



CR 2010/11 - Income tax: James Cook University Business Partnership Program Scholarship

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Class Ruling

Income tax: James Cook University Business Partnership Program Scholarship

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1 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 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 comprises full time students who are enrolled in a Bachelor of Business at James Cook University (JCU) who receive a scholarship from the James Cook University Business Partnership Program (JCUBPP). In this Ruling, a person belonging to this class of entities is referred to as a JCUBPP 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 9 to 24 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 2010. 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).

Scheme

9. 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 21 August 2009;
- JCUBPP Overview Booklet;
- JCUBPP Sponsorship Agreement – draft dated 15 July 2009;
- JCUBPP code of conduct;
- JCUBPP Scholarship Agreement – draft dated 15 July 2009; and
- Letter from applicant dated 11 December 2009.

10. The JCU offers three-year scholarships to full time students who undertake a specially structured Bachelor of Business degree (the course) under the JCUBPP. Each scholarship is funded by a business sponsor.

11. The purpose of the JCUBPP is to help students by:

- giving them an opportunity to apply the knowledge gained at JCU;
- providing valuable practical experience in a professional environment;
- giving them an opportunity to develop networks within their chosen industry; and
- improving their chance of obtaining employment with a sponsor on completion of their studies.

12. Once a business has agreed to participate in the JCUBPP, a JCUBPP Sponsorship Agreement (the Sponsorship Agreement) will be entered into between JCU and the sponsoring business. The Sponsorship Agreement outlines details of the sponsorship arrangement with the sponsoring business and the responsibilities of the various parties.

13. The business sponsor will pay an annual sponsorship amount to JCU in advance on 31 January in each calendar year. Over the term of the course, JCU agrees that it will pay the scholarship to the JCUBPP student as follows:

- 50% in the first study period (that is, the first 13 week period during each calendar year in which units of study are taught at JCU); and
- 50% in the second study period (that is, the second 13 week period during each calendar year in which units of study are taught at JCU).

14. A student will be eligible to be awarded a scholarship if the student:

- has applied for and subsequently enrolls in the Bachelor of Business degree as a full-time student;
- is an Australian citizen or has permanent residency status;
- possesses appropriate interpersonal skills having regard to the nature of the sponsor's business and industry; and
- meets all relevant selection criteria and processes of the JCUBPP and any other requirements deemed by JCU to be appropriate to that program.

15. The selection criteria considered most important in the assessment of a student for the program are as follows:

- academic excellence;
- academic achievement;
- leadership and initiative;
- excellent communication and interpersonal skills;
- social interest and community mindedness;
- interest in and commitment to working with people; and
- global awareness and interest in local, national and global issues.

16. The awarding of each scholarship is at the sole discretion of JCU, however the business sponsor may be involved in the process.

17. The length of the course for a JCUBPP student is three years, the same as the standard Bachelor of Business for non-recipients of the scholarship. JCUBPP students will take advantage of the flexible delivery options available to enable them to complete their course within the required three year time frame. Flexible study options may include the delivery of subjects which are timetabled after hours or in intensive block mode. Intensives are offered to all students but will be mandatory for JCUBPP students.

18. Each JCUBPP student must undertake as part of their course two placements with their respective sponsor. These compulsory placements take the form of two full semesters of workplace integrated training, during which the student will apply their acquired skills in a real-world environment, gaining valuable experience. The placements form part of the JCUBPP student's elective components within the course.

19. Each placement constitutes a three credit point subject, for which there will be a HELP liability, as would apply to any other enrolled subject.

20. The structure of the course for a JCUBPP student will be:

- Year 1: the JCUBPP student does not undertake any work placement and his or her study plan reflects that of a non-JCUBPP student.
- Year 2: a JCUBPP student undertakes work placement in the first semester only, in addition to completing two subjects. Normal course work is undertaken in semester two.
- Year 3: a JCUBPP student undertakes work placement in the second semester only in addition to completing two subjects. Normal course work is undertaken in semester one.

21. Under the Sponsorship Agreement the business sponsor is required to

- nominate an appropriate member of staff to act as a supervisor of the JCUBPP student for the duration of the work placement,
- make copies of all relevant workplace policies and procedures available to the JCUBPP student and if necessary ensure they undertake an appropriate induction program,
- provide a positive learning environment for the JCUBPP student, and
- provide JCU with a written report of the training outcomes upon completion of each thirteen week work placement period.

22. The tasks and projects undertaken by the JCUBPP student during a work placement will be individually negotiated between the student and the JCU subject co-ordinator and will involve a student generated proposal which will need to be ratified by the co-ordinator. The proposal will be based on activities undertaken in the workplace and the efficacy of the project will be determined by the valid connection between theory and practice.

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23. It is not a requirement or condition of the scholarship that the JCUBPP student becomes an employee of either JCU or the sponsor business, either during or after their undergraduate course. Nor does JCU or the sponsor business have any obligation to employ the student on completion of the program.

24. Under the terms of the Sponsorship Agreement, ownership of intellectual property in any new material created during the work placements will vest with the business sponsor. However, it is not expected that any significant benefit will accrue to a business sponsor from a work placement.

Ruling

25. Scholarship payments made by the JCU to a JCUBPP student under the arrangement described in this Ruling are considered to be 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.

Commissioner of Taxation

28 April 2010

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.*

26. 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

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

28. Payments received by the students under the JCUBPP are considered to be ordinary income, being periodical receipts that are expected and relied upon by the student.

Exempt income

29. 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.

30. 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.

31. 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?

32. Students participating in the JCUBPP are undertaking a specially constructed Bachelor of Business degree course which is only offered by JCU to students on a full-time basis.

33. The two semester-long work placements undertaken by a JCUBPP student are compulsory units in the degree course and the student remains a full-time student whilst undertaking each work placement.

34. As such, JCUBPP students are accepted as being full-time students at a university.

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

35. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in the ITAA 1997. The *Macquarie Dictionary*, 1991, 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'.

36. Paragraphs 34 to 48 of Taxation Ruling TR 93/39 Income tax: friendly society education funds 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...'.¹

37. 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;¹ and
- the education of the recipient is at least one purpose for which the scholarship is provided.²

38. The JCUBPP scholarship involves a competitive process which involves the student being assessed against a range of criteria such as their academic achievements and interpersonal skills. As such, it is accepted that selection to participate in the JCUBPP is merit based.

¹ *Re Leitch (deceased)* [1965] VR 204.

² *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450.

39. In *Chesterman v. Federal Commissioner of Taxation*³ Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

40. The JCUBPP scholarship is paid to a student enrolled with JCU as a full time student. The purpose of the JCUBPP is to give the student an opportunity to gain practical, real world experience with prominent business sponsors as part of their undergraduate degree course. It is accepted that the JCUBPP Scholarship has the requisite educational purpose.

41. The payments received by a student under the JCUBPP 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?

42. 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?

43. 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?

44. 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.

³ (1923) 32 CLR 362 (at 385-6)

45. 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.⁴

46. Students, as part of their Bachelor of Business degree are required to undertake two placements, each for the duration of one semester, at the work place of the business sponsor. These placements are an integral part of the undergraduate degree, being assessed and credited as subjects towards the degree. The terms of the scholarship indicate that there is no employment relationship between the student and the business sponsor during the work placement.

47. The terms of the scholarship put the student under no obligation (whether or not legally binding) to become an employee of either JCU or the business sponsor in the future, or to do so if required.

48. The payments under the JCUBPP 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?

49. 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.

50. Paragraph 51-35(d) imposes a similar requirement to that of paragraph 51-35(c) by excluding employment-like relationships, that is, contracts wholly or principally for labour.

51. It is recognised that work can be part of an education program⁵.

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

⁴ *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652.

⁵ *Federal Commissioner of Taxation v. Hall* 75 ATC 4156 at 4164 and 4162

53. 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.

54. 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.

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

Are the scholarships provided principally for educational purposes?

56. The JCUBPP scholarships are awarded to a student to enable them to complete a three-year Bachelor of Business degree at JCU, which includes two compulsory elective subjects in the form of a work placement at the sponsoring business.

57. Although ownership of intellectual property in any new material created by the student vests with the business sponsor, there is no expectation on the part of the sponsor of gaining any significant benefits from this.

58. It is accepted that in providing the JCUBPP scholarships the JCU and business sponsor are doing so principally for educational purposes. The scholarship payments are therefore not excluded from exemption by paragraph 51-35(e).

Conclusion

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

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 51-35(f)
- TAA 1953
- Copyright Act 1968

Related Rulings/Determinations:

TR 93/39; TR 2006/10

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) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652
- *Re Leitch (deceased)* [1965] VR 204

Subject references:

- exempt income
- 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)

Other references:

- *The Macquarie Dictionary*, 1991, 2nd revised Edition

ATO references

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