


CR 2014/29 - Income tax: Government funded payments made under the Breadwinners' Program

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Class Ruling

Income tax: Government funded payments made under the Breadwinners' Program

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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 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:
- subsection 6-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 51-10 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are full-time students of the University of Sydney (the University) who are recipients of Government funded payments under the Breadwinners' Program (the Program).

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 8 to 18 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.

Date of effect

7. This Ruling applies from 1 July 2012. 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

8. The following description of the scheme is based on a number of documents provided to the Commissioner. These documents or relevant parts of them, as the case may be, form part of and are to be read with this description. The documents include:
 - the application for class ruling dated 30 October 2013
 - Student Scholarship Agreement – The Breadwinners' Program.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Purpose and overview of the Program

9. Since 2007 the Federal Government (the Government) has been committed to the 'Closing the Gap' strategy which is aimed at improving the lives of Indigenous Australians by aligning their access to areas such as education, health and housing with those offered to the wider Australian population. As part of this strategy, a 2012 review was undertaken into the access and outcomes of higher education for Indigenous Australians. The subsequent report produced detailed the extent of the disparity between the participation of Indigenous Australians in higher education and the participation of the Australian population as a whole. The report recognised that the Government could only effect positive change in this area with the assistance and cooperation of universities and the wider Australian community.

10. In recognition of this, the University sought to develop a program which provides Indigenous Australians with an opportunity to engage in tertiary study where they would otherwise be unable to. In developing the Program, the University recognised that a significant barrier to further education for Indigenous Australians is the requirement for these students to take time off from full-time employment in order to complete their full-time study. This becomes further problematic when the student is the breadwinner for the family and therefore unable to take the required time away to study.

11. The Program is specifically aimed at assisting those facing the most substantial barriers, breadwinners. The Program breaks through these financial barriers by establishing a study fund which pays the student during their years as a full-time student to replace their lost income.

12. The Government supports the Program by making a grant (the Government Grant) to the University for the specific purpose that the funds be used to make payments to students under the Program.

Eligibility

13. The Program is open to individuals who satisfy all of the following three criteria:

- Indigenous Australians
- Currently employed in full-time work
- Are the breadwinner for their family.

14. The University selects students for the Program based on their suitability judged against these criteria.

What the student will receive

15. The student will receive payments in their third and fourth years of study when they are a full-time student. These payments will be the equivalent of 80% of the gross income they received while undertaking full-time employment.

How the Program works

16. The role of the student:

- Eligible students will be enrolled in their relevant degree which they will undertake over four years.
- During the first two years the student will study on a part-time basis and in the final two years will study full-time.
- During the first two years the student will forgo 20% of their gross income which will be contributed by their employer to the study fund.
- The student will receive payments from the study fund in their third and fourth years when they are a full-time student. The study fund will consist of contributions made by the individual, their employer and the University (in its role of administering the Government Grant).

17. The role of the employer:

- The employer, in support of the Program and the Closing the Gap policies driving the Program, will contribute the equivalent of 20% of the employee's gross income to the study fund during years one and two when the employee is a part-time student.
- The employer may support the student with study leave days during the first two years as part-time students when they are still engaged in full-time work.

18. The role of the University:

- The University (via the Government Grant) will match the 20% contributions made by both the student and the employer. That is, the University will contribute to the study fund the equivalent of 40% of the student's gross income from full-time employment during years one and two.
- The University will provide the student with education through the relevant degree programs. The University will not provide discounted fees. Fees are to be paid by the student through the Higher Education Contribution Scheme (HECS).

Ruling

19. The portion of the payments students receive under the Program that are sourced from Government contributions (the Government funded payments) and administered by the University is ordinary income and would be assessable to the student under subsection 6-5(1). However, these Government funded payments are exempt from income tax under item 2.1A in the table in section 51-10.

Commissioner of Taxation

19 March 2014

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.*

20. The Ruling made at paragraph 19 is only for the Government funded payments (administered by the University) that students receive under the Program. Consequently, it is only these payments that are discussed below.

Assessable income

21. 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

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

23. 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.

24. 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.

25. 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

26. 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

27. The Government funded payments received by a student as part of the Program are considered to be ordinary income, being receipts that are expected and relied upon by the student and received during a period where they replace foregone income from employment.

Exempt income

28. 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.

29. Amounts of ordinary income and statutory income are exempt from income tax under section 51-1 if the amount is of a type listed in the tables in Division 51, subject to any exception or special condition.

30. 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 a scholarship, bursary, educational allowance or educational assistance; and
- (c) they are not subject to the exceptions set out in section 51-35.

As the Government funded payments students receive under the Program are considered to be ordinary income, it must be established whether or not they are exempt income under Division 51. This requires a consideration of these three conditions.

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).

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 participants in the Program full-time students at a school, college or university?

31. Students participating in the Program are full-time students at the University during the period in which they receive Government funded payments under the Program. Therefore this condition for exemption is met.

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

32. 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'.

33. 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....'.

34. 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

35. To be selected for the Program, students are assessed against specific criteria. As such, it is accepted that selection for the Program is merit based.

36. The purpose of the Government in providing funds for the Program is to enable the selected students to receive a higher education at the University.

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 (*Hall's Case*).

37. Accordingly, it is accepted that the Government funded payments made under the Program are made by way of 'a scholarship, bursary, educational allowance or educational assistance'.

Do the exceptions in section 51-35 apply?

38. Section 51-35 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)
- payments made under a scholarship that are not provided principally for educational purposes: paragraph 51-35(e).

Are the Government funded payments Commonwealth education or training payments?

39. The payments made under the Program are not of a kind covered by paragraphs 51-35(a), 51-35(b) or 51-35(f).

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

40. Paragraph 51-35(c) 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.

41. 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.⁹ It was held that the exemption did not apply where, as a matter of ordinary language, it could be said that the receipt of the scholarship amount was conditional on the recipient working with the payer if the payer so required.

⁹ *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652.

42. Under the Program, students do not have any obligation (whether or not legally binding) to become an employee of the Government, or to do so if required.

43. The Government funded payments made under the Program are therefore not excluded from exemption under paragraph 51-35(c).

Are the Government funded 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?

44. Paragraph 51-35(d) 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.

45. 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.

46. Under the Program, students do not have any obligation (whether or not legally binding) to enter into a contract with the Government that is wholly or principally for the student's labour, or to do so if required.

47. The Government funded payments made under the Program are therefore not excluded from exemption under paragraph 51-35(d).

Are the scholarships provided principally for educational purposes?

48. The purpose of the Government in providing funds for the Program is to enable the selected students to receive a higher education at the University.

49. Therefore, the Government funded payments made under the Program are not excluded from exemption by paragraph 51-35(e).

Conclusion

50. Accordingly, the Government funded payments made to students under the Program are exempt under item 2.1A of the table in section 51-10.

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:

- exempt income
- scholarships, fellowships & bursaries

Legislative references:

- ITAA 1936
- 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)
- ITAA 1997 51-35(f)

Case references:

- 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
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- Re Leitch (deceased) [1965] VR 204
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570

Other references:

- The Macquarie Dictionary, 1991, 2nd Revised Edition

ATO references

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