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Monash Postgraduate Association

Response to Review of Australian Taxation Office advice on scholarships

March 2017

The Monash Postgraduate Association (MPA) is an independent incorporated body, representing more than 22,000 postgraduate students enrolled on the Australian campuses of Monash University.

The MPA appreciates the opportunity to respond to the ATO's review of advice on scholarships.

It is important that scholarships provided for genuine educational purposes remain (or in the case of part-time, become) exempt from taxation.

Unlike universities and government departments, student associations see the reality of policies and taxation rulings played out on the lives of students every day. We know that many research postgraduates are barely surviving on a scholarship income.

Taxing scholarships would be a significant financial disincentive to pursuing a research degree, and we would urge the ATO to ensure that any commercial benefit or industry experience arising from a research degree is not used as a trigger to exclude genuine educational scholarships from tax exemption.

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1. Scholarship, bursary, educational allowance or educational assistance

> *…we propose to give broad meaning to these terms based on the following characteristics:*
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> *the scholarship, bursary, educational allowance or educational assistance is open to a wide range of candidates…*

Were this definition to be put in place as it stands, scholarships being offered to target and support equity groups in furthering higher education may not be determined by the ATO to be open to "a wide range of candidates". The result of this characteristic being included as a definition of "scholarship" may have the unintended negative consequence of scholarships for specific equity groups, such as Indigenous postgraduates, being deemed taxable.

2. Full-time student vs part-time

> *We propose broadly adopting the rules for Austudy entitlement to determine whether a student is full-time. These rules require a student to be doing at least 75% of the equivalent full time load for the course they are enrolled in for the given study period (for example, semester, trimester or year).*
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> *The alternative is to specify the number of hours per week, such as 35 or 40 hours. This method would be more easily applied across more course loads, including Research and PhD students.*

The MPA supports the adoption of the former definition, that is, that a student must be doing at least 75% of EFTSL for the course load to be considered full-time. The latter (alternative) definition would give rise to widespread inequities across faculties and universities, and cause confusion for research postgraduates as to precisely how those hours should be calculated.

We would also encourage the ATO to rule part-time scholarships as exempt from taxation where the scholarship is provided for educational purposes. Postgraduates from equity groups are already disadvantaged – doubly so given that they are more likely to study part-time and therefore have their scholarships taxed.

It is incorrect to assume that people studying part-time are also fully employed. The reality is that people study part-time for many reasons including responsibilities for children and aged parents, disabilities, and financial imperatives to work part-time.

Taxing part-time scholarships unfairly targets women students, low social-economic status students, regional students, remote students, Indigenous students and students with disabilities.

3. At a school, college or university

We accept that the education does not have to be undertaken physically at the school, college or university. Students undertaking a full-time course may undertake training or study at an external site, which includes study from home if they are undertaking study by distance education.

This is a critical inclusion given the breadth of course delivery by universities, which for research postgraduates can include not only online coursework and distance education, but research at external and international research institutes, industry placements, fieldwork and the capacity to apply for writing-up away status.

4. Payments for employment or wholly or principally for labour

We propose the following in respect of applying paragraphs 51-35(c) and (d):

Payments received by a student "on the condition" that they will (or will if required) become, or continue to be, an employee of the payer or enter into, or continue to be, a party to a contract for labour with the payer are excluded from the exemption. Whether such a condition exists is determined at the time the scholarship is granted.

An overly broad definition of a "contract for labour" may unintentionally include the following scenario:

A PhD student is granted a scholarship by the university, with the university being both the provider and funder of the scholarship. The student takes on a project which is expected to give rise to a patentable invention. At the time of enrolment, the scholarship is granted on the basis that all intellectual property arising from the project will be owned by the university, and the student signs into a deed of assignment to this effect. The student continues to work on the invention as their PhD project and the university registers for a patent, with the student, as inventor or coinventor, positioned to receive a percentage of the profits, under their agreement with the university.

Given the student is a party to a contract that requires the student to work on a specific invention, and provides for potential payment via patent profits, it is not clear whether or not this would be interpreted by the ATO as a "contract for labour".

The scholarship will not be exempt if the recipient performs any employee or contract for labour services as a condition of the granting of the scholarship. This extends to research conducted for or on behalf of the scholarship provider, even where the recipient is undertaking a research scholarship, if the granting of the scholarship is conditional on such services performed [see FCT v. Hall 75 ATC 4156].

It is common for scholarships to be provided to students to work on specific research problems within the university. If the outcome of that research, in addition to

providing a PhD project, also furthers the university's ability to deliver their commercial arm of a particular service or business, it does not necessarily follow that this was the primary aim of the scholarship. However, where the university is both the provider and funder of a scholarship, the interpretation of a "contract for labour" may well cause confusion around the exemption status of such a scholarship.

The MPA believes that in both these instances scholarships should not be considered taxable as they are being provided first and foremost for educational purposes. That there is some potential personal benefit for the student or commercial benefit for the university is secondary.

5. Payments not principally for educational purposes

> *We intend to specify that the 'provider' is not necessarily the payer. Where a party other than an educational institution 'funds' the scholarship and the student's activities have some relationship or connection to that party providing the funds, such as working with or for the provider, or working towards outcomes potentially beneficial to the provider, the 'funder' can be the provider for the purposes of applying paragraph (e) and analysing the 'purpose' of that party, rather than the payer [see Hall and Polla-Mounter].*

It should be noted that many postgraduate research scholarships are funded from multiple sources. The ATO paper refers to the "scholarship provider" as a single entity. What percentage of the scholarship would need to come from an organisation in order to apply the "payment for employment" principles? With an understanding of that entity being critical to the definition of scholarships being tax exempt, any attempts to determine eligibility would be difficult.

> *We make the following observations as grounds for discussion and comment:*
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> *To be exempt from income tax, the law specifies that it must be provided principally for educational purposes. This means there can be collateral advantages [as was the case in Hall] so long as the primary purpose is for educational purposes. It is not enough that an educational purpose is a by-product or incidental purpose of the scholarship…*
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> *…It is considered that a relevant principal purpose other than an educational one can arise where there is an obtaining of outcomes for the provider from scholarship recipient activities that benefit, or can benefit, the provider in the same way an employee or contractor working for the provider would...*

Given that research postgraduates are encouraged as part of their research training to conduct research, present at conferences and publish in academic journals, this could be interpreted as benefiting the scholarship provider where that scholarship provider (and funder) is a university, whose employees' duties are also to conduct and publish research. Essentially every research postgraduate on a university-funded scholarship could be subjected to taxation, if the above interpretation were broadly applied.

> *...An appropriate test for the provision of commercial activities where the party has funded the scholarship is one of equivalence of output to the funder. That is, if the recipient's activities produce an output equivalent to what a similarly experienced employee or contractor would produce, then the principle purpose is considered to be something other than the provision of education.*

The MPA would argue that an "equivalent of output" is *not* an appropriate test for the "provision of commercial activities where the party has funded the scholarship".

This test fails to take into account the *process* of achieving the output, which for research postgraduates is an educational process but for employees is a directed process. It also fails to take into account the time taken to achieve the output, which for research postgraduates is three to four years, but for employees would be at least half that time.

A PhD student is given general directions by their supervisor, and takes courses to learn how to search the literature, develop a methodology and analyse data (an employee already has these skills). As they gain experience they set their own research directions and make their own decisions as to how to present their thesis (an employee is directed by their employer). Along the way they are required to complete discipline-related coursework and are subjected to various forms of examination (an employee is not subjected to these educational requirements).

Furthermore, in order to determine whether or not a research postgraduate's output is beneficial to a scholarship funder and could have equally been produced by an employee, it would be necessary to see that output, which is the production of a thesis. Given the uncertain nature of research, it may be that it is of no benefit at all to the scholarship funder. If the thesis fails examination, we might also assume that the research is of no benefit. Is the ATO then planning to retrospectively tax or not tax the scholarship holder depending on the outcome of the research project?

Even where a scholarship funder benefits from the output of a research postgraduate, it is clear that the primary purpose of a research degree is educational and that a research postgraduate bears little resemblance to an employee.

Research cannot be learned in a classroom – it requires real-life research problems to solve. It would be contrary to the whole concept of research and innovation if research postgraduates were forced to choose theoretical research problems for their PhDs because choosing real-life research problems could lead to their scholarships being taxed.

We appreciate your consideration of these comments and would welcome the opportunity to discuss these matters with the ATO.