


CR 2005/88 - Income tax: Murdoch University Scholarship for Industry Honours and/or Postgraduate Diploma Programs

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Class Ruling

Income tax: Murdoch University Scholarship for Industry Honours and/or Postgraduate Diploma Programs

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are sections 6-5, 6-20, 51-1, 51-10 and 51-35 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies are students who receive a scholarship for either the Postgraduate Diploma in Professional Experience Program and/or the Biomedical Science Industry Honours Program at Murdoch University. In this Ruling these persons are referred to as 'students'.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 20.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2005. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

9. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

10. The arrangement that is the subject of this Ruling is described below. This description is based on documents which are attached to the file record maintained by the Australian Tax Office for this Ruling. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 16 May 2005;
- Copy of Work Placement Agreement between Murdoch University and the sponsoring organisation; and

- Additional information provided by letter dated 13 September 2005.
11. The Postgraduate Diploma in Professional Experience Program and the Biomedical Science Industry Honours Program (the Courses) are both a ten month course in duration. The Courses comprise:
- an initial study block at Murdoch University (the University);
 - a six months placement at a sponsoring organisation providing a Student with practical experience in the work place; and
 - a final study block at the University.
12. Each sponsoring organisation provides the University with funding for a student scholarship and a work placement for the student. Students are paid a scholarship amount fortnightly over the duration of the course.
13. Students enrolled in the Courses will be full time. Both domestic and international students are eligible to apply.
14. The selection criteria for acceptance into the Courses is that a Student must:
- have completed an undergraduate degree attaining specified grade levels;
 - undertake an interview with University representatives;
 - complete a one day preparatory workshop; and
 - provide a Curriculum Vitae to the sponsoring organisation and undertake an additional interview.
15. Each work placement is supported by an agreement with the sponsoring organisation.
16. During the work placement, academic supervision of Students is a requirement of the course.
17. Students are assessed at the end of the work placement, based on deliverables agreed at the beginning of the program.
18. There is no obligation on the Student to render any service to the University whether as an employee or under a contract, either while studying or after completion of the course.
19. Students are precluded from taking employment with the sponsoring organisation during the placement.
20. At the end of the work placement, there is no requirement or obligation on the part of the sponsoring organisation to offer permanent employment to the Student.

Ruling

21. The payments made as described in paragraph 12 of this Ruling to full-time Students awarded a Murdoch University Postgraduate Diploma in Professional Experience Program Scholarship and/or a Murdoch University Biomedical Science Industry Honours Program Scholarship are considered ordinary income and are therefore, in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, these payments will be exempt from income tax under item 2.1A in the table in section 51-10 of the ITAA 1997.

Explanation

22. A payment or other benefit received by a taxpayer is assessable income if it is:

- income in the ordinary sense of the word (ordinary income); or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income).

Ordinary income

23. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

24. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist.

25. The payments received by the Students are considered to be ordinary income as they are periodical payments and are depended upon by the recipient (*Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652).

26. As the payments are considered to be ordinary income, it is not necessary to consider whether they could also be statutory income.

Exempt income

27. Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

28. Certain amounts of ordinary income and statutory income are exempt from income tax under section 51-1 of the ITAA 1997 if the amount is of a type listed in the tables in Division 51 of the ITAA 1997.

29. Item 2.1A in the table in section 51-10 of the ITAA 1997 provides that payments are exempt from income tax if:

- they are made to a full-time student at a school, college or university;
- they are made by way of scholarship, bursary, educational allowance or educational assistance; or
- they are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

Are scholarship holders full-time students at a school, college or university?

30. Yes. The scholarship is awarded to full time Students enrolled in the Courses offered by the University.

Are payments made by way of scholarship, bursary, educational allowance or educational assistance?

31. Yes. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in the ITAA 1997. The Macquarie Dictionary, 2nd Revised Edition, defines 'scholarship' as 'the sum of money or other aid granted to a scholar', and 'scholar' as 'a student; who, because of merit, etc., is granted money or other aid to pursue ... studies'. 'Student' is defined as 'one who is engaged in a course of study and instruction at a college, university, or professional or technical school' and 'one who studies a subject systematically or in detail'.

32. Paragraphs 34 to 45 of Taxation Ruling TR 93/39 discuss the meaning of the words 'scholarship, bursary, educational allowance or educational assistance' for the purposes of the former paragraph 23(z) of the *Income Tax Assessment Act 1936*. Paragraph 35 of TR 93/39 states that the words are no more '...than a description of rewards for merit attained as a result of competition or selection on the basis of general criteria...'.

33. In interpreting the meaning of the words 'scholarship, bursary, educational allowance or educational assistance', courts have determined that the relevant characteristics of a scholarship include:

- the selection of recipients based on merit or some other rational criterion (*Re Leitch, deceased* [1965] VR 204); and
- the education of the recipient is at least one purpose for which the scholarship is provided (*FC of T v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450) (*Hall's case*).

34. In *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6) Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction. Rath J in *Halls' case* held that research conducted under supervision at a university is institutional in character and therefore educational.

35. A limited number of scholarships are offered. Students awarded a scholarship must satisfy a selection criteria which includes academic achievement, work experience and an interview process. The Postgraduate Diploma and Industry Honours program enables a Student to gain a valuable opportunity to apply their academic knowledge in a supervised working environment.

36. It is accepted that the scholarships are subject to a competitive process and are granted on merit. There is an educational purpose in the provision of the scholarships. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

37. No. Section 51-35 of the ITAA 1997 excludes the following payments from exemption:

- payments by the Commonwealth for education or training: paragraphs 51-35(a), (b) and (f) of the ITAA 1997;
- payments made on the condition that the student will (or will if required) become an employee of, or enter into a labour contract with, the payer: paragraphs 51-35(c) and (d) of the ITAA 1997; and
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e) of the ITAA 1997.

Are the payments Commonwealth education or training payments?

38. No. The payments made under the scholarship are not of a kind covered by paragraphs 51-35(a), (b) or (f) of the ITAA 1997.

Are the payments made on the condition that the student will (or will if required) become an employee of or enter into a contract for labour with the payer?

39. No. Paragraphs 51-35(c) and (d) of the ITAA 1997 exclude payments from exemption if they represent:

- (c) a payment by a person or an authority on the condition that the student will (or will if required) become, or continue to be, an employee of the person or authority;
- (d) a payment by a person or an authority on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the person or authority that is wholly or principally for the labour of the student.

40. In *FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488, the Federal Court took the view that the words 'upon condition' do not require a contract between the parties to exist or any other form of legal relationship. The Court held that the exemption does not apply where, as a matter of ordinary language, it can be said that the receipt of the scholarship amount is conditional on the recipient working with the payer if the payer so requires.

41. The Students are required to complete the Courses which involves working at a sponsoring organisation for a period of six months so that Students can apply their academic knowledge in a working environment. It is accepted that this is an integral part of the education of the Students and is not employment or a contract for labour by the Student with the sponsoring organisation. In addition, after graduating, Students are not required to engage in employment with a sponsor and sponsors are not required to offer employment to any of the Students.

42. Also, there is no obligation for the Student to render any service to the University whether as an employee or under a contract, either while studying or after completion of the course.

Are the scholarships provided principally for educational purposes?

43. Yes. It is accepted that the payments made under the terms of this scholarship are provided principally for educational purposes and therefore are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Detailed contents list

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Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 93/39; TR 97/16*Subject references:*

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Legislative references:

- TAA 1953 Pt IVA
- ITAA 1936 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-20
- ITAA 1997 6-20(1)
- ITAA 1997 Div 51
- ITAA 1997 51-1
- ITAA 1997 51-10
- ITAA 1997 51-35
- ITAA 1997 51-35(a)
- ITAA 1997 51-35(b)

- ITAA 1997 51-35(c)
- ITAA 1997 51-35(d)
- ITAA 1997 51-35(e)
- ITAA 1997 51-35(f)
- Copyright Act 1968

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362
- *FC of T v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652
- *Re Leitch, deceased* [1965] VR 204

Other references:

- *Macquarie Dictionary*, 2nd Revised Edition

ATO references

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