

CR 2010/26 - Income tax: South Australian Bonded Medical Scholarship Scheme



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Class Ruling

Income tax: South Australian Bonded Medical Scholarship Scheme

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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); and
- Section 6-10 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 consists of full-time students who occupy university places funded by the South Australian government under the South Australian Bonded Medical Scholarship Scheme. In this Ruling, a person belonging to this class of entities is referred to as a Scholarship Recipient.

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 17 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 South Australian Bonded Medical Scholarship Scheme (Scholarship 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 (undated), received 5 February 2007;
- Pro-forma Scholarship Recipient Deed of Agreement between the South Australian Minister for Health (Minister), a body corporate pursuant to the *Administrative Arrangements Act 1994* and the student, being the Scholarship Recipient;
- Deed of Agreement between the Minister and Flinders University; and
- Deed of Agreement between the Minister and the University of Adelaide.

10. The Scholarship Scheme has been established by the Minister with the University of Adelaide and Flinders University under the respective Deeds of Agreement.

11. The Scholarship Scheme is administered on behalf of the Minister by Country Health SA Inc, which was an incorporated health service established under the former *South Australian Health Commission Act 1976* and from 15 March 2008 has been an incorporated hospital by proclamation under the *Health Care Act 2008* (SA).

12. The Scholarship Scheme is designed to attract and retain medical graduates to work as medical practitioners within designated areas of South Australia and forms a part of the South Australian government's strategy to deal with a shortage of general practitioners and specialists in those areas.

13. Under the Deed of Agreement between the Minister and each university, the university must provide additional places in its Bachelor of Medicine, Bachelor of Surgery course, select Scholarship Recipients for those places and provide training up to the completion of their qualification.

14. The Minister is obligated to pay an annual Scholarship Amount to the university upon receipt of a tax invoice from the university. The Scholarship Amount payable by the Minister is defined by reference to the Schedule to the Deed of Agreement to be \$26,500 per scholarship in 2007, and is indexed each year in accordance with that agreement. The Scholarship Amount is in full discharge of the fees for the places occupied by the Scholarship Recipients. The university must absorb any increase in course fees and is not able to recoup any shortfall from the Minister or Scholarship Recipient.

15. Whilst the Deed of Agreement states that the payment by the Minister of the Scholarship Amount is for and on behalf of each Scholarship Recipient and the Scholarship Recipient Deed of Agreement provides that the Minister is obliged to pay the Scholarship Amount as a discharge of the Scholarship Recipient's fees in relation to the course, the university treats the Scholarship Recipient as occupying a sponsored place in the course and does not raise any debt against the Scholarship Recipient in the university's accounts.

16. Where a Scholarship is terminated under the terms of the Scholarship Recipient Deed of Agreement before completion of the course, the Scholarship Recipient's enrolment in the course is also terminated.

17. Each Scholarship Recipient is required to enter into a Scholarship Recipient Deed of Agreement with the Minister, being a legally binding contract detailing the terms and conditions of the scheme. Included is a requirement that the Scholarship Recipient will work after graduation as a medical practitioner in a designated area of South Australia at the direction of the Minister for a specified period. There is no requirement to be employed by the Minister or any department or authority of the Minister.

Ruling

18. Payments of the Scholarship Amounts under the South Australian Bonded Medical Scholarship Scheme are not ordinary income of the Scholarship Recipient under section 6-5, nor are they statutory income of the Scholarship Recipient under section 6-10.

Appendix 1 – Explanation

❗ *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.*

19. 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

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

21. 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.

22. Payments made by the Minister under the Scholarship Scheme are not considered to be ordinary income, as the Scholarship Recipient does not derive any amount. This is because the Scholarship Amount paid by the Minister to the relevant university is for the university to provide the Minister with additional sponsored places in its Bachelor of Medicine, Bachelor of Surgery course to be occupied by Scholarship Recipients.

23. The Scholarship Recipient is not liable for any course fees and is not able to direct how the Scholarship Amount is applied or dealt with.

24. Accordingly, the scholarship recipient is not taken to have derived an amount of ordinary income under subsection 6-5(4).

Statutory income

25. 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.

26. Section 10-5 lists provisions about statutory income and included in this list is a reference to section 15-2.

27. 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]'.

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

29. The Scholarship Recipient is not an employee of the Minister, nor is the Scholarship Recipient in any current employment for which the payment of the Scholarship Amount by the Minister to the university would be in respect of. As such, the benefit that the Scholarship Recipient receives will not be in respect of any employment, under section 15-2.

30. 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 *Income Tax Assessment Act 1936* (ITAA 1936) (now re-enacted as section 15-2 of the ITAA 1997). Wilson J, having referred to the judgments in *Dixon*¹ and *Hayes*,² 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.³ Gaudron J, with whom Deane J agreed, expressed the same view.⁴ To fall within the ambit of the provision, 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'.⁵

31. 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.

¹ *Federal Commissioner of Taxation v. Dixon* (1952) 10 ATD 82; (1952) 86 CLR 540.

² *Hayes v. Federal Commissioner of Taxation* (1956) 11 ATD 68 at 72; (1956) 96 CLR 47.

³ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 519.

⁴ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 536.

⁵ *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.

32. In this instance, whilst not an ordinary commercial contract, the Scholarship Recipient has entered into, and is bound by the conditions and obligations specified in the Scholarship Recipient Deed of Agreement, including the requirement to work in an area of South Australia specified by the Minister for a period of 6 years. Whilst the Scholarship Recipient must meet these conditions and obligations under the Scholarship Recipient Deed of Agreement, meeting them will not amount to services rendered for the benefit of the place in the course. The scholarship benefit received by the Scholarship Recipient is for their education and not for any services rendered under section 15-2.

33. Accordingly, the value of the Scholarship Amounts is not statutory income of the Scholarship Recipient.

Appendix 2 – Detailed contents list

34. 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 2006/10

Subject references:

- exempt income
- scholarships

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- Administrative Arrangements Act 1994 (SA)
- Health Care Act 2008 (SA)
- South Australian Health Commission Act 1976 (SA)
- TAA 1953
- Copyright Act 1968

Case references:

- Federal Commissioner of Taxation v. Cooke and Sherden 80 ATC 4140 (1980) 10 ATR 696
- Federal Commissioner of Taxation v. Dixon (1952) 10 ATD 82 (1952) 86 CLR 540.
- Hayes v. Federal Commissioner of Taxation (1956) 11 ATD 68 (1956) 96 CLR 47
- Revesby Credit Union Co-operative Ltd. & Lidcombe Credit Union Co-operative Ltd. v. FC of T (1965) 112 CLR 564
- Smith v. Federal Commissioner of Taxation [1987] HCA 48; (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274

ATO references

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