IT 2391 - Income tax : calculation of separate net income of dependants

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TAXATION RULING NO. IT 2391

INCOME TAX : CALCULATION OF SEPARATE NET INCOME OF DEPENDANTS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210697	CONCESSIONAL REBATES	159J

OTHER RULINGS: IT 255, IT 2114

PREAMBLE The expression "separate net income" has a particular significance in the income tax law. The "separate net income" derived by a dependant in a year may affect the concessional rebate available to a taxpayer in the year in respect of the maintenance of a dependant. Similarly, the "separate net income" of a dependant child or student may affect the notional concessional child and student rebate which has been retained for the calculation of the medical expenses, zone, sole parent and housekeeper rebates. Medicare levy is also affected by the "separate net income" of a dependant child or student.

RULING 2. "Separate net income" is not defined in the Income Tax Assessment Act. Nor is the word "income" defined. There are definitions of the expressions "income from personal exertion" and "income from property" but they are not conclusive whether a particular receipt has the character of income - the basic effect of the definitions is that certain receipts are to be treated as "income from personal exertion" or "income from property" as the case may be.

3. In any discussion of the word "income" it is always useful to refer to the following observations of Jordan C.J. in Scott v. Commissioner of Taxation (N.S.W.) (1935) 3 A.T.D. 142 at pp.144-145:-

> "The word 'income' is not a term of art, and what forms of receipts are comprehended within it, and what principles are to be applied to ascertain how much of those receipts ought to be treated as income, must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as the statute states or indicates an intention that receipts which are not income in ordinary parlance are to be treated as income, or that special rules are to be applied for arriving at the taxable amount of receipts."

4. Ordinarily it would be understood that salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, dividends, rents, interest and the proceeds of businesses are

receipts of an income nature. The list is not exhaustive - it is indicative that periodical rewards flowing from work, business, lands or investments and other recurrent payments, e.g. pensions, are of an income nature. On the other hand receipts which do not constitute income would include capital receipts, e.g. proceeds from the sale of a private residence, surpluses on realisation of investments, etc. Other receipts which would not ordinarily be regarded as income include legacies, gifts and lottery prizes.

5. Sub-section 159J(6) of the Income Tax Assessment Act specifically includes some receipts in and excludes others from the calculation of "separate net income". Net capital gains that are included in the assessable income of a dependant by Part IIIA of the Income Tax Assessment Act are expressly included in "separate net income". The amount of assistance provided to a dependant child or student or to any other person by the Commonwealth or a State for the purpose of maintenance or accommodation of the dependant in connection with his or her education, is "separate net income". However, the "separate net income" of a child under 16 or a student does not include the value of any scholarship, bursary, exhibition or prize except to the extent that it consists of assistance in respect of maintenance or accommodation. The sub-section expressly excludes from the "separate net income" of a dependant family allowance, family income supplement, a handicapped child's allowance, domiciliary nursing care benefits and Government assistance provided in connection with the education of isolated children.

6. Subject to the exceptions in the preceding paragraph "separate net income" includes all receipts which have the character of income whether they are liable to income tax or whether there are provisions in the income tax law specifically exempting them from liability. It should be remembered that the Income Tax Assessment Act taxes some receipts which might not ordinarily be of an income nature. Profit arising from the purchase and sale of property within twelve months is a useful illustration. Notwithstanding that section 26AAA operates to render such profits liable to tax not all profits arising from the sale of property within twelve months of its purchase are of an income nature. If the particular property was purchased for the sole purpose of selling it at a profit and sold within a short time of its purchase then the profit would have an income character. On the other hand if a property was not purchased for the sole purpose of making a profit any profit made on its sale is unlikely to have the character of income. The basic question to be answered in each case is whether the particular receipt is of an income nature.

7. "Separate net income" includes pensions and the full amount of any lump sum payment in lieu of annual leave, sick leave or long service leave (Case S42, 85 ATC 340; Case 48 28 CTBR (NS) 354). It also includes trust income to which a dependant child is presently entitled even though the child may not have received it (Case B24, 70 ATC 111; Case 86, 15 CTBR (NS) 549). In Case T29 86 ATC 283; Case 33 29 CTBR (NS) 252, it

was held that invalid pensions are "separate net income" - they are not expressly excluded from the definition in sub-section 159J(6).

8. In Taxation Ruling No. IT 2114 it was accepted that the family allowance component of a TEAS payment was not included in the "separate net income" of a dependant.

9. It is to be remembered that it is the "separate net income" of a dependant which is relevant for concessional rebate purposes. The net income is, broadly, the amount remaining after deducting from the gross income expenses which are regarded, according to ordinary accountancy and commercial principles, as a direct charge against the income. It is not the same as taxable income. Payments for income tax, superannuation, health insurance, etc. are not taken into account in calculating "separate net income". Similarly, gifts and other non-business expenses, Case M33 12 TBRD, Case 56 10 CTBR (NS) , and prior year losses, Case N49 81 ATC 243, Case 3 25 CTBR (NS) 11, are disregarded in the calculation of "separate net income".

COMMISSIONER OF TAXATION
9 April 1987

APPENDIX

This Ruling replaces IT 2391 which was circulated on Monday, 6 April 1987. The ruling contains a new paragraph 6 which has been expanded to eliminate any possible uncertainty which may have arisen from the former paragraph 6.