CR 2024/53 - University of Melbourne - loans from public and private ancillary funds

Status: **legally binding**

Class Ruling

University of Melbourne – loans from public and private ancillary funds

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out our opinion on the way the provisions listed in this Ruling apply to the defined class of entities who take part in the scheme set out in paragraphs 16 to 21 of this Ruling.

2. This Ruling does not affect the obligations of public and private ancillary funds to comply with the rules in the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* and the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* (collectively, the Guidelines), whichever is applicable. To remain endorsed as a deductible gift recipient, an ancillary fund must comply with the relevant Guidelines.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

4. Where used in this Ruling, 'PAF' or 'PAFs' refers to both public and private ancillary funds collectively.

5. This Ruling does not address the University of Melbourne's (University) entitlement to endorsement as a deductible gift recipient. Nor does it address a PAFs compliance with the Guidelines, other than subsection 15(4) of the Guidelines.

6. This Ruling does not address any specific circumstances relating to assignments of a PAF loan.

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Who this Ruling applies to

7. This Ruling applies to you if you are a PAF endorsed as a deductible gift recipient under section 30-120 that:

- enters into a loan agreement between 1 July 2024 and 30 September 2025 with the University (PAF Loan) and provides a loan to the University under an agreement consistent with the scheme, or
- becomes a lender to the University under an assignment or transfer of the rights under a PAF Loan, provided that the terms of the assignment or transfer do not result in the Guidelines being breached.

When this Ruling applies

8. This Ruling applies from 1 July 2024 to 30 September 2025. The Ruling continues to apply after 30 September 2025 to PAFs who entered into a PAF Loan with the University or PAFs that become a lender to the University after 30 September 2025 under an assignment or transfer of rights under a PAF Loan (provided the terms of the assignment or transfer do not result in the Guidelines being breached).

Ruling

Interest savings form part of the public or private ancillary fund's annual distribution

9. For the purposes of complying with section 15 of the relevant Guidelines, the difference between the amount of interest accrued under a PAF Loan and the interest which would accrue on a comparable loan sourced from a financial institution at 'arm's length' will form part of the PAF's annual distribution. For the purposes of this Ruling this is referred to as 'the market value of the interest foregone'.

10. Under the scheme, the market value of the interest foregone is 10.60% per annum for the term of a PAF Loan.

Example 1 – interest saving forms part of the annual distribution

11. *On 1 July 2024, PAF A provides a loan to the University under a PAF Loan. The loan principal is $100,000 and there is no interest payable.*

12. *Using the interest rate of 10.60% per annum, the amount of interest that is payable on a comparable loan for the 2024–25 income year is $10,600.*

13. *An amount of $10,600 (being the difference between the amount of interest based on a market rate of $10,600 and the interest accrued under a PAF Loan of nil) qualifies as part of PAF A's annual distribution in the 2024–25 income year, and each subsequent year during the term of the loan.*

Example 2 – interest saving forms part of the annual distribution on transfer or assignment

14. *If PAF A, referred to in Example 1 of this Ruling, assigns or transfers the loan to PAF B, under an arrangement that complies with the Guidelines, on the first day of an income year, an amount of $10,600 qualifies as part of PAF B's annual distribution in that income year.*

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15. *If PAF A transfers or assigns the loan to PAF B during an income year, the amount PAF A can treat as part of its annual distribution for that income year is calculated as a proportion of $10,600 based on days of the year up to the date the assignment or transfer is effective. The amount PAF B can treat as part of its annual distribution for that income year is calculated as a proportion of $10,600, based on days of the year from the date the assignment or transfer was effective.*

Scheme

16. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

17. The University is a public university which is established under the *University of Melbourne Act 2009* (Vic) and is registered as a charity with the Australian Charities and Not-for-profits Commission. It is endorsed as a deductible gift recipient under section 30-120 and is covered by table item 1 of subsection 30-15(2) as a public university (table item 2.1.1 of subsection 30-25(1)).

18. The Cumming Global Centre for Pandemic Therapeutics (the Cumming Global Centre) is part of the University and is not a separate entity.

19. The purpose of the loans, to be obtained by the University from PAFs, is to meet the University's sole responsibility for providing all the funding for the administration and operations of the Cumming Global Centre.

20. The Term Sheet, provided by the applicant on 9 May 2024, sets out the terms of the PAF Loan and is part of the scheme.

Table 1: Key terms and information from the Term Sheet

Borrower:	The University of Melbourne…
Lenders:	Australian domiciled public or private ancillary funds who meet the University's protocols.
Amount:	Aggregate target of $200,000,000 over one or multiple loan agreements or such other lower or higher amount as agreed by the University.
Maturity date:	In respect of a loan, 25 years after the date of its loan agreement. The University must repay the loan at that time. A loan may not be repaid early without consent of the Lenders.
Purpose:	Proceeds from each loan will be invested in units in trusts or other investment vehicles forming part of the University's investment portfolio (each an **Investment**) and distributions from the Investment made available to the Cumming Global Centre as further described in Schedule 1 [of the Term Sheet].
Interest:	Interest will **not** be payable on a loan.
Assignments and Transfers by Lenders:	A Lender may, at any time after the date which is 5 years after the date of their loan agreement, assign any of its rights or novate any of its rights and obligations to any organisation with the consent of

	the University (which must not be unreasonably withheld or delayed) including approval from the University's Gift Committee.
Description of the Investments:	The proceeds from each loan will be invested in units in trusts or other investment vehicles forming part of the University's investment portfolio, which is overseen by the University's governance process and currently managed by a professional fund manager.
Investment strategy:	The initial and ongoing investment strategy for an Investment will be determined by the University's Investment Management Committee.
Management of Investments:	The University and any fund manager engaged by it will have absolute discretion in managing the Investments, including by way of redeeming and acquiring units in trusts or other investment vehicles forming part of the University's investment portfolio, provided that the capital, net of distributions, remains invested throughout the life of a loan and remains the subject of security for the benefit of the Lenders.
Investment income:	Annual distributions from an Investment will be determined using a "smoothing" Yale distribution rule or such other rule with the University's Investment Management Committee's approval. The University must apply the distributions to fund expenses related to, or expenditure on, the Cumming Global Centre.
Investment capital:	The University will be the legal owner of an Investment and, for the avoidance of doubt, will be entitled to any capital appreciation on the Investments after repayment of the relevant loan.
Charitable activities:	…The objective [of the Cumming Global Centre is] to be a globally top pandemic therapeutics research centre and to create solutions to minimise the impact of future pandemics. This will require providing long-term contracts for scientists enabling employment of the very best in the world and enabling it to secure significant peer reviewed research funding and to deliver outstanding research results over time and attract other leading scientists and peer reviewed funding.

21. The arm's length interest rate on a comparable loan from a financial institution, and the methodology used to determine the interest rate, was provided by the applicant and accepted by the Commissioner prior to entering into the scheme.

Commissioner of Taxation
4 September 2024

Appendix – Explanation

❶ ***This Explanation 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.***

Table of Contents **Paragraph**

Background

22. Paragraph 30-125(1)(d) has the effect that a PAF will only be entitled to remain endorsed as a deductible gift recipient if the fund and its trustees comply with the relevant Guidelines.

23. A deductible gift recipient is defined in section 30-227 and includes an entity which is endorsed under Subdivision 30-BA as an ancillary fund in table item 2 of subsection 30-15(2).

24. Section 426-103 of Schedule 1 to the *Taxation Administration Act 1953* requires the Minister to formulate public ancillary fund guidelines that must be complied with to remain endorsed as a deductible gift recipient. By legislative instrument dated 17 February 2022, the public ancillary fund guidelines were remade and titled the *Taxation Administration (Public Ancillary Fund) Guidelines 2022.*

25. Section 426-110 of Schedule 1 to the *Taxation Administration Act 1953* requires the Minister to formulate private ancillary fund guidelines that must be complied with to remain endorsed as a deductible gift recipient. By legislative instrument dated 20 September 2019, the private ancillary fund guidelines were remade and titled the *Taxation Administration (Private Ancillary Fund) Guidelines 2019.* The most recent compilation is dated 25 February 2022.

Interest savings form part of the public or private ancillary fund's annual distribution

26. Pursuant to section 15 of the Guidelines, a PAF must make an annual distribution.

27. Subsection 15(4) of the Guidelines states:

> A ***distribution*** is the provision of money, property or benefits. Where a fund distributes property or benefits, the market value of the property or benefit provided is to be used in determining whether the fund has complied with subsection (1).

28. Subsection 15(4) of the Guidelines provides 6 examples of how this applies. Example 4 in the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* states:

> Where a public ancillary fund lends money to an eligible deductible gift recipient at a discount to the interest rate which would be charged on a comparable loan sourced from a financial institution at arm's length, the fund is providing the borrower with a benefit equal to the market value of the interest forgone in the financial year by the lender because the borrower was not charged an arm's length rate of interest.

29. Similarly, Example 4 in the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* states:

> Where a private ancillary fund lends money to an eligible deductible gift recipient at a discount to the interest rate which would be charged on a comparable loan sourced from a financial institution at arm's length, the fund is providing the borrower with a benefit equal to the market value of the interest forgone in the financial year by the lender because the borrower was not charged an arm's length rate of interest.

30. More broadly, in the context of subsection 15(4) of the Guidelines, a benefit[1] is considered to mean something that confers 'an advantage or profit; a gain' and includes one which has a pecuniary value to the deductible gift recipient.

31. Therefore, under the scheme, a PAF would be considered to be providing a benefit to the University equal to 'the interest forgone' by the PAF, because the University is paying less than a market rate of interest.

32. The amount of this benefit will therefore form part of the PAF's annual distribution.

33. To determine the market value of the interest foregone, the PAF may use an interest rate of 10.60% per annum for the term of the loan, being a rate equivalent to the rate on a comparable loan sourced from a financial institution at arm's length.

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[1] Definition of 'benefit': Nygh, PE (ed.) and Butt, P (ed.) (1998) *Butterworths Concise Australian Legal Dictionary*, 2nd edn, Butterworths, Sydney.

References

Legislative references:

- ITAA 1997 30-15(2)
- ITAA 1997 30-25(1)
- ITAA 1997 Subdiv 30-BA
- ITAA 1997 30-120
- ITAA 1997 30-125(1)(d)
- ITAA 1997 30-227
- TAA 1953 Sch 1 426-103
- TAA 1953 Sch 1 426-110
- University of Melbourne Act 2009 (Vic)

Other references:

- Nygh, PE and Butt, P (ed.) (1998) Butterworths Concise Australian Legal Dictionary, 2nd edn, Butterworths, Sydney
- Taxation Administration (Public Ancillary Fund) Guidelines 2022
- Taxation Administration (Private Ancillary Fund) Guidelines 2019

ATO references

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