

CR 2010/23 - Income tax: Queensland Health Bonded Medical Scholarships



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Class Ruling

Income tax: Queensland Health Bonded Medical 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 provision(s) 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:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Section 6-10 of the ITAA 1997;
- Section 51-10 of the ITAA 1997; and
- Section 51-35 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 consists of full-time students who are in receipt of scholarship payments, and whose tuition fees are paid by the Director-General of Queensland Health on behalf of the State of Queensland (Queensland Health), under an Agreement for the Queensland Health Bonded Medical Scholarship (Scholarship Agreement). 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 9 to 22 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 July 2007 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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 4 April 2007;
- Pro-forma Deed of Agreement between the Director-General of Queensland Health on behalf of the State of Queensland, and the student (the Scholarship Agreement); and
- Deed of Agreement dated 10 May 2006 between the State of Queensland acting through the Department of Health and a recognised University in Queensland (University) offering the course of study.

10. As part of the reforms of the Queensland public health care system announced by the Queensland Premier on 1 July 2005, Queensland Health Bonded Medical Scholarships (Scholarships) are being offered by the Queensland State Government through Queensland Health to increase the number of medical graduates in Queensland. The Scholarships are intended to encourage graduate Australian citizens (with preference to Queensland residents) to undertake medical studies at the University.

11. The course of study is the full-time Bachelor of Medicine/Bachelor of Surgery (MBBS) degree offered by the University.

12. The Scholarships are aimed at increasing the number of public and private medical practitioners in identified geographical areas, which currently have a shortage of medical practitioners. Shortages are also present in specific medical practice specialties in Queensland.

13. The students occupy places which have been reserved by Queensland Health under a separate agreement with the University. Funding for those places are paid by Queensland Health to the University at an agreed rate relative to the course fees each year. The funding is provided at the commencement of the year for the year unless a student rejoins or commences in the second semester, in accordance with the agreement between the University and Queensland Health.

14. Applications for the Scholarship undergo a competitive, merit-based selection process. A University panel independently assesses the applications to select the successful applicants. The Scholarship is open only to full-time internal students. Each successful student is required to enter into the Scholarship Agreement, being a contract that sets out his or her obligations as part of the Scholarship.

15. Under the Scholarship Agreement Queensland Health will pay the Scholarship Funds, comprising:

- The tuition fees in relation to the student's place at the University for the MBBS degree. This is paid annually directly to the University; and
- An Education Support Allowance of up to \$25,000 per annum. Up to \$5,000 of this amount is intended to cover the costs of travel and accommodation required as part of the degree (for example, clinical placements). This is to be paid as an annual, lump sum payment within 30 days of the commencement of the first semester in each year.

16. Further, under the Scholarship Agreement, the student must:

- Attend and pass the course subjects in order to successfully obtain his or her degree in the minimum period permitted by the University;
- As soon as practical after completion of the study period, obtain general registration, subject to internship conditions, with the Medical Board of Queensland; and
- Successfully complete a prescribed internship in Queensland in accordance with the *Medical Practitioners Registration Act 2001* (Qld).

17. The student, upon successful completion of the MBBS, must obtain registration with the Medical Registration Board of Queensland as an intern and must undertake his or her internship (52 weeks) as arranged by Queensland Health. 'Intern' means a medical practitioner who holds a certificate from the Medical Board of Queensland authorising an appointment as such under the *Medical Practitioners Registration Act 2001* (Qld). Interns are medical graduates who have been accepted into an intern training program. Generally, this will be the first year of practice following completion of a medical degree.

18. The schedule to the Scholarship Agreement specifies the internship conditions that must be satisfied. Upon successful completion of the MBBS degree, Queensland Health will provide to the student, and the student will commence, a prescribed internship at the date, location and duration as nominated by and as directed by Queensland Health. The student agrees to be engaged in an Area of Priority Service while undertaking the prescribed internship. 'Area of Priority Service' means either or both of:

- any geographical location in Queensland;
- a field of medical practice (taking into account the degree and registration obtained by the student) in either the public or private health sector within Queensland.

19. The Scholarship Agreement further provides that the student will not undertake a prescribed internship other than as provided by Queensland Health, without the prior written consent of Queensland Health. In Queensland, only Queensland Health and a non-government hospital are accredited providers of intern training programs. That hospital is a private organisation that is not operated by Queensland Health and only offers 12 internships per year. All other internships in Queensland are with Queensland Health. The student may therefore be required under their agreement to work for Queensland Health.

20. Within two years of completion of the study period and upon completion of the prescribed internship, the student must obtain general registration with the Medical Board of Queensland without conditions.

21. Once the above registration (without conditions) is obtained, the student is obliged to work in an Area of Priority Service as an employee on a full-time basis. The actual Area of Priority Service is to be determined by Queensland Health after consultation with the student. The student will not necessarily be required to work with or for Queensland Health, because in some circumstances the requirement to work in an Area of Priority Service can be met through work in a private practice. However, Queensland Health has the power to require a student to work in a particular Area of Priority Service in which Queensland Health is the only suitable employer.

22. The student must work in an Area of Priority Service for the 'work period' specified in the Scholarship Agreement, subject to any extension of time period due to leave approved at the discretion of Queensland Health (and, where applicable, the student's private employer). The work period includes any period of internship or practical training required to be undertaken.

23. The student may be required to pay back all or a portion of the Scholarship funds if he or she does not meet his or her contractual obligations under the Scholarship Agreement, depending on the individual's circumstances as determined by Queensland Health. The amounts that may be required to be paid back would depend on whether the individual is still a student or has graduated, and the length of time of study and/or work completed.

Ruling

Education Support Allowance

24. Payments of the Education Support Allowance under the Queensland Health Bonded Medical Scholarship are ordinary income of the student under section 6-5.

25. The payments are not exempt from income tax under Item 2.1A in the table in section 51-10 as a scholarship, bursary, educational allowance or educational assistance, as they are excluded from exemption by the operation of section 51-35.

Payments of tuition fees

26. Payments of tuition fees by Queensland Health direct to the University for reserved places are not ordinary income of the student under section 6-5, nor are they statutory income of the student under section 6-10.

Commissioner of Taxation

30 June 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.*

Education Support Allowance

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) provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

29. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

30. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*¹, the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

31. Amounts that are periodical, regular or recurrent, relied upon and expected on a periodic basis by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,² as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.³ Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.⁴

32. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

33. In *Scott v. Federal Commissioner of Taxation*,⁸ Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities.⁹ In *Federal Commissioner of Taxation v. Harris*,¹⁰ a bank made a lump-sum payment to supplement a former employee's pension so as to alleviate the negative effects of high inflation. The majority held that the payment was not a product of the former employment and this was an important element in finding that the payment was not income.

34. Payments of the Education Support Allowance are ordinary income as they are paid periodically and are received by the student as financial support to meet the student's regular expenditure whilst studying.

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443 (*Dixon*).

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 570; (1956) 11 ATD 68 (*Hayes*), *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375, *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254, *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; (1953) 5 AITR 496; 24 ATR 527.

⁷ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

⁸ (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

⁹ At 527.

¹⁰ (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869.

Exempt income

35. 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.

36. 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.

37. Item 2.1A in the table in section 51-10 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.

The three conditions are discussed in paragraphs 38 to 49 of this Ruling.

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

38. This condition is satisfied as the scholarship recipients are required to be full-time students at a university.

Would the payments be considered to be made by way of scholarship, bursary, educational allowance or educational assistance?

39. 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'.

40. 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 former paragraph 23(z) of the *Income Tax Assessment Act 1936* (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 ...'

41. 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).

42. It is accepted that selection to receive a Scholarship is merit-based, and that the Scholarship has the requisite educational purpose.

43. Accordingly, the payments under the Scholarship Agreement would, if derived by a student, be considered to be made by way of a scholarship, bursary, educational allowance or educational assistance.

Do any of the exceptions in section 51-35 apply?

44. 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?

45. 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?

46. 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.

47. 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 for the payer.

48. On completion of the degree, the Scholarship Agreement provides that Queensland Health will provide to the student, and the student will commence, a prescribed internship at the date, location and duration as nominated by and as directed by Queensland Health. The student will not undertake a prescribed internship other than as provided by Queensland Health, without the prior written consent of Queensland Health (see paragraph 18 of this Ruling). As such, it is accepted that the student will, or will if required, become an employee of Queensland Health during his or her prescribed internship.

49. Accordingly, paragraph 51-35(c) will apply to exclude the payment of the Education Support Allowance from being exempt from income tax under Item 2.1A in the table in section 51-10.

Payments of tuition fees

Ordinary income

50. The principles of ordinary income as explained by the courts are summarised at paragraphs 28 to 34 of this Ruling and apply in determining whether the tuition fees paid by Queensland Health to the University are ordinary income to the student.

51. Subsection 6-5(4) provides that in working out whether a taxpayer has derived an amount of ordinary income and (if so) when the taxpayer has derived it, the taxpayer is taken to have received the amount as soon as it is applied or dealt with in any way on their behalf or as they direct.

52. It is considered that the benefit constituted by the Scholarship is not ordinary income of the student, as the student does not derive any amount. The payments are made direct by Queensland Health to the University to provide an 'employer reserved place' in the medical course and the student does not incur a liability for tuition fees. No amount that would have been ordinary income is applied on behalf of, or at the direction of, the student. Subsection 6-5(4) therefore has no application.

Statutory income

53. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

54. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

55. Section 15-2 provides that a taxpayer's assessable income includes the value of all allowances, gratuities, compensation, benefits, bonuses and premiums 'provided to [the taxpayer] in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by [the taxpayer]'.

56. As a holder of a place in the course, the student receives a benefit. However, for the value of the scholarship to be assessable income of the student under section 15-2, it must be 'provided to the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of or services rendered'.

57. The student is not an employee of Queensland Health, nor are they in any current employment for which the payment of the tuition fees by Queensland Health to the University will be in respect of. As such, the benefit that the student receives will not be in respect of any employment, under section 15-2.

58. In *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513, members of the High Court commented on the general application of paragraph 26(e) of the ITAA 1936 (now re-enacted as section 15-2 of the ITAA 1997). Wilson J, having referred to the judgments in *Dixon*¹¹ and *Hayes*,¹² stated that, in relation to services rendered apart from employment, paragraph 26(e) of the ITAA 1936 applied only where the payment was, directly or indirectly, a reward for services rendered.¹³ Gaudron J, with whom Deane J agreed, expressed the same view.¹⁴ As such, there must be a 'real relation' between the payment and the services rendered in the sense of that the payment is a reward for those services, taking into account 'the total situation of the taxpayer'.¹⁵

59. In *Federal Commissioner of Taxation v. Cooke and Sherden* 80 ATC 4140, when determining the meaning of rendering services under paragraph 26(e) of the ITAA 1936, the Full Federal Court referred to comments by McTiernan J in *Revesby Credit Union Co-operative Ltd. v. FC of T* (1965) 112 CLR 564 at 578, where he stated:

I consider that 'the rendering of services' should consist of the doing of an act for the benefit of another, which is more than the mere making of a contract and which goes beyond the performance of an obligation undertaken in the course of an ordinary commercial contract.

60. In this instance, whilst not an ordinary commercial contract, the student has entered into, and is bound by the conditions and obligations specified in, the Scholarship Agreement, including the requirement to work in a specified area for a specified period. Whilst the student must meet these conditions and obligations under the Scholarship Agreement, meeting them will not amount to services rendered for the benefit of the place in the course. The scholarship benefit received by the student is for their education and not for any services rendered under section 15-2.

61. Accordingly, the value of the payments of tuition fees under the Scholarship is not statutory income of the student.

¹¹ (1952) 10 ATD 82; (1952) 86 CLR 540.

¹² (1956) 11 ATD 68 at 72; (1956) 96 CLR 47.

¹³ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 519.

¹⁴ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 536.

¹⁵ *Federal Commissioner of Taxation v. Dixon* (1952) 10 ATD 82, per Dixon CJ and Williams J at 84-85; (1952) 86 CLR 540 at 555.

Appendix 2 – Detailed contents list

62. 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

Subject references:

- exempt income
- scholarships, fellowships & bursaries

Legislative references:

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- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 6-20(1)
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 Div 51
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- 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)
- ITAA 1936 23(z)
- ITAA 1936 26(e)
- TAA 1953
- Copyright Act 1968
- Medical Practitioners Registration Act 2001 (Qld)

Case references:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Cooke and Sherden 80 ATC 4140

- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- Federal Commissioner of Taxation v. Hall (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- Federal Commissioner of Taxation v. Harris (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- Federal Commissioner of Taxation v. Ranson (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; 6 AITR 248; (1956) 11 ATD 68
- Re Leitch (deceased) [1965] VR 204
- Revesby Credit Union Co-operative Ltd. v. FC of T (1965) 112 CLR 564
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; 10 AITR 367; (1966) 14 ATD 286
- Smith v. Federal Commissioner of Taxation (1987) 164 CLR 513
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; 5 AITR 496; (1953) 10 ATD 126

Other references:

- Macquarie Dictionary, 2nd Revised Edition

ATO references

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