



CR 2009/13 - Income tax: Victorian Public Health Training Scheme Scholarships

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 This document has changed over time. This is a consolidated version of the ruling which was published on *4 March 2009*



Class Ruling

Income tax: Victorian Public Health Training Scheme Scholarships

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid 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

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

Relevant provision(s)

2. The relevant taxation provisions dealt with in this Ruling are:

- Subsection 6-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- Section 51-10 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is persons who are enrolled full-time in a Masters or Doctorate course of study, approved by the Department of Human Services to form part of the Victorian Public Health Training Scheme (VPHTS), and who receive a Victorian Public Health Training Scheme Scholarship (VPHTS Scholarship). In this Ruling, a person belonging to this class of entities is referred to as a student.

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 42 of this Ruling.

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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Date of effect

8. This Ruling applies from 1 January 2009. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

9. This Class Ruling replaces CR 2006/27 which is withdrawn on and from 4 March 2009 due to a change in payer under the scheme. Class Ruling CR 2006/27 sets out the Tax Office's view on whether scholarship payments to students up to 28 February 2009 by La Trobe University under the Victorian Public Health Training Scheme are exempt from income tax under item 2.1A in the table in section 51-10.

Scheme

10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application, dated 31 July 2008;
- e-mail correspondence with the applicant between 26 September 2008 and 11 February 2009.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

11. The VPHTS has been established by the Public Health Branch of the Victorian Department of Human Services (DHS).

12. The stated aim of the VPHTS is to build the capacity and expertise of the public health workforce by providing advanced training and on-the-job experience for health professionals from a variety of professional disciplines in the principles of public health.

13. The broad objectives of the VPHTS are:

- to facilitate the development, knowledge, skills and competencies required of a public health practitioner in each VPHTS fellow;
- to contribute to public health through learning and experience obtained from the placements;
- to contribute to collaboration and shared knowledge between public health organisations; and
- to ensure graduates of the VPHTS can accept positions of responsibility within the public health field.

14. To receive a VPHTS Scholarship, applicants are expected to demonstrate that they are well prepared for advanced training in public health and that they have the potential for an outstanding career in public health practice. This will usually mean that they have a primary degree in health science or a human services discipline, although applicants from beyond these fields can also be considered.

15. Applicants are also expected to have demonstrated that they have substantial practical experience in public health work or in another comparable field providing relevant experience.

16. The VPHTS scholarship is highly competitive and applicants are ranked in terms of their potential contribution to public health practice and the degree to which such potential would be enhanced through participating in the VPHTS.

17. The VPHTS scholarship is provided to students to enable them to undertake a two year full-time Masters course (or a three year full-time doctorate or equivalent course) at a university. The selection of the university to offer the course in 2009 (and beyond) will be determined by a tender process.

18. Students are paid a scholarship amount fortnightly by DHS for the duration of the scholarship.

19. The Masters course undertaken by the students has the following components:

- the study of at least five prescribed subjects at the university;
- undertaking six approved fieldwork placements of four months each; and
- the submission of a bound volume (the equivalent to the preparation of a thesis) for assessment at the conclusion of the degree.

20. Students are also encouraged to participate in professional public health organisations beyond their placements, including presenting conference papers and submitting papers for publication. Evidence of these activities is included in the bound volume submitted for assessment at the conclusion of the degree.

21. Each fieldwork placement is an integral part of the Masters degree and is assessed and credited as a separate subject towards the degree. A student cannot achieve the qualification without successfully completing all of the fieldwork placements.

22. The selection of placements is determined after consultation between the student, DHS and the university, and involves a 'matching up' of the available placements and the student's assessed learning needs (that is, where they have limited or no experience).

23. A student is able to express an interest in being placed with a particular organisation, but the decision will ultimately be made by the university in consultation with DHS, based on the student's academic learning needs.

24. The purpose of the placements is not for the student to provide the benefit of existing expertise to an organisation but rather to further the learning needs of the student, by allowing them to learn new skills under the close supervision of a senior employee of the placement organisation. Students are not allocated a placement in any area in which they already have substantial existing skills and expertise. In fact, a student with expertise that is relevant to a particular placement organisation is deliberately placed with another organisation, in order to ensure that they develop new skills.

25. Students are not allocated a placement to meet any operational needs of the placement organisation or to facilitate completion of that organisation's projects.

26. Planning meetings between the university, student, DHS and the placement organisation are held prior to each placement to determine the specific learning activities to be undertaken by the student during the placement. These activities will not replace or supplement the work done by employees of the placement organisation. These activities are selected to provide practical experience to the student in an area where they have no or limited experience.

27. DHS and the placement organisations do not derive any material benefit from the activities that a student performs during the placements, and in fact devote resources to providing a senior employee to supervise the student closely and contribute to the student's learning experience.

28. The initial fieldwork placement will be with DHS. The applicant has advised that the requirement for an initial placement with DHS is to ensure that the students obtain an overview of the public health sector. All subsequent placements will be with DHS and/or other public health organisations. It is expected that no more than three placements in total will be undertaken with DHS.

29. The responsibilities of the university (Field Placement Coordinator) in relation to the field placements include:

- discuss opportunities for field placements with placement organisations;
- provide a handbook outlining the Masters course Field Placement Program;
- provide a Letter of Exchange that sets out the risks the university agrees to bear with respect to the actions of students whilst on placement;
- provide ongoing monitoring of student work and progress of project work through ongoing and regular input and contact with students;
- liaise with the placement organisation, placement supervisor and other organisation staff; and
- coordinate the setting of objectives and implementation of educational content, and setting and assessing the standard of learning and performance.

30. The responsibilities of the field placement organisation include:

- discuss the requirements of the field placement program with the university (Field Placement Coordinator);
- provide a field placement project relevant to the student's course of study;
- provide a field placement project supervisor during the placement;

- provide an orientation to students on commencement of the placement, which shall include such information, instruction and training as necessary to enable the students to perform the placement activities in a safe manner;
- provide an environment for students whilst on placement that is, as far as is practicable, safe and without risks to health; and
- complete and return the Letter of Exchange in regard to student placements and maintaining insurance coverage as agreed.

31. Each field placement is supported by an agreement with the placement organisation. The agreement outlines:

- the project(s) to be undertaken during the field placement;
- the purpose and objectives of the field placement;
- competencies and skills to be learned, and how they will be measured and assessed; and
- the responsibilities of the various parties.

32. The field placement supervisor's report at the conclusion of each placement is written in consultation with the university (Field Placement Coordinator). The final report is retained by the university and the student has a copy for inclusion in their bound volume at the conclusion of the course.

33. The bound volume produced at the conclusion of the course includes:

- specific reports and papers produced during the placements, including the supervisor reports from each placement; and
- a written commentary produced by the student which is a piece of academic writing on a particular theme, area or issue of interest to the student and of importance to public health practice.

34. Ownership of the intellectual property in all the material produced by the students in satisfaction of the Masters degree (or doctorate), including any intellectual property created during the fieldwork placements, will be determined in accordance with the university's internal research and intellectual property guidelines and policies.

35. The offer of the scholarship is not subject to any condition on the student to continue in, take up, or take up if required, employment with the scholarship provider or any other organisation.

36. There are no restrictions on existing DHS employees applying for a scholarship. If an existing DHS employee is successful in the application process, they will be expected to either resign from their employment prior to taking up the scholarship or apply for leave without pay for the duration of the scholarship. There is no entitlement to leave without pay, and any request will be granted on a case by case basis, subject to DHS business needs. Whilst on leave without pay, the student will not receive superannuation co-payments or accrue leave entitlements.

37. Students may be permitted to undertake up to 4 hours of paid employment per week outside the requirements of the VPHTS. However, they will need the approval of the university to undertake any such employment.

38. The scholarship will be terminated in the event of unsatisfactory academic performance. Such a decision will be made by DHS in consultation with the university and in accordance with the academic criteria developed by the university for that academic course. The scholarship will also be terminated if the student ceases to be enrolled in the university course.

39. Scholarship holders will be entitled to sick leave and recreational leave. Such leave will be taken in accordance with the applicable guidelines of the university.

40. Students and the university (Field Placement Coordinator) will have regular monthly meetings. The purpose of these meetings is to discuss administrative matters to do with the course and for students to exchange experiences, review journal articles, guest speakers etc.

41. Approximately 80% of the student's time during any particular placement will be devoted to activities directly related to the placement. The remainder of their time will be spent on other course-work aspects of the Masters (or doctoral) course.

42. At the conclusion of each 12 month period, the student is required to submit to the university a detailed report on the projects undertaken during the placements and the competencies and skills achieved.

Ruling

43. The payments made as described in paragraph 18 of this Ruling to students awarded a VPHTS Scholarship are considered ordinary income and are therefore, in principle, assessable income under subsection 6-5(1). However, these payments will be exempt from income tax under item 2.1A in the table in section 51-10.

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.*

44. 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

45. Subsection 6-5(1) provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

46. Payments received by the students under the VPHTS Scholarship are considered to be ordinary income, being periodical payments that are depended upon by the recipient.

Exempt Income

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

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

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

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

The three conditions are discussed below.

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

50. The Masters course will include course work at a university plus six work placements that will be assessed and credited as subjects towards the Masters degree, which is a full-time course offered by a university.

51. As such, students in receipt of a VPHTS scholarship are accepted as being full-time students at a university.

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

52. 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'.

53. Paragraphs 34 to 48 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 ITAA 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...'.

54. 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 (*Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450).

55. The VPHTS scholarship process is highly competitive with applicants having to demonstrate that they are well-prepared for advanced training in public health and that they have the potential for an outstanding career in public health practice. As such, it is accepted that selection to receive a VPHTS scholarship is merit based.

56. 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.

57. The Masters degree undertaken by students in receipt of the VPHTS scholarship is a full-time course comprising course work at a university plus six work placements designed to expand the student's knowledge of the public health system and which are assessed and credited as subjects towards the degree. It is accepted that the VPHTS Scholarship has the requisite educational purpose.

58. The payments received by a student under the VPHTS Scholarship are therefore accepted as being made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

59. Section 51-35 excludes the following payments from exemption:

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

Are the payments Commonwealth education or training payments?

60. The payments made under the scholarship are not of a kind covered by paragraphs 51-35(a), (b) or (f).

Are the payments made on the condition that the student will (or will if required) become or continue to be an employee of the payer?

61. Paragraph 51-35(c) excludes payments from exemption if they represent:

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.

62. In *Federal Commissioner of Taxation v. Ranson* (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652, the Federal Court took the view that the words 'upon condition that' 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.

63. Students, as part of their Masters course, are required to undertake six placements over a two year period. These placements are an integral part of the Masters course, being assessed and credited as subjects towards the Masters degree. Any contribution a student may make to the business outcomes of the placement organisation is not relied upon by the organisation and is incidental to the study program.

64. The placements do not require the student to become an employee. Rather, the terms of the scholarship indicate that there is no employment relationship, even though some features of the Scholarship agreement, such as provisions for leave, are similar to those ordinarily made for employees.

65. The terms of the scholarship put the student under no obligation (whether or not legally binding) to become an employee of any organisation in the future, or to do so if required.

66. The payments under the VPHTS are therefore not excluded from exemption under paragraph 51-35(c).

Are the payments made on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the payer that is wholly or principally for the labour of the student?

67. Paragraph 51-35(d) excludes payments from exemption if they represent:

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.

68. Paragraph (d) imposes a similar requirement to that of paragraph (c) by excluding employment-like relationships, that is, contracts wholly or principally for labour.

69. It is recognised that work can be part of an education program (see *Federal Commissioner of Taxation v. Hall* 75 ATC 4156 at 4164, also at 4162).

70. The tasks or projects undertaken by a student during a field placement are determined by the university in consultation with the student and placement organisation. These tasks or projects are dictated by the academic needs of the student rather than the day-to-day requirements of the placement organisation.

71. During each placement the student is required to devote approximately 20 per cent of their time to other academic requirements of the course, such as participation in other professional public health activities, presenting conference papers or submitting papers for publication. The intellectual property in the work completed by the students in satisfaction of the Masters degree will be determined in accordance with the university's internal research and intellectual property guidelines and policies.

72. In circumstances where work is carried out solely or primarily for an educational purpose and its results are not calculated to benefit the placement organisation but are incidental products of the study program, there is no contract wholly or principally for the labour of the student.

73. In the present case, the terms of the scholarship put the student under no obligation (whether or not legally binding) to enter into a contract wholly or principally for the student's labour in the future, or to do so if required.

74. The payments under the VPHTS are therefore not excluded from exemption under paragraph 51-35(d).

Are the scholarships provided principally for educational purposes?

75. The field placements are specifically selected and the tasks formulated to meet the needs of the particular student in completing the requirements of the Masters degree. Assessment is controlled and carried out by the university. There is no ancillary purpose that work done by students will serve the operational needs or projects of the DHS or other placement organisations.

76. It is accepted that in providing the post-graduate scholarships in public health, the DHS does so principally for educational purposes. The scholarship payments are therefore not excluded from exemption by paragraph 51-35(e).

Conclusion

77. Accordingly, the payments made to a student under the VPHTS scholarship will be exempt under item 2.1A of the table in section 51-10.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 93/39; TR 2006/10

Previous Rulings/Determinations:

CR 2006/27

Subject references:

- exempt income
- postgraduate research
- scholarships

Legislative references:

- ITAA 1936 23(z)
- ITAA 1997
- ITAA 1997 6-5(1)
- 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)

- TAA 1953

- Copyright Act 1968

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362
- *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- *Federal Commissioner of Taxation v. Ranson* (1989) 90 ALR 533; 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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