

CR 2024/29 - Queensland Health - Nursing and Midwifery Regional, Rural and Remote Student Placement Allowance



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Status: **legally binding**

Class Ruling

Queensland Health – Nursing and Midwifery Regional, Rural and Remote Student Placement Allowance

❶ 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the Nursing and Midwifery Regional, Rural and Remote Student Placement Allowance (Allowance) received by Eligible Students under the Queensland Health student clinical placements program.
2. Details of this scheme are set out in paragraphs 9 to 18 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated. Terms which are defined in the Student Placement Deed or the Deed of Variation referred to in paragraph 10 of this Ruling have been capitalised.

Note: By issuing this Ruling, the ATO is not endorsing this program. Potential participants must form their own view about the program.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - are an Eligible Student, having met the eligibility criteria set out in paragraph 13 of this Ruling, and
 - receive the Allowance from Queensland Health.
5. In this Ruling, a person belonging to this class of entities is referred to as a student.

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When this Ruling applies

6. This Ruling applies to you if you are a student who undertakes a Placement from 1 January 2024 to 31 December 2027.

Ruling

7. The receipt of an Allowance paid to you by Queensland Health is not assessable as ordinary income under section 6-5.

8. CGT event C2 under section 104-25 happens when a student is paid the Allowance by Queensland Health.

- If you are a full-time student, the capital gain made from this CGT event is exempt income pursuant to table item 2.1A of section 51-10, and therefore not assessable income pursuant to subsection 6-15(2).
- If you are a part-time student, the capital gain made from this CGT event is not exempt income, and therefore is assessable income pursuant to section 6-10.

Scheme

9. 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.

10. Other information referenced is as follows:

- pro-forma Deed Poll between the student, the State of Queensland acting through Queensland Health, a Hospital and Health Service and a recognised Australian Education Provider (Student Deed Poll – Funding) received on 30 January 2024
- pro-forma Student Placement Deed and pro-forma Deed of Variation between the State of Queensland acting through Queensland Health and a recognised Australian Education Provider received on 31 January 2024 and 30 January 2024 respectively, and
- Nursing and Midwifery Regional, Rural and Remote Student Placement Allowance Guideline received on 31 January 2024.

11. Under a clinical placements program, Queensland Health enters into contracts (Student Placement Deeds) with Australian Education Providers to allow students to undertake clinical placements in Queensland Health facilities. The principal purpose of clinical placements is for the educational benefit of the student. The placement is educative and to enable the student to meet the requirements of the accredited curriculum.

12. The Allowance was developed to address the cost-of-living challenges experienced by students and to attract a health workforce to regional, rural and remote Queensland (by assisting with living costs associated with undertaking a regional, rural and remote Placement away from their usual place of residence).

13. To be eligible for the Allowance:

- (a) The Placement must be in accordance with an executed Student Placement Deed.

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- (b) An Education Provider which is a party to the Student Placement Deed must have an approved Deed of Variation to that Student Placement Deed.
- (c) The student must
 - (i) be a Queensland resident
 - (ii) be completing the final year of a study program at an Australian university or registered training organisation run by the Education Provider which leads them to qualify as either a registered nurse, enrolled nurse or midwife under subsection 53(a) of the *Health Practitioner Regulation National Law (Qld)*
 - (iii) prior to commencing the Placement, have completed and submitted to Queensland Health the application form for the Allowance and an executed Student Deed Poll – Funding
 - (iv) undertake the Placement at a Queensland Health Facility which, in accordance with the Modified Monash Model (MMM), is in a MMM 2 to MMM 7 location 100 kilometres or more from the student's place of residence, and based in Queensland
 - (v) complete a Placement of at least 4 weeks and within the period 1 January 2024 to 31 December 2027, and
 - (vi) within 3 months of having completed the Placement, finalise the Allowance payment form, have it endorsed by a delegate of their Education Provider and submit it to Queensland Health for processing.

14. The Allowance is a one-off payment of \$5,000, payable to the student by Queensland Health.

15. Placements are considered vocational placements for the purposes of the *Fair Work Act 2009* (FWA). Section 12 of the FWA defines 'vocational placement' to mean a placement that is:

- (a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and
- (b) undertaken as a requirement of an education or training course; and
- (c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

16. The Student Placement Deed does not apply to students who are employees of Queensland Health and undertaking a Placement for purposes related to their employment with Queensland Health and confirms (subject to 2 exceptions) that students are not to be paid to attend Placement or receive any other financial benefit directly for Placement hours. Pursuant to the Deed of Variation to the Student Placement Deed, one exception to this rule is the payment of the Allowance to Eligible Students 'to assist with the living costs associated with undertaking a regional, rural or remote clinical Placement'.

17. Upon execution of the Student Deed Poll – Funding, the student acknowledges and agrees that while on Placement they will not be an employee of Queensland Health and Queensland Health has no obligation to remunerate the student in respect of the services the student performs.

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18. There is no requirement for the students to commence employment with Queensland Health at any point following their Placement.

Commissioner of Taxation

8 May 2024

Status: **not legally binding**

Appendix – Explanation

❗ *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.*

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Assessable income

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 in your assessable income if it is income according to ordinary concepts.

21. 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.

22. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)*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

¹ [1990] HCA 25.

Status: **not legally binding**

business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

23. Amounts that are periodical, regular or recurrent, relied upon and expected on a periodic basis by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income², as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.³ Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.⁴

24. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

25. In *Scott v Federal Commissioner of Taxation*⁸, Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities. In *The Commissioner of Taxation of the Commonwealth of Australia v. Harris G.O.*⁹, a bank made a lump sum payment to supplement a former employee's pension to alleviate the negative effects of high inflation. The majority held that the payment was not a product of the former employment, and this was an important element in finding that the payment was not income.

26. The Student Placement Deed, being the instrument governing the student placement arrangements between Queensland Health and the Education Providers, does not apply to employees of Queensland Health and, but for the Allowance and consistent with the definition of a vocational placement under the FWA, does not allow for the students to be paid (remunerated) to attend Placement or for any services performed during Placement hours. The students are therefore not employees of Queensland Health while on Placement, nor are they required to commence employment with Queensland Health following their Placement.

27. The Placement is undertaken as a requirement of the students' study program and has educational benefits for the students. The Allowance is paid to encourage students to undertake their Placement in regional, rural and remote locations (by assisting them with costs associated with living away from their usual place of residence). It is not paid to the students as a product of any employment of, or services rendered by, the students and it is not paid to compensate them for salary or wages lost while undertaking their Placement.

28. The Allowance is only to be paid to the students by Queensland Health upon satisfactory completion of the Placement and Queensland Health's receipt of the Allowance payment form (endorsed by the Education Provider delegate) and takes the form of a one-off lump sum amount. The Allowance is not paid or expected periodically.

29. These factors, when considered together, lead to the conclusion that the Allowance received by the students is not ordinary income under subsection 6-5(1).

² *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65.

³ *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21, *Commissioner of Taxation of the Commonwealth of Australia v. Rowe, Anthony John Poulston* [1995] FCA 834.

⁴ *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65, per Fullagar J.

⁵ *Scott v Federal Commissioner of Taxation* [1966] HCA 48, *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21, *Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

⁶ *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.

⁷ *Scott v Federal Commissioner of Taxation* [1966] HCA 48.

⁸ [1966] HCA 48.

⁹ [1980] FCA 74.

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Statutory income

30. 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.

31. A list of the statutory income provisions is set out in section 10-5. Of the statutory income provisions set out in section 10-5, 2 sections are relevant to the Allowance received by students. These are section 15-2 relating to allowances and other things provided in respect of employment or services and section 102-5 relating to capital gains.

32. Subsection 15-2(1) provides that assessable income includes:

... the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you ...

33. It is in their capacity as students under which, and as a consequence of their satisfaction of all of the eligibility criteria relating to the Allowance for which, students receive the Allowance, and not (as explained in paragraphs 26 and 27 of this Ruling) because of any employment relationship they have or any services they will have rendered during their Placement. As such, the Allowance received by students is not assessable income under section 15-2.

34. A student's entitlement to receive the Allowance is a CGT asset under subsection 108-5(1) that is acquired when their submitted Allowance payment form is approved by Queensland Health.

35. CGT event C2 happens if your ownership of an intangible CGT asset ends. CGT event C2 happens when a student's entitlement to receive the Allowance is discharged or satisfied as a result of having been paid.

36. Where a student is paid the Allowance, they will make a capital gain from this CGT event under subsection 104-25(3) equal to the amount of the Allowance less any cost base for that asset, and (subject to paragraphs 37 to 59 of this Ruling) include that capital gain in the calculation of their net capital gain (if any) for the income year under section 102-5.

Exempt income

37. Subsection 6-20(1) provides that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law. An amount of exempt income is not assessable income (subsection 6-15(2)).

38. 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.

39. Table item 2.1A of section 51-10 provides that payments are exempt from income tax if they are:

- made to a full-time student at a school, college or university
- made by way of a scholarship, bursary, educational allowance or educational assistance, and
- not subject to any exception set out in section 51-35.

40. As the Allowance is statutory income, it must be established whether or not it is exempt income under Division 51. This requires a consideration of these 3 conditions.

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Full-time students at a school, college or university

41. The Allowance is awarded to Eligible Students who are enrolled in and are completing their final year of a study program either on a part-time or full-time basis at an Australian university or registered training organisation run by the Education Provider. Any training organisation run by the Education Provider is registered under the *National Vocational Education and Training Regulator Act 2011* to provide vocational educational training to students and qualify as a 'school' or 'college' for the purpose of this condition.

42. Where the Allowance is received by a full-time student, it is accepted that these students satisfy the condition of being a full-time student at a school, college or university. Conversely, where the Allowance is received by a part-time student, the amount will not be exempt income under Division 51.

Scholarship, bursary, educational allowance or educational assistance

43. The words 'scholarship', 'bursary', 'educational allowance' or 'educational assistance' are not defined in the ITAA 1997. *The Macquarie Dictionary* online¹⁰ defines:

- scholarship as 'the sum of money or other aid granted to a scholar'
- scholar as 'a student who, because of merit, etc., is granted money or other aid to pursue his or her studies', and
- student as 'someone who is engaged in a course of study and instruction, as at a college, university, or secondary school' and 'someone who studies a subject systematically or in detail'.

44. 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 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 ...'.

45. 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 criterion¹¹, and
- education of the recipient is at least one purpose for which the scholarship is provided.¹²

46. To receive the Allowance, students must undertake a merit-based selection process which involves the satisfaction of the general eligibility criteria set out in paragraph 13(c) of this Ruling. As such, it is accepted that the awarding of the Allowance is merit based.

47. In *Chesterman v Federal Commissioner of Taxation*¹³, Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

48. The Allowance is paid to the student (among other criteria) upon completion of 4 or more weeks of a placement at a Facility for the purpose of clinical health practical

¹⁰ Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 23 April 2024.

¹¹ *Re Leitch, deceased* [1965] VR 204.

¹² *Federal Commissioner of Taxation v Hall* (1975) 6 ALR 457.

¹³ [1923] HCA 24.

Status: **not legally binding**

education (Placement). The Placement is an academic requirement that allows students to consolidate and apply their theoretical skills and knowledge in an off-campus setting, and be provided with access, orientation, resources, and opportunities to engage in immersive clinical teaching and training. As such, it is accepted that the Allowance has the requisite educational purpose.

49. Accordingly, it is accepted that the payment of the Allowance by Queensland Health to a student is made by way of a scholarship, bursary, educational allowance or educational assistance.

Section 51-35 exceptions

50. Section 51-35 excludes the following payments from income tax 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 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)).

Commonwealth payment for education or training

51. The payment of the Allowance is not made by the Commonwealth and is therefore not of a kind covered in paragraphs 51-35(a), (b) or (f).

Payment on condition that the student enters into employment with, or a contract for labour with, the payer

52. Paragraphs 51-35(c) and (d) exclude 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, or
- 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.

53. In *Commissioner of Taxation of the Commonwealth of Australia v. Ranson, E.L.*¹⁴, the Federal Court took 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. 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.

54. The Student Placement Deed, as reflected in the Student Deed Poll – Funding, expressly provides that students are not staff, employees, agents, or contractors of Queensland Health, nor are the students required or expected to become an employee of Queensland Health at any point. The Placement is a vocational placement in accordance

¹⁴ [1989] FCA 741.

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with section 12 of the FWA, meaning it is undertaken as a requirement of an education or training course, such that Queensland Health has no obligation to remunerate the student in respect of their services other than the payment of the Allowance to assist with the living costs associated with undertaking the Placement in a regional, rural or remote location at least 100 kilometres from the student's place of residence.

55. The agreements entered into by Queensland Health and the student do not constitute a contract wholly or principally for the labour of the student during the Placement, nor are the students under any obligation to enter into a contract wholly or principally for the labour of the student at any point.

56. As such, the payment of the Allowance is not excluded under paragraphs 51-35(c) or (d).

Payment not provided principally for educational purposes

57. The word 'principally' is not defined and takes on its commonly understood meaning of 'chiefly' or 'mainly'.¹⁵ The Allowance is only payable to the student upon completion of their Placement at a Queensland Health Facility, is undertaken as a requirement of the student's study program and has educational benefits for the student.

58. The Placement is not to be used as a means to conduct ordinary operations of a Facility or to fill vacancies caused by the absence of Facility staff members.

59. As such, the payment of the Allowance is provided principally for education purposes and not excluded under paragraph 51-35(e).

Pay as you go withholding

60. The Pay as you go withholding regime is established under Part 2-5 of Schedule 1 to the *Taxation Administration Act 1953*. Section 10-5 of Schedule 1 to the *Taxation Administration Act 1953* lists the payments and other transactions that are subject to Pay as you go withholding (called withholding payments).

61. The Allowance is not regarded as a withholding payment and Queensland Health is not required to withhold amounts from the Allowance.

¹⁵ Macmillan Publishers Australia, The *Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 23 April 2024.

Status: **not legally binding**

References

Related Rulings/Determinations:

TR 93/39

Legislative references:

- ITAA 1936 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-15(2)
- ITAA 1997 6-20(1)
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(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)
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- TAA Pt 2-5 of Sch 1
- TAA Sch 1 10-5
- Fair Work Act 2009 12
- Health Practitioner Regulation National Law (Qld) 53(a)
- National Vocational Education and Training Regulator Act 2011

Cases relied on:

- *Chesterman v Federal Commissioner of Taxation* [1923] HCA 24; 32 CLR 362; 29 ALR 224
- *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJR 505

- *Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29; 77 ATC 4255; 7 ATR 519; 15 ALR 449; 34 FLR 375
- *Federal Commissioner of Taxation v Hall* (1975) 6 ALR 457; 75 ATC 4156; 5 ATR 450
- *Commissioner of Taxation of the Commonwealth of Australia v. Ranson, E.L.* [1989] FCA 741; 89 ATC 5322; 20 ATR 1652; 90 ALR 533
- *Commissioner of Taxation of the Commonwealth of Australia v. Rowe, Anthony John Poulston* [1995] FCA 834; 60 FCR 99; 95 ATC 4691; 31 ATR 392
- *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25; 170 CLR 124; 64 ALJR 392; 90 ATC 4413; 21 ATR 1; 93 ALR 193
- *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21; 96 CLR 47; 11 ATD 68; 30 ALJR 96
- *Re Leitch, deceased* [1965] VR 204
- *Scott v Federal Commissioner of Taxation* [1966] HCA 48; 117 CLR 514; 40 ALJR 205; [1967] ALR 561; 14 ATD 286
- *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13; 86 CLR 570; [1953] ALR 366; 26 ALR 658; 10 ATD 126
- *The Commissioner of Taxation of the Commonwealth of Australia v. Harris, G.O.* [1980] FCA 74; 43 FLR 36; 80 ATC 4238; 10 ATR 869; 30 ALR 10

Other references:

Macmillan Publishers Australia, The Macquarie Dictionary (online)

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