

***CR 2012/51 - Income tax: Doxa Cadetship Program
living allowance payments made by the Doxa Youth
Foundation***

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Class Ruling

Income tax: Doxa Cadetship Program living allowance payments made by the Doxa Youth Foundation

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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 provisions

2. The relevant provisions dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - section 51-10 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies comprises full time students in receipt of living allowance payments under the Doxa Cadetship Program. In this Ruling, a person belonging to this class of entities is referred to as a cadet.

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 23 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 2011. 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.
10. Doxa Youth Foundation (Doxa) is a not for profit organisation established to provide opportunities to children and young people to help them achieve their potential.
11. Since 1992 the Doxa Cadetship Program (the Program) has provided long term financial and personal support for talented young people from disadvantaged backgrounds to get them through a tertiary qualification and into a career.

12. The Program is a cooperative effort by cadets, corporate sponsors and Doxa. It is funded by donations from a cross section of companies from the law, engineering, finance, government, science and medical sectors as well as philanthropic contributions.

Selection process

13. The Program is promoted to young people at Year 12 level attending the 300 government and non-government schools in Melbourne and Victorian country areas that have been identified by the Victorian government as having a higher than average number of disadvantaged students who need assistance to achieve their goals. The students' readiness to learn may be impaired for a range of reasons, including family, financial, social or other personal circumstances and prior educational experiences.

14. Applications close in late November each year. Once students have confirmed that they have been offered a university place (in January) the Doxa Cadetship Program team assess applications to ensure that they meet the disadvantage criteria. Applicants are then matched with the sponsors' specifications for preferred courses of study, and a shortlist of eligible candidates for each potential sponsor is prepared.

15. Each sponsor is given a shortlist of eligible candidates and is responsible for selecting candidates for interview and then subsequently choosing the successful cadet(s). Doxa will assist in the selection process if required, but the final decision rests with the sponsor.

16. Typical criteria used in the sponsor's decision include:

- the relevance of the academic course being undertaken by the student to the sponsor's needs;
- an assessment of the student's likelihood to succeed in tertiary study; and
- an assessment of the personal fit in the corporate environment.

The Cadet Agreement

17. Successful applicants are required to enter into a 'Cadet Agreement' with Doxa in which the cadet agrees to meet the following conditions during the duration of the cadetship:

- maintain academic results at a minimum of pass standard;
- provide Doxa with copies of academic results;
- submit two mentor reports per year to Doxa on time;

- compulsory attendance at seminars, workshops and training programs and other functions run by Doxa;
- undertake one school visit to a secondary school in the first year only to talk to Year 12 students about the Program;
- complete eight weeks of work placement per year with the sponsor;
- not make any changes or deferment to the agreed course of tertiary study without prior written agreement of Doxa and the sponsor; and
- personal conduct is to be of a standard that will bring credit to the cadet, the Program and to the sponsor.

18. If a cadet fails to meet these conditions they may be removed from the Program, required to refund amounts paid in advance or lose privileges attached to the Program.

Sponsors

19. Sponsors are integral to the Program.
20. Under the Program, a sponsor is required to:
 - make a donation of \$7,000 per cadet per annum to Doxa. This amount is used by Doxa to fund the Program, including the payment of a \$120 per week living allowance to the cadet. If the cadet, for whatever reason, does not remain on the Program, any unspent monies are retained by Doxa and put towards other costs of the Program;
 - provide eight weeks work placement per annum for the duration of the cadet's university course. There is no additional cost to a sponsor (such as salaries) in providing this work experience. The work placement will usually occur during the cadet's semester breaks or at a time that is mutually negotiated between the cadet and a sponsor;
 - appoint a mentor to assist the personal development of the cadet who will guide and counsel the cadet, especially during the work placement periods;
 - provide relevant training to the role the cadet will be performing; and
 - provide occupational health and safety induction training and provide all relevant information regarding workplaces where the cadet will be performing their role.

21. Doxa provides personal accident insurance for cadets to cover any injury or illness as a result of their work placement with a sponsor.

Doxa's commitments and responsibilities

22. Under the Program, Doxa commits to:

- screen and shortlist applicants, ensuring applicants meet the disadvantaged criteria;
- fund all program management costs and conduct the day to day administration of the program;
- provide cadets with personal development;
- provide cadets with a suit in their first year;
- provide cadets with a book allowance each year;
- liaise with sponsors and mentors and monitor the cadets' progress and performance; and
- provide counselling support for cadets where required.

23. In meeting the above commitments, Doxa has the responsibility to:

- liaise with schools and community organisations which have suitable students to ensure the integrity of selection;
- provide a point of contact for the cadets, their families, tertiary institutions and sponsors;
- assist sponsors in the selection of cadets and support mentors in the provision of quality on-the-job training to cadets;
- regularly review the cadets' progress at university and work placements throughout the minimum three year period of sponsorship;
- assist sponsors in identifying employment opportunities for graduated cadets;
- provide additional personal development training, including communication and social skills;
- provide backup and support by facilitating contact among cadets at different stages of the Program, including graduated cadets; and
- ensure a dedicated and professional team is available to manage all the operations of the Program.

Ruling

24. The living allowance payments made to Doxa cadets are assessable income to the cadet under subsection 6-5(1) of the ITAA 1997. However these payments are exempt from income tax under item 2.1A in the table in section 51-10 of the ITAA 1997.

Commissioner of Taxation

11 July 2012

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.*

25. 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

26. Subsection 6-5(1) of the ITAA 1997 provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

27. 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.

28. 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.

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

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

² *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

³ *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).

30. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴ The whole of the circumstances must be considered⁵ and the motive of the payer may be relevant to this consideration.⁶

31. Living allowance payments received by a cadet are considered to be ordinary income, being periodical receipts that are expected and relied upon by the cadet.

Exempt income

32. Subsection 6-20(1) of the ITAA 1997 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.

33. 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, subject to any exception or special condition.

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 a 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.

35. As the living allowance payments received by a Doxa cadet are ordinary income, it must be established whether or not they are exempt income under Division 51 of the ITAA 1997. This requires a consideration of these three conditions.

Are the Doxa cadets full-time students at a school, college or university?

36. In these circumstances, it is accepted that the Doxa cadets undertaking a full-time study program at a university satisfy this criteria.

⁴ *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.

⁵ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

⁶ *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.

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

37. 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'.

38. 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...'.⁷

39. 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;⁷ and
- the education of the recipient is at least one purpose for which the scholarship is provided.⁸

40. To be awarded a Doxa cadetship, students have to undertake a competitive selection process which involves them being assessed against a range of criteria such as their personal circumstances, academic potential and interpersonal skills. As such, it is accepted that selection for the Doxa cadetship is merit based.

41. In *Chesterman v. Federal Commissioner of Taxation*⁹ Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

42. The Doxa cadetship is awarded to a student enrolled in an undergraduate degree at a university. It is accepted that the Doxa cadetship has the requisite educational purpose.

43. Accordingly, it is accepted that living allowance payments made under the Doxa cadetship are made by way of 'a scholarship, bursary, educational allowance or educational assistance'.

⁷ *Re Leitch (deceased)* [1965] VR 204.

⁸ *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450.

⁹ (1923) 32 CLR 362 (at 385-6).

Do the exceptions in section 51-35 apply?

44. 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), 51-35(b) and 51-35(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 living allowance payments made under the Program are not of a kind covered by paragraphs 51-35(a), 51-35(b) or 51-35(f) of the ITAA 1997.

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

46. Paragraph 51-35(c) of the ITAA 1997 excludes payments from exemption if they represent:

a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority.

47. The Federal Court has taken 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.¹⁰ It was held that the exemption did not apply where, as a matter of ordinary language, it could be said that the receipt of a scholarship amount was conditional on the recipient working with the payer if the payer so required.

48. The living allowance payments made by Doxa are funded by the donations made to Doxa by the sponsor. Should the cadet not complete their education for whatever reason, Doxa is not required to refund to the sponsor any unspent monies. Therefore, the 'payer' for the purposes of section 51-35 of the ITAA 1997 is Doxa and not the sponsor.

¹⁰ *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652.

49. The terms of the Doxa cadetship put the cadet under no obligation (whether or not legally binding) to become an employee of Doxa in the future, or to do so if required.

50. The living allowance payments under the Program are therefore not excluded from exemption under paragraph 51-35(c) of the ITAA 1997.

Are the payments made on the condition that the cadet 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?

51. Paragraph 51-35(d) of the ITAA 1997 excludes payments from exemption if they represent:

a payment by an entity or 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 entity or authority that is wholly or principally for the labour of the student.

52. Paragraph 51-35(d) of the ITAA 1997 imposes a similar requirement to that of paragraph 51-35(c) of the ITAA 1997 by excluding employment-like relationships, that is, contracts wholly or principally for labour.

53. It is recognised that work performed for an organisation can be part of an education program.¹¹

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

55. The terms of the Doxa cadetship put the cadet under no obligation (whether or not legally binding) to enter into a contract wholly or principally for the cadet's labour in the future, or to do so if required.

56. The living allowance payments under the Program are therefore not excluded from exemption under paragraph 51-35(d) of the ITAA 1997.

Are the cadetships provided principally for educational purposes?

57. The Doxa cadetships are awarded to a cadet to enable them to complete an undergraduate degree course.

58. It is accepted that in providing the Doxa cadetship Doxa is doing so principally for educational purposes. The living allowance payments made under the Program are therefore not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

59. Accordingly, the living allowance payments made to a cadet are exempt under item 2.1A of the table in section 51-10 of the ITAA 1997.

¹¹ *Federal Commissioner of Taxation v. Hall* 75 ATC 4156 at 4164 and 4162.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 93/39; TR 2006/10

Subject references:

- Education payments
- Exempt income
- Income support payments
- Scholarships, fellowships & bursaries

Legislative references:

- ITAA 1936
- ITAA 1936 23(z)
- ITAA 1997
- ITAA 1997 6-5
- 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 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. 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. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652
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- *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; (1956) 11 ATD 68; (1956) 6 AITR 248
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Other references:

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