



# ***CR 2006/3 - Income tax: Swinburne University - Industry-Based Learning Scholarship***

 This cover sheet is provided for information only. It does not form part of *CR 2006/3 - Income tax: Swinburne University - Industry-Based Learning Scholarship*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 January 2006*



## Class Ruling

### Income tax: Swinburne University – Industry-Based Learning Scholarship

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#### **ⓘ This Ruling provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant Taxation provision(s)**

2. The taxation provisions 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 entities**

3. The class of entities to which this Ruling applies are full time undergraduate students at Swinburne University (the University) who receive an Industry-Based Learning Scholarship (IBL Scholarship). In this Ruling these entities are referred to as 'students'.

#### **Qualifications**

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 25.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
  - this Ruling may be withdrawn or modified.
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National Circuit  
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## Date of effect

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8. This Ruling applies from 1 January 2006. 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 taxation provisions are not amended.

## Scheme

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10. The scheme that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the 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 scheme are:
- Application for Class Ruling dated 1 September 2005;

- Draft Industry-Based Learning (IBL) Scholarship Handbook; and
- Further information provided by telephone and email by the applicant.

11. The University offers full time undergraduate students an opportunity to participate in an Industry Based Learning Program (IBL Program) with the aim of helping students link their education with industry requirements. The IBL Program has subject status, although in most cases it will not constitute one of the subjects compulsorily required to complete a course. The IBL Program subject is passed or failed based upon assessment and recorded in a student's statement of results.

12. To be eligible for the IBL Program students must be currently enrolled as full time students in courses in one of the following Faculties within the University:

- Life and Social Sciences;
- Engineering and Industrial Sciences;
- Business and Enterprise;
- Information and Communication Technologies; or
- The Lilydale Division.

13. These courses comprise:

- an initial study block at the University;
- an IBL Program that consists of a six months or twelve months placement (industry placement), at a sponsoring organisation within an industry relevant to their area of study, with the aim of providing the student with practical experience in the work place; and
- a final study block at the University.

14. Acceptance into the IBL Program is a precondition to the student becoming eligible for an IBL Scholarship.

15. The selection requirements for awarding the IBL Scholarship are that a student must:

- be a current full time undergraduate student and attaining specified academic results or grade levels within a relevant Faculty;
- go to workshops and information sessions in preparation;
- provide an application to the University; and
- undertake an interview with the sponsoring organisation.

The University will, in consultation with the sponsoring organisation, make the final selection of the student taking into account all of the above.

16. The IBL Program provides an opportunity for the student to apply their academic knowledge and enhance their learning in a professional environment relevant to their studies.

17. Each industry placement is supported by an agreement with the sponsoring organisations under which the learning outcomes from that placement are established. The student remains subject to the Statutes and Regulations of the University at all times while on the industry placement.

18. During the industry placement, academic supervision of students is required. Therefore, the University appoints a staff member as the Swinburne supervisor.

19. The Swinburne supervisor liaises with the sponsoring organisation before the commencement of the industry placement to make arrangements for the day to day supervision of the student by an Industry supervisor appointed by the sponsoring organisation.

20. The Swinburne supervisor monitors the student's progress at regular intervals during the industry placement to ensure:

- that the learning program undertaken by the student is appropriate; and
- that the student is progressing satisfactorily.

21. The student's performance will be assessed by a combination of:

- journal entries;
- reports;
- presentations;
- evaluations;
- site visits by the Swinburne supervisor; and
- progress reports from the organisation.

22. Students are assessed at the end of the industry placement, based on the learning outcomes and deliverables agreed at the beginning of the IBL program.

23. Funding for the IBL Scholarship is provided to the University by the sponsoring organisation.

24. The University administers the IBL Scholarships. Students are paid a scholarship amount fortnightly by the University over the duration of their industry placement. The total of the IBL Scholarship paid will be in the range of \$24,500 to \$32,500 per annum.

25. There is no obligation on the student to render any service to the University or sponsoring organisation whether as an employee or under the scholarship, either while studying or after completion of their course. Students may be invited by the sponsoring organisation to undertake casual work during their industry placement, however, if they wish to accept the offer, they will need the approval of their Swinburne supervisor.

## **Ruling**

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26. The payments made as described in paragraph 24 of this Ruling to students awarded an IBL 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.

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**Commissioner of Taxation**

1 February 2006

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## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

27. 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

28. 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).

29. 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.

30. Payments received by the students under the IBL Scholarship 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; (1989) 89 ATC 5322; (1989) 20 ATR 1652).

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

### Exempt income

32. 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.

33. 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.

34. 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; and
- 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 holder's full-time students at a school, college or university?**

35. Yes. The IBL scholarship will only be awarded to full time students enrolled in courses in certain Faculties at the University.

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

36. 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'.

37. 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...'.

38. 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*).

39. The opportunity to participate in the IBL Program and to apply for the IBL scholarships is made available each year to all full-time students who are enrolled at the University and currently studying a course within one of the relevant Faculties. The University and the sponsoring organisation participate in student selection for the IBL Scholarship. It is accepted that the selection of the students is based on merit.

40. 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.

41. The IBL Scholarship is paid to a student involved in the IBL Program. The purpose of the program is to enhance the student's academic studies. The program has subject status within the course being studied by the student. It is accepted that there is an educational purpose in the provision of the IBL scholarships.

42. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

## **Do the exceptions in section 51-35 apply?**

43. 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?**

44. 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?***

45. 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.

46. 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.

47. Students undertaking the IBL Program participate in a 6 or 12 months industry placement which involves being placed at a sponsoring organisation so that students can apply their academic knowledge in a working environment. It is accepted that the industry placement 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, either during the course or after graduation, there is no obligation on the students to engage in employment with a sponsor, and sponsors are not required to offer employment to any of the students.

48. 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?***

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

## Appendix 2 – Detailed contents list

50. The following is a detailed contents list for this Ruling:

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 92/20; TR 93/39

### *Subject references:*

- exempt income
- postgraduate research
- scholarships

### *Legislative references:*

- 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

- TAA 1953

### *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
- *FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 89 ATC 5322; (1989) 20 ATR 1652
- *Re Leitch, deceased* [1965] VR 204

### *Other references:*

- *The Macquarie Dictionary*, 2nd Revised Edition

### ATO references

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