


# ***TR 94/D28 - Income tax: zone rebate for residents of isolated areas***

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This document has been finalised by TR 94/27.



## Draft Taxation Ruling

### Income tax: zone rebate for residents of isolated areas

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#### IT 2650

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### What this Ruling is about

1. This Ruling provides guidelines to assist in determining whether an individual taxpayer is eligible for a zone rebate under section 79A of the *Income Tax Assessment Act 1936*. In particular, the Ruling:

- (i) explains how to determine whether an individual is a resident in a zone area or in a special area within a zone;
- (ii) explains the factors to be considered in determining whether a point falls within a special area in either Zone A or Zone B including:
  - (a) the 'shortest practicable surface route' test in subsection 79A(3D); and
  - (b) the 'adjacent to or in close proximity' test in subsection 79A(3E); and
- (iii) explains how the Commissioner will exercise his discretion in calculating the amount of rebate allowable under paragraph 79A(2)(f).

2. The Ruling consolidates Taxation Ruling IT 259 with Taxation Rulings IT 343, IT 2068, IT 2118 and IT 2233. These Taxation Rulings are now withdrawn.

3. This Ruling does not determine whether certain points fall within a zone area, or the special area of a zone. Draft Taxation Ruling TR 94/D29 provides an alphabetical list of points that fall within Zone A and Zone B, and the special areas within those zones.

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## Ruling

### Resident of zone area

4. For a taxpayer to be entitled to a zone rebate under subsections 79A(1) or 79A(2), the taxpayer must satisfy one of the residence tests in subsection 79A(3B).

5. Subsection 79A(3B) provides that an individual is a resident of a particular area, being a prescribed area, Zone A, Zone B or a special area within either of those zones (referred to in this Ruling as a 'relevant area'), if the individual satisfies one of the tests in paragraphs 79A(3B)(a) to 79A(3B)(e). These tests (except for the test in paragraph 79A(3B)(b)) depend on where the individual 'resided' during the period or at the time specified in those paragraphs.

6. The word 'resided' in its context in subsection 79A(3B) has its ordinary meaning. According to the *Shorter Oxford English Dictionary*, 'reside' ordinarily means to dwell permanently, or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.

7. The term 'resident' in subsection 79A(3B) has a special meaning. It extends to an individual who 'resided' in a relevant area in a year of income for more than one-half of the year of income. It also extends to an individual who had not so resided but who actually was in the relevant area for more than one-half of the year of income.

8. Whether an individual 'resided' in a relevant area in a year of income in the ordinary sense is a question of fact that turns on the circumstances of each particular case. No hard and fast rules apply. To assist in determining for a year of income whether an individual 'resided' in a relevant area according to ordinary concepts, the following factors need to be taken into account:

- (a) the intended and actual length of the individual's stay in the relevant area;
- (b) any present intention either to leave the relevant area at some definite point in time;
- (c) the establishment of a home (in the sense of a dwelling place) in the relevant area;
- (d) whether the individual maintains a residence or place of abode outside a relevant area or has abandoned any such residence or place of abode on entering a relevant area;
- (e) the duration and continuity of the individual's presence in the relevant area; and

- (f) the durability of association that the individual has with the relevant area (in the sense that the individual, for example, has his or her personal effects in the area, maintains bank accounts or other assets in the area, has informed Government Departments such as the Department of Social Security to send family allowance payments or other benefits to the area, has children in places of education in the area, has family or business ties in the area and so on).

9. The weight to be given to each factor varies with the individual circumstances of each case and no single factor is conclusive.

10. For the purposes of section 79A, an individual may be a 'resident' of a relevant area, even though he or she did not 'reside' in the area in the ordinary sense of the word, if the individual was actually in that area, whether continuously or intermittently, for more than one-half of the year of income.

11. We accept that an individual may have his or her settled or usual place of abode at a particular place, and therefore resides at that place, even though in a particular year of income the individual may not have lived in or at that particular place, nor was actually at that place, for more than one-half of the income year.

12. Whether an individual derived income from sources within a relevant area is not determinative of whether the individual resided in that area in terms of subsection 79A(3B).

13. For the purposes of subsection 79A(3B), if an individual resided on a trawler, which was at sea for more than one-half of a year of income, the individual is not a resident of either Zone A or Zone B. The individual is therefore not entitled to any zone rebate.

14. On the other hand, an individual may have resided in a zone area (for example, Zone B) during a part of a year of income and have been at sea, say on a trawler, for the balance of the year. If the individual was physically present in other zone areas during the balance of the year and the total time spent in the zone areas exceeded more than one-half of the year of income, the individual is eligible for a zone rebate.

**Subsection 79A(3D) - whether a point falls within a 'special area' in either Zone A or Zone B**

15. A higher amount of rebate (than that allowable for a resident of Zone A or Zone B) is allowable if an individual resides in the 'special area' in either Zone A or Zone B. The term 'special area' is defined in subsection 79A(3D) as being those points in Zone A or Zone B that were not, as at 1 November 1981, situated 250 kilometres or less by

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the shortest practicable surface route from the centre point of the nearest urban centre with a census population, from the 1981 census, of not less than 2,500.

## **Subsection 79A(3D) - shortest practicable surface route**

### ***Surface route***

16. For the purposes of the 'shortest practicable surface route' requirement in paragraph 79A(3D)(a), the expression 'surface route' is defined in subsection 79A(4) to mean a route other than an air route. This ordinarily means a route (wholly or partly) across land or across water.

### ***Practicable route***

17. The question may arise whether particular types of travel routes are 'practicable' in terms of the 'shortest practicable surface route' requirement in paragraph 79A(3D)(a).

### ***Road Routes***

18. In the vast majority of cases, road routes are the shortest practicable surface routes to and from population centres. If the road is reasonably well defined, whether it is a sealed highway or a major or minor access road (public or private), and if it is normally used by zone residents to travel between a point in a zone and the relevant population centre, the distance by that road determines whether an individual who resided at that point is eligible for the special area zone rebate.

19. The fact that the road in question may occasionally be impassable as a result of floods, etc., does not mean that it is not a practicable route. However, a road that is regularly impassable for a significant part of the year is not a practicable route.

### ***Water Routes***

20. If a water route is wholly or partly the generally adopted method of travelling to and from a population centre, that route, to that extent, is the practicable route. It is not reasonable, however, to treat a water route as being practicable if it is not readily negotiable, in terms of water conditions or distance. It might be a practicable route, however, even though it is not readily negotiable, if there is a regular passenger service available.

21. If there is a practicable water route, the fact that one or more of the residents of a particular area choose to fly rather than use the water route, does not make a point in that area a point within a special area.

### ***Train Routes***

22. Only in exceptional cases would we accept that a train route is a practicable route in remote zone areas. In view of their infrequency, train services are not normally the means by which zone residents travel to and from a population centre. Zone residents can generally be expected to travel by road. Accordingly, if the distance by rail from a point in a zone area to the nearest population centre of 2,500 or more is less than 250 kilometres, while by road it is more than 250 kilometres, the point falls within the special area of the zone.

### **Distance measurement**

23. In applying subsection 79A(3D), the relevant distance to be measured is that from the point in the urban area from which distances are usually measured. In capital cities, this is usually the GPO or other designated point in the central business district of the city. In other places, the measurement is usually taken from the post office or other historical centre of the town. Some tolerance in favour of a taxpayer is permitted in the event of doubt as to the place from which distances are usually measured.

24. To establish the shortest practicable surface route, current road maps suffice to indicate approximate distances to the centre point of an urban centre with a population of 2,500 or more. Signposted distances are also used as prima facie evidence of distances involved.

25. In rare cases, it may be necessary to obtain an accurate measurement of the distance involved for the purpose of settling a dispute. To reduce the possibility of dispute, particularly if several alternative routes are available (eg in the case of a location to be measured from a capital city), a degree of tolerance in favour of a taxpayer is permitted in dealing with borderline distance situations.

26. The shortest practicable surface route is not intended to include rough tracks or other little used roads if there is another route that is normally used. However, a route that is wholly or partly across water is the shortest practicable surface route if that is the generally adopted method of surface transport.

27. The question to be decided in each case is whether the particular route is the generally accepted and reasonably available route taken by the relevant zone residents as a whole. The circumstances of a particular individual, (eg whether or not he or she owns a car or boat,

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and thus, what route he or she ordinarily takes), is not the determining factor.

28. If it is established that there is no practicable surface route from a point in a zone to the nearest urban population centre, that point should be treated as being in the special area of the zone.

## **Subsection 79A(3E) - adjacent or close proximity test**

29. Under subsection 79A(3E), the Commissioner has a discretion to treat a point in either Zone A or Zone B that is not in a special area in that zone as being in a special area in that zone if the point is 'adjacent to or in close proximity to' the special area.

30. It must be appropriate, having regard to all the circumstances, to treat the point as being a point in the special area in the zone.

31. If an individual lives 'adjacent to' or 'in close proximity to' a special area in Zone A or Zone B, the individual may qualify for the special area zone rebate if this is appropriate having regard to all the circumstances.

28. Circumstances in which the Commissioner has accepted that it is appropriate to apply subsection 79A(3E) include the following:

- (i) If one outstation on a property is in the special area, but the homestead and/or other outstations are not. If taxpayers live on the same property but at different (though adjacent or closely proximate) points, and at least one point is in the special area of a zone, subsection 79A(3E) will generally be applied to treat the other points as also being in the special area.

There may, however, be some cases where the application of the subsection would not be appropriate. For example, the main homestead situated on a very large station, to which the general rule would otherwise extend, may itself be only a short distance from, and have ready access to, a relevant urban centre. In these circumstances, to treat the homestead as being in the special zone area would be unreasonable. This is therefore subject to a consideration of the particular circumstances in any case.

- (ii) We accept, in the case of the islands off the Northern Territory coastline, that there is no practicable surface route from any of the islands to a relevant population centre. Accordingly, points on those islands are regarded as being in the special area of Zone A.

(iii) If the taxpayer resided in an area of extreme isolation and hardship: the following combination of factors constitutes extreme isolation or hardship:

- the only surface route is frequently closed by climatic conditions;
- there are no medical or hospital services in the area; and
- the only means of communication is a weekly mail service or radio telephone.

This is not an exhaustive list but, if similar factors to these are present, this may indicate extreme isolation or hardship. The question of extreme isolation or hardship is one of fact and should be decided on the circumstances of each case.

29. If individuals reside on either side of the 250 kilometre dividing line, the adjacent or close proximity test in subsection 79A(3E) should be used to provide consistent treatment between the individuals concerned. The operation of subsection 79A(3E) is not intended to be used, however, to allow the special area zone rebate to cases other than these 'borderline' cases.

#### **Amount of rebate under paragraph 79A(2)(f)**

30. The amount of the zone rebate allowable is determined by subsection 79A(2). That subsection fixes the rebate in several situations in paragraphs 79A(2)(a) to (e).

31. Paragraph 79A(2)(f) provides that the amount of the rebate allowable, in all situations not covered by paragraphs 79A(2)(a) to (e), is such an amount as in the Commissioner's opinion is reasonable in the circumstances.

32. Paragraph 79A(2)(f) applies, for instance, if an individual is a resident of Zone A but has actually been in the special area of Zone A for part of the year of income.

33. If the individual calculates the rebate on a proportionate basis according to the period of time the individual spends in Zone A and the special area of Zone A, he or she could expect the Commissioner to regard the amount of the rebate so calculated as reasonable.

34. Paragraph 79A(2)(f) is similarly designed to cover cases where a taxpayer qualifies as a resident of the prescribed area, but not as a resident of Zone A, through periods of residence in both Zone A and Zone B.

35. For example, a person may reside in Zone A for five months, and in Zone B for two months. Paragraph 79A(2)(f) provides that in



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such a case, the taxpayer shall be allowed such a rebate, (not more than the rebate for the special area in Zone A or B, nor less than the rebate for Zone B) as the Commissioner considers reasonable in the circumstances. In practice, such a taxpayer is allowed a rebate calculated on the basis of five-sixths of the Zone A rebate plus one-sixth of the Zone B rebate.

## Date of effect

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36. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does 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 the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Explanations

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37. A rebate of tax (commonly referred to as a 'zone rebate'), ascertained in accordance with section 79A, is granted to residents of certain areas in Australia as an income tax concession in recognition of the disadvantages that they are subjected to because of the uncongenial climatic conditions, isolation and high cost of living in comparison with other parts of Australia.. The amount of the rebate allowable depends on whether the taxpayer is a resident in Zone A, Zone B or in a special area within each of those zones. The rebate is only allowable to a taxpayer other than a company or a taxpayer in the capacity of a trustee. In essence, therefore, it is only allowable to individual taxpayers who qualify for the rebate by having resided in a relevant area.

### Resident of zone area

38. An individual is a resident of a relevant area in a year of income if any of the following tests in subsection 79A(3B) applies:

- (a) he or she resided there for more than on-half of the year of income;
- (b) he or she was actually in the relevant area for more than one-half of the income year;
- (c) he or she died during the income year and at the date of death resided in the relevant area;

- (d) in the circumstances stated in paragraph 79A(3B)(d) or 79A(3B)(e), he or she resided or was actually in the relevant area for more than 182 days in two consecutive years of income.

39. The word 'resident' in subsection 79A(3B) does not bear the same meaning as the defined term 'resident' or the defined expression 'resident of Australia' in subsection 6(1). The definition of 'resident' or 'resident of Australia' in subsection 6(1) only applies in the absence of a contrary intention appearing. A contrary intention does appear in the context in which the word 'resident' appears in subsection 79A(3B). In effect, the word 'resident' in subsection 79A(3B) has the particular meaning given to it in that subsection.

40. The statutory tests of residence in section 79A, except for the test in paragraph 79A(3B)(b), depend on where an individual 'resided'. The term 'resided' in subsection 79A(3B) bears its ordinary meaning. An individual may therefore be found to be a resident of a relevant area, broadly speaking, either because the individual:

- i) resided in that area, or
- ii) was actually in that area,

whether continuously or intermittently, during more than one half of the relevant year of income.

41. Taxation Board of Review No. 3 in Case P82, 82 ATC 399; Case 14 26 CTBR (NS) 111 considered the provisions of the Act relating to rebates for residents of isolated areas. Although the decision relates to the operation of section 79A as it existed in the 1978-79 income year, it has continuing application to the current section 79A.

42. The case involved the determination of the place of residence of a taxpayer. The evidence disclosed that the taxpayer was a deckhand on a prawn fishing boat operating out of Groote Eylandt. Throughout the year of income the taxpayer lived on board the boat and did not own, rent or maintain a house or other form of residence on the island or on the mainland. The evidence further disclosed that throughout the year under review, the boat was at sea for approximately six days to each one spent in port.

43. A majority of the Board considered the fishing boat to be the taxpayer's place of residence. Since the boat was at sea for more than one half of the year of income and therefore outside the zone area, the taxpayer could not be said to be a resident of a prescribed area as defined in former subsection 79A(4). In the result no rebate was allowable.

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44. The decision of the Taxation Board of Review No. 3 needs to be followed in comparable circumstances.

## **Whether a point falls within a special area of either Zone A or Zone B**

45. Since 1 November 1981 a special area zone rebate in lieu of the ordinary rebate for Zone A and Zone B has been available for people residing or spending the required period of time in particularly isolated areas. Such areas are referred to as the 'special area' within either zone.

46. 'Special area' within Zone A or Zone B is defined in paragraph 79A(3D)(a) as being points in that Zone situated in excess of 250 kilometres by the shortest practicable surface route from the centre point of the nearest urban centre with a census population of 2,500 or more.

47. If a person is a resident in the special area in Zone A or Zone B, paragraph 79A(2)(a) provides a higher amount of rebate than for a resident in either of those zones.

## **Subsection 79A(3E) - adjacent or close proximity test**

48. Subsection 79A(3E) gives the Commissioner a discretion to treat a point in Zone A or Zone B that is not in the special area in that Zone, as being in the special area where the point is adjacent to, or in close proximity to, the special area. In deciding whether to exercise his discretion, the Commissioner must have regard to all the circumstances.

49. Subsection 79A(3E) introduces the concept of an adjacent to, or close proximity test. The subsection is designed to reduce anomalies that may arise through a strict interpretation of the 250 kilometre shortest practicable surface route test.

## ***Outstations***

50. As a general rule, if taxpayers live on the same property but at different points, at least one of which is in the special area of a zone, subsection 79A(3E) will generally be applied to treat the other points as also being in the special area.

***Islands off the Northern Territory coastline***

51. As to islands off the Northern Territory coast:

- (a) There are no boats registered as passenger carriers outside the confines of Darwin Harbour.
- (b) There is no service by vessel (other than cargo delivery) by barge to any of the islands, even the closer ones.
- (c) If boats are to go to the islands they would have to be small vessels, most of the islands only being accessible by barge.
- (d) There are a number of physical restrictions:
  - narrow shallow entrances; and
  - all access areas to the islands (eg rivers and inlets) are tidal, restricting access to two periods each day, these times varying with the tides.
- (e) Heavy seas are common even in the dry season, and the size of the boat that can land at the island runs a high risk even at that time of the year. In the wet season when the westerlies blow, any travel outside of the harbour is fraught with danger as a result of the high seas and storms, and craft of the size mentioned above can not put out to sea. The Darwin Yacht Club have a dry docking area, no member being permitted to put his or her boat in the water during the wet season.

52. On the basis of this information, we accept that there is no practicable surface route from any of the islands off the Northern Territory coastline to a relevant population centre. Accordingly, points on those islands are regarded as being in the special area of Zone A.

***Residence in an area of extreme isolation and hardship***

53. In an unreported decision of 29 August 1985, Taxation Board of Review No. 2 allowed in full a taxpayer's claim for a zone rebate applicable to the special area within Zone A on grounds of extreme isolation and hardship. We respectfully accept the correctness of that decision.

54. The facts of the case were that at all times during the 1981-82 income year the taxpayer resided in Zone A, 238 kilometres by road from the nearest urban centre. The road, a four-wheel drive track and the only surface route to the taxpayer's residence, was frequently closed for varying periods of time due to local climatic conditions. There were no medical or hospital services in the area. The only

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means of communication were a weekly mail service or radio telephone.

55. The taxpayer claimed a zone rebate applicable to an individual who resides in the special area of Zone A, and requested that the Commissioner exercise his discretion under subsection 79A(3E) to treat his residence as a point within the special area in Zone A. On assessment, the taxpayer's claim was reduced by an amount equal to the difference between the rebate for the special area within Zone A and the rebate for Zone A. This amount was disallowed on the basis that the taxpayer was unable to show that he had an adjacent, or closely proximate, neighbour within the special area, and that as a consequence subsection 79A(3E) had no application.

56. The Board decided to allow the taxpayer's objection. The Board considered that, while the concept of an adjacent or closely proximate neighbour was a relevant consideration in the exercise of the discretion in subsection 79A(3E), it was also relevant to have regard to other factors. The Board relied on the presence in the subsection of the words 'having regard to all the circumstances'. The members of the Board unanimously decided that the extreme degree of isolation and hardship experienced by the taxpayer in this particular case was such that it was appropriate to exercise the discretion in favour of the taxpayer, having regard to these circumstances.

57. We agree that the circumstances to which the Board had regard were relevant to the exercise of the discretion under subsection 79A(3E). The Board did not expressly reject the adjacent to, or close proximity, test as a determinative test, but decided that a number of other circumstances should be taken into consideration in exercising the discretion in that case. The decision reached by the Board was therefore open to it on the particular facts of the case, and it may be applied in similar fact situations involving an extreme degree of isolation and hardship.

## **Amount of rebate under paragraph 79A(2)(f)**

58. In paragraph 79A(2)(f) there is a discretion available to the Commissioner to allow an amount of rebate that he considers reasonable in situations not covered by paragraphs 79A(2)(a), (d) or (e).

59. The decision of Taxation Board of Review No. 3 in Case P83, 82 ATC 407; Case 15, 26 CTBR(NS) 118 illustrates the need for the discretion in paragraph 79A(2)(f) to be exercised according to the merits of each particular case. There, the Board considered the operation of section 79A as it existed in the 1978-79 year of income.

However, the decision has continuing application to the current section 79A.

60. The case involved the exercise of the discretion under the former counterpart to paragraph 79A(2)(f), *ie.* paragraph 79A(2)(c).

61. The taxpayer was a resident of a town in Zone B. He spent five months of the year there. For the remainder of the year he operated a trawler out of ports situated within Zone A, visiting the ports only to unload, to take on provisions and to refuel. Time in port was estimated to be one month. In accordance with the general practice outlined in paragraph 35 above, we allowed an amount of rebate representing five-sixths of the Zone B rebate and one-sixth of the Zone A rebate.

62. In exercising the discretion under former paragraph 79A(2)(c), the Board of Review decided that the taxpayer should receive the full Zone A rebate, notwithstanding that the taxpayer was physically present in Zone A for only one month. The Board was influenced by the fact that for more than six months, the taxpayer had been exposed to the uncongenial climatic conditions and isolation of Zone A areas. More importantly, the taxpayer experienced the additional burden of the high cost of living in Zone A. In this context the factual situation is not markedly different from that of a fisherman who is a resident of a zone but spends perhaps more than one-half of the year at sea in pursuit of his occupation. Despite the absence at sea, he is still faced with the disadvantages attached to the particular zone by reason of his residence there.

63. This decision of the Taxation Board of Review No. 3 is followed in comparable circumstances.

## **Examples**

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### ***Example 1***

64. Alison, a resident of Townsville, is absent from her residence for more than six months because of illness. This period of absence does not mean that Alison has ceased to be a resident of Townsville for zone rebate purposes.

### ***Example 2***

65. If, as in Western Australia, a pastoral property extends into both Zone A and Zone B, and a taxpayer is engaged indiscriminately on duties in both zones, the taxpayer is to be regarded as a resident of Zone A. The same treatment should be afforded if a homestead is in

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one zone, and the place where the work is performed is in another zone. If a taxpayer's place of employment is in Zone B, but his or her residence is just outside the prescribed area, he or she should be regarded as 'being in' Zone B within the meaning of paragraph (b) of the definition of resident in subsection 79A(3B).

### *Example 3*

66. Yvonne resides on Pelorus Island in Zone B. A boat or ferry is the only method of surface transport between Pelorus Island and the mainland. For the purposes of the shortest practicable surface route test in subsection 79A(3D), the route across water would be taken into consideration.

### *Example 4*

67. In the case of Groote Eylandt situated in the Gulf of Carpentaria, we understand that there is no passenger boat service between the island and the nearest population centre of 2,500 or more; Nhulunbuy, which is about 200 kilometres away by water. The generally adopted means of travel to and from the island is by air to more distant centres. In these circumstances, it is considered that the water route from the island to Nhulunbuy is not a practicable route. Indeed, it is accepted that there is no practicable surface route, (which does not include an air route) between the two places, and Groote Eylandt has, on that basis, been accepted as being in the special area. In any event, by virtue of subsection 79A(3F), the census population of Nhulunbuy is taken to be less than 2500.

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## Commissioner of Taxation

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- prescribed area
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- shortest practicable surface route
- special area
- zone allowances
- zone rebates

*legislative references*

- ITAA 79A
- ITAA 79A(2)(f)
- ITAA 79A(3D)
- ITAA 79A(3E)
- ITAA 79A(4)

*case references*

- Taxation Board of Review No. 3, Case P82 82 ATC 399; Case 14 26 CTBR (NS) 111.
- Taxation Board of Review No. 3, Case P83 82 ATC 407; Case 15 26 CTBR(NS) 118.
- Unreported Taxation Board of Review No.2; 29/08/85