



CR 2003/7 - Income tax: Exempt Income - Commonwealth Aged Care Nursing Scholarships

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Class Ruling

Income tax: Exempt Income – Commonwealth Aged Care Nursing Scholarships

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are sections 6-5, 6-20, 51-1, 51-10 and 51-35 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to which this Ruling applies are:

- Undergraduate students;
- Postgraduate students – Commission research; and
- Postgraduate students – Continuing Professional Development;

who obtain a Commonwealth Aged Care Nursing Scholarship from the Commonwealth Department of Health and Ageing ('the Health Department').

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 18 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the years of income commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 26 June 2002;
- Correspondence from the Health Department dated 15 July 2002; and
- Correspondence from the Health Department dated 27 September 2002.

10. The Health Department provides Commonwealth Aged Care Nursing Scholarships ('the Scholarships') for the purpose of encouraging students with a rural background to enter nursing education programs offered at a rural campus of an Australian University. The aim is to increase the number of nurses in regional and rural Australia working in the area of aged care. The scholarships will cover Undergraduate students, Postgraduate students - Commission research and Postgraduate students - Continuing Professional Development.

11. The Scholarships Undergraduate Scheme will facilitate the successful graduation of registered nurses that may go on to practice in the aged care sector in regional and rural areas of Australia. Likely employers of nurses when they graduate are nursing homes and hostels, hospitals with aged care facilities and community organisations that care for the health of the aged. Subject to the registration requirements of the relevant Nursing Boards, the nurses may be self employed. Applicants are ranked against selection criteria provided in the application form which is based on a competitive process.

12. Undergraduate nursing courses offered at Australian Universities are predominantly full-time, although some universities now offer the course part-time. Scholarship holders will be able to undertake their studies part-time or full-time. The scholarships are not bonded and so successful applicants do not have any ongoing commitment to the Commonwealth after the completion of their nursing education program as a result of accepting a scholarship.

13. Postgraduate students will be able to apply to undertake postgraduate studies, Commission research or participate in Continuing Professional Development opportunities that will provide a demonstrable influence on the achievement of improved outcomes

in the aged care sector. Postgraduate students are not likely to engage in full-time study, but rather combine their part time study with other activities.

14. The Scholarships will provide up to \$10,000 financial assistance for Undergraduate students each year during the length of a student's nursing studies, which is usually three years. The scholarships will be paid on a fortnightly basis to the recipients throughout the academic year. Undergraduate nursing degrees that are longer than three years, for example a double degree of four years full time study or Honours, the students may be eligible for some extra funding under Special Case provisions.

15. The specific amounts awarded for Scholarships for Postgraduate students – Commission research and Postgraduate students – Continuing Professional Development will be decided by the selection committee. The maximum amount is \$10,000 and in most cases this is the amount that is bid for.

16. Post-graduate Commission research students are able to engage in research which must be endorsed by the university. The research is not for the benefit of an employer but only for the benefit of the student's study. Applicants under this category bid for a scholarship amount.

17. Successful students are required to provide an annual report of satisfactory academic achievement and enrolment status continuing to meet the eligibility criteria.

18. The Scholarships will continue to be offered for four years. The Commonwealth funding for the Scholarships is for a period of four years commencing in the 2003 academic year.

Ruling

19. Payments made under the Commonwealth Aged Care Nursing Scholarship to Undergraduate students and Postgraduate students are ordinary income under subsection 6-5(1) of the ITAA 1997.

20. However, the payments described in the preceding paragraphs when paid to full-time students at a school, college or university are exempt from income tax by the operation of sections 6-20, 51-1 and 51-10 of the ITAA 1997.

21. Payments made to part-time Undergraduate students and part-time Postgraduate students are assessable income.

Explanations

Ordinary income

22. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

23. Scholarship payments made to Undergraduate students are treated as ordinary income due to the periodical nature of the payments (*FC of T v. Ranson* – (1989) 90 ALR 533, (1989) 20 ATR 1652, 89 ATC 5322 (the *Ranson Case*)).

Exempt income

24. Section 51-1 of the ITAA 1997 exempts from income tax ordinary income and statutory income covered by tables in sections 51-5 to 51-30.

25. Item 2.1A of the table in section 51-10 of the ITAA 1997 provides an income tax exemption in relation to payments:

- to a full-time student at a school, college or university;
- made by way of a scholarship, bursary, educational allowance or educational assistance; or
- that are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

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

26. Undergraduate nursing courses offered at Australian Universities are predominantly full-time although, some universities now offer the course part-time. Scholarship holders will be able to undertake their studies part-time or full-time.

Postgraduate students – Commission research and Postgraduate students – Continuing Professional Development are not likely to study full time, but in combination with other activities.

27. Pursuant to Item 2.1A of the table in section 51-10, only full-time students at a school, college or university are eligible for scholarship payments to be exempt from income tax. Part-time students will be ineligible for the scholarship payments to be exempt.

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

28. 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'.

29. Paragraphs 34 to 45 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 *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'.

30. In interpreting the meaning of the words 'scholarship, bursary, educational allowance or educational assistance', courts have determined that 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 (*FC of T v. Hall* (1975) 75 ATC 4156).

31. It is accepted that the students selected for the Scholarships are subject to a competitive process and that the Scholarships are granted on merit.

32. The Department of Health provides the Scholarships to students for the purpose of encouraging students with a rural or regional background to enter nursing education programs at a rural or regional campus of an Australian University. There is an educational purpose behind the provision of the Scholarships. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

33. 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), (b) and (f);
- payments made on the condition that the student will (or will if required) become an employee of, or enter

into a labour contract with, the payer: paragraphs 51-35(c) and (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?

34. Paragraph 51-35(a) excludes from exemption Commonwealth payments for assistance for secondary education or in connection with the education of isolated children. The Scholarship payments are not payments of this kind.

35. Paragraph 51-35(b) excludes from exemption Commonwealth education or training payments, as defined in section 52-145. The Scholarship payments are not payments of this kind.

36. Paragraph 51-35(e) excludes from exemption scholarship payments that are education entry payments under Part 2.13A of the *Social Security Act 1991*. The Scholarship payments are not payments of this kind.

Are the payments made on the condition that the student will or will if required enter into an employment contract or a contract for labour with the payer?

37. Subsections 51-35(c) and (d) of the ITAA 1997 exclude payments from exemption if they represent:

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

Under the terms of the arrangement the Scholarship holders are not required to be, or become, employees of the Department of Health. They also have no right or expectation of future employment with the Department of Health.

38. The Scholarship for Undergraduate students will facilitate the successful graduation of registered nurses who may go on to practice in the aged care sector in regional and rural areas of Australia. This occurrence is not considered to give rise to a contract with the

Department of Health or any other authority that is wholly or principally for the labour of the student.

39. The Scholarship holders do not enter into and are not required to enter into an employment contract or a contract for labour with the Department of Health.

Are the Scholarships provided principally for educational purposes?

40. The Scholarships are available to both part-time and full-time students who are enrolled in Undergraduate and Postgraduate courses with a University.

41. The payments must be principally for the educational purposes. That the University may be required to share or provide rights to any intellectual property created as a result of the research does not in itself prevent the Scholarship being principally for the education of the student. The information provided by the University indicates that its principal purpose is the education of the student via the means of a research postgraduate degree course. The funds made available by the external organisations or sponsors assist the University to achieve its principal educational purpose

Conclusions

42. If the student is a full-time student, the payments will not be excluded from exemption by paragraph 51-35 of the ITAA 1997. The scholarship payments will be exempt income of the full-time students.

43. If the student is a part-time student, the requirements of item 2.1A of section 51-10 have not been met. The scholarship payments are assessable income of the part-time students.

Detailed contents list

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Commissioner of Taxation

5 February 2003

Previous draft:

Not previously released in draft form

- ITAA 1997 Div 51

- ITAA 1997 51-1

- ITAA 1997 51-5

- 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 1997 52-145

- Social Security Act 1991 2.13A

- Copyright Act 1968

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 93/39;

TR 97/16; CR 2001/1

Subject references:

- Exempt income

- Scholarships

- Post graduate scholarships

- Under graduate scholarships

Legislative references:

- TAA 1953 Part IVAAA

- ITAA 1936 23(z)

- ITAA 1936 23(z)(i)

- ITAA 1997 6-5

- ITAA 1997 6-5(1)

- ITAA 1997 6-20

Case references:- FC of T v., Hall (1975) 6 ALR 457;
(1975) 75 ATC 4156; (1975) 5

ATR 450

- Re Leitch, deceased 1965 VR 204

- FC of T v., Ranson - (1989) 20 ATR
1652; (1989) 90 ALR 533; 89 ATC
5322

- AAT Case 4470; Case V100
88 ATC 650; (1988) 19 ATR 3642

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