



# ***CR 2014/7 - Income tax: payments assigned to representative public dentists (RPDs) under the Child Dental Benefits Schedule (CDBS)***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 January 2014*



## Class Ruling

### Income tax: payments assigned to representative public dentists (RPDs) under the Child Dental Benefits Schedule (CDBS)

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#### **❶ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the Taxation Administration Act 1953.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 8-1 of the ITAA 1997; and
  - section 17-5 of the ITAA 1997.

### Class of entities

3. The class of entities to which this Ruling applies are RPDs who are either:

- directly employed by a State or Territory; or

- are not directly employed by a State or Territory, but are employed by a not for profit community health service or public health service (health service) that receives funding from a State or Territory to provide public dental services;

and who:

- are assigned dental benefits by patients under the CDBS; and
- are provided with a separate Medicare Provider Number for the provision of public dental services.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 34 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

## Date of effect

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7. This Ruling applies from 1 January 2014. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application received 10 September 2013;
- Dental Benefits Act 2008 (the Act);
- Dental Benefits Rules 2013 (the Rules);

- Medicare approved forms:
  - DB1N-DB;
  - DB2-DB; and
  - DB4-DB.

**Note:** *certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.*

9. The Minister for Health may, by legislative instrument, make Dental Benefits Rules in order to carry out or give effect to the Act.

10. The Rules establish the operational framework and service items for the CDBS.

11. The Department of Human Services is responsible for administering the payment of dental benefits and the compliance management framework for CDBS.

12. The Rules revoke the *Dental Benefits Rules 2009* (the Former Rules) and its associated Medicare Teen Dental Plan (MTDP). The MTDP will close on 31 December 2013 however it is possible that there will be outstanding benefits claimed after this date for eligible services rendered prior to the closure.

13. Under the CDBS:

- A dental benefit is payable if dental expenses are incurred in respect of an eligible dental service rendered to an eligible dental patient
- The amount of the dental benefit payable is the amount specified in, or determined in accordance with, the Rules
- If a dental benefit is payable, it is payable by the Chief Executive Medicare to the person who incurs the dental expenses in respect of the dental service. Dental benefits will be payable to dental providers in circumstances where the dental patient has assigned his or her right to the benefit to the provider in accordance with section 12 of the Act
- A claim for a dental benefit must be lodged with the Chief Executive Medicare
- The Chief Executive Medicare is to notify eligible patients in relation to a dental service to persons who are deemed eligible to receive dental benefits
- A person is deemed eligible to receive dental benefits if the person:
  - is an eligible person as defined in section 4 of the Act
  - satisfies the means test outlined in section 24 of the Act; and

- satisfies Rule 9 of the Rules;
- The Minister may make Dental Benefit Rules which may provide for a Dental Benefits Schedule (the Schedule).

14. The dental services must be performed by, or on behalf of, a dental provider. The following classes of persons are dental providers for the purposes of the Act:

- a person registered or licensed as a dental practitioner or dentist in the Division of Dentists under a law of a State or Territory; and
- a person registered or licensed as a specialist in the Division of Dentists under a law of a State or Territory

provided they have been issued with a Medicare provider number by the Chief Executive Medicare.

15. A dental service may be rendered on behalf of a dental provider by the following classes of persons:

- dental hygienists;
- dental therapists;
- dental prosthetists; and
- oral health therapists.

16. A dental service may also be rendered on behalf of a public sector dental provider by another public dental sector provider. This allows for the operation of administration arrangements for billing in the public sector.

17. A 'public sector dental provider' means:

- (a) a dental provider employed by, contracted to, or providing dental services under an arrangement with:
  - (i) the Commonwealth; or
  - (ii) a State; or
  - (iii) an internal Territory; or
  - (iv) a local governing body; or
  - (v) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory; or
- (b) a dental provider on whose behalf another dental provider provides dental services under an arrangement with a body mentioned in subparagraph (a) (i), (ii), (iii), (iv) or (v).

18. One or more public sector dental providers in each State or Territory are nominated as RPDs for the provision of dental services under the CDBS.

19. The Chief Executive Medicare issues each RPD with a separate Medicare Provider Number for each practice location for the provision of public dental services. This Medicare Provider Number is separate from any Medicare Provider Number they may have for the delivery of private dental services.

20. Dental providers for the purposes of the Act must be registered with Medicare Australia and have a Medicare Provider Number issued for the provision of public dental services to be eligible to provide services listed in Schedule 1 of the Schedule.

21. Services provided by or under an arrangement with a State or Territory are eligible for dental benefits only if:

- the service is listed in Schedule 1 of the Schedule;
- the State or Territory where by the service is provided is listed in column 1 of Schedule 2; and
- the service was provided on or before the date in column 2 of Schedule 2 in respect of that State.

22. Schedule 2 of the Schedule lists the date after which each State or Territory government may no longer access benefits, and access to benefits in that State will be limited to private providers only. The Minister has the ability to make exceptions allowing certain access for public providers even if the date in Schedule 2 has been passed.

23. Entitlements under the CDBS are means tested. The means test for eligibility is defined in the Act and the Rules.

24. The Chief Executive Medicare can issue more than one notice of eligibility to an eligible person in a calendar year. These circumstances include when the person is an FTB-A person for more than one recipient or the notice of eligibility is lost or damaged.

25. For the relevant calendar year, the period of eligibility takes effect from 1 January and remains in effect until the end of 31 December of the calendar year. This allows a person whose eligibility is established late in the year to claim benefits for eligible services provided earlier in the year.

26. Dental benefits payable for an eligible person under the Rules are limited to \$1,000 over a two calendar year period. This amount will continue to apply into the future unless a new amount is provided for. Once the cap amount is reached, no additional benefits can be paid for services provided in the two calendar year period.

### ***Bulk billing arrangements***

27. By convention, all dental services provided under the Act by public sector dentists are bulk billed. In accordance with the operation of the Act and the Rules, and the administrative arrangements between the Departments of Health and Human Services and States and Territory departments, this bulk billing arrangement works as follows:

28. The dental services are provided to the eligible dental patient. The eligible dental patient and the RPD by whom, or on whose behalf, the dental service is rendered enter into an agreement – under which the patient assigns their right to the payment of the dental benefit to the RPD and the RPD accepts the assignment in full payment of the dental expenses incurred by the patient. This agreement is made in accordance with the approved Department of Human Services form, which is effected through the Department of Human Services approved manual or electronic assignment process.

29. The approved manual form by which the assignment is effected may be the form DB4-DB, in which the patient signs the statement ‘I assign my right to benefit to the Dental Provider who has rendered the service(s)’, with the name and separate Medicare Provider Number of the RPD on the form under the words ‘Name and provider number of Dental Provider who rendered the above services’. Alternatively, the approved form by which the assignment is effected may be the form DB2-DB, in which the patient signs the statement ‘I assign my right to benefits to the dental provider who has rendered the service(s)’, with the name of the RPD on the form under the words ‘Dental provider who rendered the above service(s)’ and the separate Medicare Provider Number under the words ‘Provider number’. The assignment of benefit may also be effected through a form which substantially complies with DB4-DB and DB2-DB when the patient wishes to assign their benefits through the Medicare Online claiming process.

30. The approved manual form (or one that substantially complies with the approved form) by which benefits are claimed is lodged with the Department of Human Services form DB1N-DB (together with one or more DB4-DB or DB2-DB assignment forms – or a form which substantially complies with the approved assignment forms), including the statement signed by the RPD that ‘the professional services specified on the attached assignment forms or claims transmission summary sheet were provided by me or on my behalf’.

31. The approved electronic form by which the assignment is effected is where patients agree to assign their benefits to the provider through an EFTPOS terminal keypad through the Medicare Easyclaim system.

32. It is an implied or express term of the contract between the RPD and the relevant State, Territory or health service that all the claimed assigned dental benefits will be paid to the relevant State, Territory or health service into a separately identifiable bank account.

33. The RPD does not receive any of the benefits payable for the dental services.

34. Providers must keep clinical records, where relevant, for a period of four years.

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## **Ruling**

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### **Assigned dental benefits**

35. The dental benefit assigned by the patient to a RPD under the CDBS is income according to ordinary concepts, and is assessable income of the RPD under section 6-5 of the ITAA 1997.

36. The amount included in assessable income excludes any goods and services tax (GST) component, section 17-5 of the ITAA 1997.

### **Deductibility of amounts paid by the Chief Executive Medicare**

37. The amount paid by the Chief Executive Medicare to a State, Territory or health service bank account in respect of the bulk billed dental benefit assigned to a RPD is an allowable deduction to the RPD under section 8-1 of the ITAA 1997.

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**Commissioner of Taxation**

22 January 2014

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### Assigned dental benefits

38. Section 6-5 of the ITAA 1997 provides that an amount is assessable income if it is income according to ordinary concepts (ordinary income).

39. In relation to the arrangement the subject of this ruling, the Act restricts the class of persons to whom benefits may be assigned to identified dentists, who are registered or licensed to practice as dentists under a law of a State or Territory and who are registered with Medicare Australia, who either themselves render the dental services giving rise to the assigned benefits, or on whose behalf such services are rendered.

40. Under the Act, a dental service is rendered on behalf of a dental provider if the dental service is rendered by another person included in the relevant class of persons under the Rules, and if the service is provided, in accordance with accepted dental practice, under the supervision of the dental provider. Under the Rules, a dental service may be rendered on behalf of a dental provider by a dental hygienist, dental therapist, dental prosthetist or an oral health therapist. In the case of a public sector dental provider, a dental service may also be rendered on his or her behalf by another public sector dental provider.

41. Under the arrangement, a dental service will be provided to a patient, either by the RPD, or, in accordance with accepted dental practice, under the supervision of the RPD, and in return for the provision of that service, the patient agrees to assign to the RPD benefits.

42. That assignment takes place pursuant to a statutory framework, by means of an approved form (DB4-DB or DB2-DB), whereby the patient assigns the benefits to the RPD who provided the services. The benefits are claimed by means of an approved form (DB1N-DB).

43. The RPD does not receive the money, because, pursuant to an agreement between the RPD and the relevant State, Territory or health service, the claimed assigned dental benefits are paid into a separately identifiable bank account held by the relevant State, Territory or health service which contracts the RPD.

44. The RPD derives the claimed assigned benefits as income according to ordinary concepts.

45. The State, Territory or health service is not a party to the contract the RPD has with the patient, under which the provision of services gives rise to the assignment of the benefits. The statutory assignment framework is such that benefits can only be assigned to the identified registered or licensed natural person, who provided the services (or who supervised their provision). A reward for the performance of personal services in the form of the assigned benefits is income according to ordinary concepts. The fact of non-receipt does not alter this conclusion.

46. In *Case T44* fees derived by a medical practitioner were paid directly to the hospital where the practitioner performed his medical services, with the hospital receiving the fees in the capacity as his agent. Under the terms of an agreement with the medical practitioner, the hospital deducted an amount from these fees, and paid the balance of the fees to a trust fund. The practitioner could in turn be paid a grant by the trust based on a percentage of his salary. As stated by Mr Roach at paragraph 13 of *Case T44*, the question at issue was:

...whether moneys generated by an account of a taxpayer rendered by, and paid to, his agent and applied in accordance with an agreement between the taxpayer and his agent constitutes assessable income of the taxpayer in the year in which payment is made by the debtor. In my view it does.

47. The assessable income of the medical practitioner was held to include the whole of the fee, notwithstanding the fee was paid directly to the hospital, and the practitioner ultimately received only part of this fee.

48. Therefore, although the dental benefit assigned by the patient to the RPD under the CDBS is paid to the relevant State, Territory or health service, it remains assessable income of the RPD under section 6-5 of the ITAA 1997.

### ***The GST component***

49. The amount included in assessable income under section 6-5 of the ITAA 1997 excludes any GST component. Section 17-5 of the ITAA 1997 ensures that an amount is treated as not being assessable income (or exempt income) to the extent that it consists of an amount relating to:

- GST payable on a taxable supply;
- an increasing adjustment in the GST that relates to a supply; or
- an increasing adjustment that relates to an acquisition and arises in circumstances that give rise to a recoupment that is included in assessable income.

## **Deductibility of amounts paid by the Chief Executive Medicare**

50. Section 8-1 of the ITAA 1997 provides that you can deduct from your assessable income any loss or outgoing to the extent that it is incurred in gaining or producing assessable income and is not:

- capital, private or domestic in nature;
- incurred in gaining or producing exempt income; or
- prevented from being deductible by another provision in the ITAA 1997.

51. It is a term of the contract that all the claimed assigned benefits are paid directly to the bank account of the State, Territory or health service. That same contract is the framework pursuant to which the dentist provides services and is remunerated.

52. The Full Federal Court decision in *Service v. Federal Commissioner of Taxation* (2000) 97 FCR 265; [2000] FCA 188; 2000 ATC 4176; (2000) 44 ATR 71 (*Service*) is relevant. In *Service*, the taxpayer was allowed a deduction for fees obtained from acting as director of other companies and as a member of various governmental bodies which he paid over to his employer company under his employment agreement. The Court held that the directors' fees paid to the company were outgoings incurred by the taxpayer in gaining or producing his assessable income from the employer.

53. It is a term of the contract that all the claimed assigned benefits are paid directly to the State, Territory or health service. Performing services under the contract gives rise to assessable income to the RPD. The payment of the claimed assigned benefits to the relevant State, Territory or health service is incurred in gaining or producing the RPD's assessable income.

54. The payment of the claimed assigned benefits to the relevant State, Territory or health service is therefore an allowable deduction pursuant to Section 8-1 of the ITAA 1997.

## **Appendix 2 – Detailed contents list**

55. The following is a detailed contents list for this Ruling:

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## References

*Previous draft:*

Not previously issued as a draft

- Copyright Act 1968
- Dental Benefits Act 2008
- Dental Benefits Rules 2013

*Related Rulings/Determinations:*

TR 2006/10

*Case References:*

- Case T44 86 ATC 366; 29 CTBNR (NS) 319
- Ho v. Federal Commissioner of Taxation [2008] AATA 783; 2008 ATC 10-044
- Service v. Federal Commissioner of Taxation (2000) 97 FCR 265; [2000] FCA 188; 2000 ATC 4176 (2000) 44 ATR 71

*Subject References:*

- business expenses
- business income
- deductions & expenses
- dental practitioners
- health professionals
- medical practitioners

*Legislative References:*

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 17-5

*Other References:*

- Dental Benefits Schedule 2013

## ATO references

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