TR 93/D35 - Income tax: medicare levy payable by persons entitled to full free medical treatment: dependants for medicare levy purposes

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This document has been finalised by TR 93/7.

Draft Taxation Ruling

Income tax: medicare levy payable by persons entitled to full free medical treatment: dependants for medicare levy purposes

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What this Ruling is about

1. The purpose of this ruling is to clarify the circumstances in which some persons, who would normally be exempt from the Medicare levy, are required to pay half the levy.

2. Persons who are normally exempt from the Medicare levy are defined as 'prescribed persons' in subsection 251U(1) of the *Income Tax Assessment Act 1936.* They include persons who are entitled to full free medical treatment by the Defence Forces or under veterans' entitlement (repatriation) legislation; blind pensioners covered by the Social Security or Veterans' Entitlement Acts; and taxpayers who receive sickness allowances under the Social Security Act 1991.

Ruling

Prescribed Persons

3. The broad principle is that if a prescribed person:

- does not have any dependants,
- has dependants who all qualify as exempt in their own right,
- has a dependant who is subject to the levy on a separate income; or

- has a dependant and a spouse who is liable to pay the levy and the spouse contributes to the maintenance of the dependant,

then that prescribed person is completely exempt from the levy.

4. Before 1 July 1991, a holder of a Health Care Card, a Pensioner Health Benefits Card or a Health Benefits Card (where the amount of income derived by the person or his or her spouse was not taken into account when determining the eligibility of that person for the card) were also entitled to exemption from the Medicare levy. This no longer applies as from 1 July 1991.

5. If a prescribed person has a spouse or one or more dependant children who are not prescribed persons included in paragraph 3, then that prescribed person is liable for payment of one half of the levy that would have been payable by a non-exempt person. A partial levy is imposed in these circumstances because the spouse or dependants are eligible for benefits under the Medicare scheme. The spouse and dependants may not be in receipt of income (in excess of the relevant threshold) and, had full exemption from the levy been granted, there would not have been any contribution made towards the cost of Medicare for persons who are entitled to benefit under it and who are not entitled to exemption from the levy.

6. If both the taxpayer and spouse are prescribed persons, a child of theirs may be treated as a dependant of only one spouse, in which case only that spouse will be liable to pay one half of the levy and the other spouse will be completely exempt. In these cases a 'family agreement' must be entered into on or before the date of lodgment of the return of income of the spouse claiming the exemption, or within such further time as the Commissioner allows. The agreement must state that, for levy purposes, the child is not to be treated as a dependant of the person claiming the exemption, and is to be treated as a dependant of the spouse. The document evidencing the agreement must be kept for a period of 5 years commencing on the date of lodgment of the return of income of the spouse claiming the exemption.

Dependants

7. For Medicare levy purposes the spouse and children under 16 of a person are treated as dependants of that person provided they are Australian residents and the person contributes to their maintenance. A child aged 16 to 24 who is a full time student is also included as a dependant if his or her separate net income is less than $1786.

8. For Medicare levy purposes a man and woman living together in a de facto relationship are regarded as legally married and a 'child' includes an adopted child, a step-child or an ex-nuptial child.

9. Where parents are divorced or separated and each contributes to the maintenance of a child, the child is taken to be a dependant solely of the parent who is entitled to receive family allowance in respect of the child.

10. A person is taken to have contributed to the maintenance of a spouse or dependant child during any period in which they reside together unless the contrary is proven. This means, for example, that a husband and wife living together who are each in receipt of income are, for Medicare levy purposes, each treated as a person who has a dependant. Each is regarded as a dependant of the other.

11. It is open to persons living together to prove that they have not contributed to the maintenance of each other by providing evidence establishing beyond doubt that each was self-supporting. Generally, the starting point in such an exercise would be a detailed record of actual household expenses and the amounts contributed by each person. Normal domestic sharing arrangements, eg. a common account to which each person contributes and which is used to meet joint expenses, is not ordinarily sufficient to establish that one person has not contributed to the maintenance of the other.

Part Year Relief from the Levy

12. Where an exempt taxpayer is entitled to relief from the Medicare levy for only part of the year of income an appropriate portion of the full year relief is granted.

Date of effect

13. 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).

Commissioner of Taxation

12 August 1993

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