



# **Tax Laws Amendment (Education Refund) Act 2008**

**No. 141, 2008**

**An Act to amend the law relating to taxation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 141, 2008**

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## **An Act to amend the law relating to taxation, and for related purposes**

*[Assented to 9 December 2008]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Education Refund) Act 2008*.

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## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Education expenses tax offset**

### ***A New Tax System (Family Assistance) (Administration) Act 1999***

#### **1 After section 169A**

Insert:

#### **169B Disclosure of information—education expenses tax offset**

- (1) The Secretary may, for the purposes of the administration of the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation relevant information about people, including their tax file numbers, acquired by an officer in the exercise of the officer’s powers, or the performance of the officer’s duties or functions, under the family assistance law.
- (2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for purposes relating to the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*.
- (3) This section does not limit the powers of the Secretary under section 168.

### ***Income Tax Assessment Act 1997***

#### **2 Section 13-1 (after table item headed “dividends”)**

Insert:

**education expenses**

payment of ..... Subdivision 61-M

#### **3 After Subdivision 61-L**

Insert:

## Subdivision 61-M—Education expenses tax offset

### Guide to Subdivision 61-M

#### 61-600 What this Subdivision is about

You may get a refundable tax offset for education expenses incurred for a school student in your care, or for yourself if you are an independent student.

There is a limit on the amount of the tax offset.

Education expenses over the limit can be taken into account in the next year of income.

#### Table of sections

##### Entitlement to education expenses tax offset

61-610	Entitlement to education expenses tax offset
61-620	Eligibility in respect of another individual
61-630	Schooling requirement
61-640	Education expenses

##### Amount of education expenses tax offset

61-650	Amount of education expenses tax offset
61-660	Education expenses tax offset limit
61-670	Shared care
61-680	Excess education expenses

## Entitlement to education expenses tax offset

### 61-610 Entitlement to education expenses tax offset

#### *Entitlement in respect of another individual*

- (1) You are entitled to a \*tax offset for an income year if:
  - (a) you satisfy subsection 61-620(1), (2), (3) or (4) on a day in the income year for an individual; and



- (b) the individual satisfies the schooling requirement in section 61-630 on that day; and
- (c) an expense covered by section 61-640 for the individual's education is incurred on that day.

*Entitlement for independent students*

- (2) You are also entitled to a \*tax offset for an income year if:
  - (a) on a day in the income year you are receiving:
    - (i) payments under a prescribed educational scheme (within the meaning of the *Social Security Act 1991*); or
    - (ii) a social security pension (within the meaning of that Act); or
    - (iii) a social security benefit (within the meaning of that Act); or
    - (iv) payments under a program included in the programs known as Labour Market Programs; and
  - (b) an independence requirement (however described) that you satisfy is relevant to the amount of the payment; and
  - (c) on that day you are:
    - (i) an Australian resident (within the meaning of the *Social Security Act 1991*) or a special category visa holder (within the meaning of the *Migration Act 1958*); and
    - (ii) residing in Australia; and
  - (d) you are aged under 25 on that day; and
  - (e) you satisfy the schooling requirement in section 61-630 on that day; and
  - (f) another individual or entity is not entitled to a tax offset for the income year for that day in respect of you under subsection (1); and
  - (g) an expense covered by section 61-640 for your education is incurred on that day.

**61-620 Eligibility in respect of another individual**

*You are entitled to Family Tax Benefit (Part A)*

- (1) You satisfy this section on a day in an income year for an individual if:

- (a) you are entitled to be paid family tax benefit for the individual in relation to that day under the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
- (b) your daily rate of family tax benefit for that day consists of, or includes, a Part A rate worked out under Part 2 or 3 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* that is greater than nil.

*You care for an individual entitled to certain payments*

- (2) You satisfy this section on a day in an income year for an individual if:
  - (a) one or more of the following:
    - (i) payments under a prescribed educational scheme (within the meaning of the *Social Security Act 1991*); or
    - (ii) a social security pension (within the meaning of that Act); or
    - (iii) a social security benefit (within the meaning of that Act); or
    - (iv) payments under a program included in the programs known as Labour Market Programs;is received on that day by the individual, or by you or another person on the individual's behalf; and
  - (b) the individual would be your FTB child (within the meaning of Subdivision A of Division 1 of Part 3 of the *A New Tax System (Family Assistance) Act 1999*) on that day if that payment were disregarded.

*Approved care organisation*

- (3) An approved care organisation (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) satisfies this section on a day in an income year for an individual if the approved care organisation is entitled, under the *A New Tax System (Family Assistance) (Administration) Act 1999*, to be paid family tax benefit for that individual on that day.

*Individual finishing full-time schooling—cut-out amount disregarded*

- (4) You satisfy this section on a day in an income year for an individual if:
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- (a) the individual satisfies the schooling requirement in section 61-630 on that day; and
  - (b) during the income year, the individual ceased to be covered by either subsection 61-630(2) or (4); and
  - (c) the individual was not covered by either of those subsections at the end of the year of income; and
  - (d) the Commissioner is of the opinion that you would satisfy one or more of subsections (1), (2) and (3) for the individual on that day if:
    - (i) paragraph (a) of item 2 of the table in subsection 22A(1) of the *A New Tax System (Family Assistance) Act 1999* (which deals with the cut-out amount) were disregarded; or
    - (ii) for approved care organisations (within the meaning of the *A New Tax System (Family Assistance) Act 1999*)—paragraph (a) of item 2 of the table in subsection 35(1) of that Act (which also deals with the cut-out amount) were disregarded.

### **61-630 Schooling requirement**

- (1) An individual satisfies the schooling requirement in this section on every day in a 6 month period beginning on 1 July or 1 January if there is at least one day in that 6 month period on which the individual:
  - (a) is covered by subsection (2) or (4); and
  - (b) attended the course of study or instruction, or received the home schooling, referred to in that subsection.

#### *Primary school student*

- (2) An individual is covered by this section if the individual is a student enrolled or registered:
  - (a) in a course of study or instruction that is a primary course within the meaning of the \*GST Act; or
  - (b) with the education authority of the State or Territory in which the individual resides as a home schooled student (however described) allocated to the primary level of education; or
  - (c) in a course of study or instruction to which subsection (3) applies.

- (3) The Minister administering the *Student Assistance Act 1973* (the **Education Minister**) may, by legislative instrument, determine that a course of study or instruction is a course to which this subsection applies.

*Secondary school student*

- (4) An individual is covered by this section if the individual is a student enrolled or registered:
- (a) in a course of study or instruction that is a secondary course within the meaning of the \*GST Act; or
  - (b) with the education authority of the State or Territory in which the individual resides as a home schooled student (however described) allocated to the secondary level of education; or
  - (c) in a course of study or instruction to which subsection (5) applies.
- (5) The Education Minister may, by legislative instrument, determine that a course of study or instruction is a course to which this subsection applies.

**61-640 Education expenses**

- (1) An expense incurred on a day is covered for you by this section if:
- (a) the expense is incurred by:
    - (i) you; or
    - (ii) your partner (within the meaning of the *Social Security Act 1991*); and
  - (b) the expense directly relates to the education of:
    - (i) one or more individuals in relation to whom paragraphs 61-610(1)(a) and (b) are satisfied on the day; or
    - (ii) if you are covered by paragraphs 61-610(2)(a), (b), (c), (d), (e) and (f) on the day—yourself; and
  - (c) the expense is of a kind mentioned in subsection (4).
- (2) However, an expense is not covered by this section to the extent that the expense:
- (a) is deductible under this Act; or
  - (b) is subject to a \*tax offset under this Act (other than this Subdivision); or

- (c) is covered by a payment or property you receive, or are entitled to receive, as reimbursement or payment of your expenses under a benefit, grant or subsidy:
- (i) the provision of which was authorised under a \*Commonwealth law or an instrument of a legislative character made under a Commonwealth law; or
  - (ii) to which paragraph (3)(a) applies.
- (3) The regulations may provide the following:
- (a) that a benefit, grant or subsidy is a benefit, grant or subsidy to which this paragraph applies;
  - (b) that an expense of a particular kind is not an expense covered by this section.
- (4) The expenses are those mentioned in column 3 of an item in the following table relating to a thing mentioned in column 2 of that item.

<b>Item</b>	<b>Thing to which expense relates</b>	<b>Kind of expense</b>
1	Computer for: (a) home use (including, in the case of an individual who has no home, use in a setting that equates to a residential setting for the person); or (b) use in an educational institution in place of paper based educational material	(a) cost of acquiring (whether by way of purchase, lease, hire or hire-purchase); and (b) cost of repairing; and (c) costs associated with running.
2	Computer-related equipment for a use referred to in item 1, including: (a) printers; and (b) disability aids	(a) cost of acquiring (whether by way of purchase, lease, hire or hire-purchase); and (b) cost of repairing; and (c) costs associated with running.
3	Home internet connection	(a) cost of establishing; and (b) cost of maintaining.
4	Item of computer software	cost of acquiring (whether by way of purchase, lease, hire or hire-purchase).
5	School textbooks, other paper based school learning material and	cost of acquiring (whether by way of purchase, lease, hire or

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Item	Thing to which expense relates	Kind of expense
	stationery	hire-purchase).
6	A tool of trade	cost of acquiring (whether by way of purchase, lease, hire or hire-purchase).

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## Amount of education expenses tax offset

### 61-650 Amount of education expenses tax offset

- (1) The amount of your \*tax offset for an income year (the *current year*) is the amount (rounded up to the nearest whole dollar) that is the lesser of:
- (a) one half of the sum of:
    - (i) all of the expenses covered for you by section 61-640 for the current year; and
    - (ii) your expenses covered by section 61-680 (about excess education expenses) for the income year ending immediately before the current year; and
  - (b) your offset limit under section 61-660 for the current year.

#### *Effect of shared care arrangements*

- (2) If:
- (a) on a particular day, you and your partner (within the meaning of the *Social Security Act 1991*) (your *partner*) satisfy subsection 61-620(1) for an individual; and
  - (b) a determination has been made under section 28 or 29 of the *A New Tax System (Family Assistance) Act 1999* of your percentage, and of your partner's percentage, of the family tax benefit for the individual for a period that includes that day; and
  - (c) an expense covered for you by section 61-640 was incurred on that day;
- for the purposes of subparagraph (1)(a)(i) you and your partner may each count only a portion of the expense corresponding to your percentage.

- (3) If:

- (a) on a particular day, you are a member of a couple (within the meaning of the *Social Security Act 1991*); and
- (b) both you and your partner (within the meaning of that Act) (your *partner*) satisfy subsection 61-620(2) or (4) for one or more individuals on that day; and
- (c) an expense covered for you by section 61-640 was incurred on that day;

for the purposes of subparagraph (1)(a)(i) the expense only counts as follows:

- (d) if you and your partner have made a written agreement nominating one of you as the member who can claim the offset under this Subdivision in respect of the individual or individuals for a period including that day:
  - (i) the nominated member may count the whole of each expense covered for you by section 61-640 incurred on that day; and
  - (ii) the other member must not count any of the expense; or
- (e) if paragraph (d) does not apply—you and your partner may each count only half of the expense.

### **61-660 Education expenses tax offset limit**

- (1) Your offset limit is:
  - (a) if you satisfy paragraphs 61-610(1)(a), (b) and (c) for one or more individuals in the current year—the sum of the amounts worked out under the method statement for each such individual; and
  - (b) if you are an independent student covered by subsection 61-610(2)—the amount worked out for yourself under the method statement.

*Method statement*

Step 1. Start with this amount:

- (a) for an individual who satisfies the schooling requirement in subsection 61-630(4) (for secondary school students) on a day in the current year—\$750; or

- (b) if paragraph (a) does not apply and the individual satisfies the schooling requirement in subsection 61-630(2) (for primary school students) on a day in the current year—\$375.

Note: The effect of step 1 is that the secondary school student starting amount applies for the whole year where an individual completes primary school in the first half of the financial year and starts secondary school in the second half of the financial year.

Step 2. Add up the number of days in the current year on which:

- (a) paragraphs 61-610(1)(a) and (b) are satisfied for you and the individual; or

Note: There are modifications to step 2(a) in section 61-670.

- (b) if you are an independent student covered by subsection 61-610(2)—paragraphs 61-610(2)(a), (b), (c), (d), (e) and (f) apply to you.

Step 3. Divide the result of step 2 by the number of days in the current year. Round the result to 2 decimal places (rounding up if the third decimal place is 5 or more).

Step 4. Multiply the result from step 1 by the result from step 3.

- (2) The amounts specified in step 1 of the method statement in subsection (1) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

### 61-670 Shared care

- (1) This section modifies the operation of step 2 of the method statement in subsection 61-660(1).

#### *Modification for shared care determinations*

- (2) If:
- (a) on a particular day, you satisfy subsection 61-620(1) for an individual; and
  - (b) a determination has been made under section 28 or 29 of the *A New Tax System (Family Assistance) Act 1999* of your



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percentage of the family tax benefit for the individual for a period that includes that day; and

(c) step 2 applies to that day;

only a portion of that day corresponding to that percentage may be counted for the purposes of step 2.

(3) If:

(a) on a particular day, you satisfy subsection 61-620(1) for an individual; and

(b) you have a shared care percentage under section 59 of the *A New Tax System (Family Assistance) Act 1999* for the individual for a period that includes that day; and

(c) step 2 (including that step as affected by subsection (2)) applies to that day;

only a portion of that day (or only a portion of the portion referred to in subsection (2)) corresponding to the shared care percentage may be counted for the purposes of step 2 (or that step as affected by subsection (2)).

*Modification for members of a couple*

(4) If:

(a) on a particular day, you are a member of a couple (within the meaning of the *Social Security Act 1991*); and

(b) both you and your partner (within the meaning of that Act) (your *partner*) satisfy subsection 61-620(2) or (4) for one or more individuals on that day; and

(c) step 2 applies to that day;

for the purposes of step 2 the day only counts as follows:

(d) if you and your partner have made a written agreement nominating one of you as the member who can claim the offset under this Subdivision in respect of the individual or individuals for that period:

(i) the nominated member may, subject to subsection (5), count the whole of each day in the period for each such individual; and

(ii) the other member must not count any days in the period for each such individual; or

(e) if paragraph (d) does not apply—only half of each day in the period may, subject to subsection (5), be counted.

*Modification for individuals not members of a couple*

- (5) If you and one or more other entities (other than your partner (within the meaning of the *Social Security Act 1991*)) each satisfy subsection 61-620(2) or (4) for an individual on a day, you may only count for the purposes of step 2 (or that step as affected by subsection (4)) a portion of that day that is reasonable having regard to:
  - (a) the objects of this subsection; and
  - (b) the living arrangements of the individual.
- (6) The objects of subsection (5) are:
  - (a) to determine the extent to which the individual was in your care on a day; and
  - (b) to prevent double counting in distributing the tax offset under this Subdivision between you and others who share the care of the individual.

**61-680 Excess education expenses**

- (1) You have an amount covered by this section from an income year if the amount worked out under paragraph 61-650(1)(a) for the year exceeds your offset limit for the year under section 61-660.
- (2) The amount that is covered by this section is the lesser of:
  - (a) all of the expenses covered for you by section 61-640 for the year that can be counted for the purposes of subparagraph 61-650(1)(a)(i); and
  - (b) twice the amount of the excess.

Note: The excess is worked out by comparing half of the education expenses to the offset limit (see section 61-650). Paragraph (b) doubles any excess so that the excess expenses have their original value and can be counted in full the next year.

Example: A family with one child in full-time secondary schooling has incurred education expenses of \$2,000 in an income year. Under section 61-650, these expenses are halved (\$1,000) and then compared to the offset limit (\$750). The excess of \$250 is doubled under subsection (2) to restore it to the original expense amount. In the next year, the family can count this \$500 of expenses towards the offset.

**4 At the end of section 67-25**

Add:

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*Education expenses tax offset*

- (7) The \*tax offset available under Subdivision 61-M is subject to the refundable tax offset rules.

**5 Section 960-265 (after table item 4)**

Insert:

4A Education expenses tax offset limit section 61-660

***Social Security (Administration) Act 1999***

**6 After section 208**

Insert:

**208A Disclosure of information by Secretary—education expenses tax offset**

- (1) The Secretary may, for the purposes of the administration of the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation relevant information about people, including their tax file numbers, acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the social security law.
- (2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for purposes relating to the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*.
- (3) This section does not limit the powers of the Secretary under section 208.

***Student Assistance Act 1973***

**7 After section 356**

Insert:

**356A Disclosure of information—education expenses tax offset**

- (1) The Secretary may, for the purposes of the administration of the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation relevant information about people, including their tax file numbers, acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under this Act.
- (2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for purposes relating to the education expenses tax offset provided by Subdivision 61-M of the *Income Tax Assessment Act 1997*.
- (3) This section does not limit the powers of the Secretary under section 355.

***Taxation Administration Act 1953***

**8 Section 45-340 (method statement, step 1, after paragraph (da))**

Insert:

(db) Subdivision 61-M of the <i>Income Tax Assessment Act 1997</i> (the education expenses tax offset); or
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**9 Section 45-375 (method statement, step 1, after paragraph (ca))**

Insert:

(cb) Subdivision 61-M of the <i>Income Tax Assessment Act 1997</i> (the education expenses tax offset); or
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**10 Application**

The amendments made by this Schedule apply to the 2008-2009 income year and later years.

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*[Minister's second reading speech made in—  
House of Representatives on 25 September 2008  
Senate on 12 November 2008]*

(192/08)