IT 2458 - Income tax : commonwealth educational allowances

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TAXATION RULING NO. IT 2458

INCOME TAX : COMMONWEALTH EDUCATIONAL ALLOWANCES

F.O.I EMBARGO : May be released

REF N.O. REF: L85/43-0 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO.	SUBJECT REFS:	LEGISLAT REFS:
I 1010321	EDUCATIONAL ASSISTANCE	23(z)
	ALLOWANCES -	23(zaa)
	TEAS, ASEAS, PGA,	51(1)
	AUSTUDY, AIC AND VCES	82A
	BENEFICIARY REBATES	102AF
	SEPARATE NET INCOME	159J(6)
	SELF EDUCATION EXPENSES	160AAA(2)
		221A(1)

OTHER RULINGS ON TOPIC : IT 271, IT 285, IT 312, IT 2114, IT 2187, IT 2391, IT 2412

PREAMBLE The purpose of this Ruling is to explain the taxation arrangements that apply to payments made under the following Commonwealth educational assistance schemes :

- AUSTUDY;
- Postgraduate Awards Scheme (PGA);
- Assistance for Isolated Children Scheme (AIC); and
- Veterans' Children Education Scheme (VCES).

RULING

AUSTUDY

Adult Secondary - for students aged 19 years and over

2. AUSTUDY is the new educational allowance scheme that, from 1 January 1987, replaced the Tertiary Education Assistance Scheme (TEAS), the Adult Secondary Education Assistance Scheme (ASEAS) and the Secondary Allowances Scheme (SAS). AUSTUDY payments are made under the provisions of Part III of the Student Assistance Act 1973, which is administered by the Department of Employment, Education and Training (DEET).

3. The new AUSTUDY scheme has 3 categories :

General secondary - for students aged 16 to 19 years undertaking full-time secondary education; undertaking full-time secondary education; and

Tertiary - for students aged 16 years and over undertaking approved full-time post-secondary courses.

4. Under AUSTUDY, the following allowances may be paid :

- living allowance, which may include a component for a student who is independent or lives away from home, for a dependent spouse or for a dependent child ;

- fares allowance, which assists students living away from home with the costs of travel at vacation times between home and the educational institution ; and

- higher education administration charge allowance, which covers the cost of the new higher education administration charge (currently $250).

In addition, from the beginning of 1988, a child care subsidy will be available under AUSTUDY for sole parents studying full-time who are unable to obtain a Commonwealth-subsidised child care place.

5. The Taxation Laws Amendment Act (No. 4) 1986 amended paragraphs 23(z) and (zaa) of the Income Tax Assessment Act 1936 (the Assessment Act) as a consequence of the replacement of TEAS, ASEAS and SAS by the AUSTUDY scheme. As was the case with TEAS and ASEAS, payments of living allowance under AUSTUDY, including those akin to allowances paid under SAS, are assessable income except for any component for a dependent child of the recipient (SAS allowances remain exempt, however, when paid in respect of a period before 1 January 1987).

6. The fares allowance, the higher education administration charge allowance and the child care subsidy payable under AUSTUDY are fringe benefits for fringe benefits tax purposes and therefore, by virtue of section 23L of the Assessment Act, are exempt from income tax. To this extent, the reference in paragraph 4 of Taxation Ruling No. IT 2412 to certain allowances paid under AUSTUDY not being exempt from income tax is varied.

7. As a consequence of the higher education administration charge allowance being a fringe benefit, section 51AH of the Assessment Act operates to deny any allowable deduction for payment of the charge. Nor is a deduction available for the cost of fares or child care in excess of the allowance or subsidy received as such expenditure is of a private or domestic nature.

PGA

8. Taxation Ruling No. IT 2412 provides details of allowances payable under the PGA scheme. That ruling refers also to the payment of a higher education administration charge allowance to award-holders under PGA. As with the AUSTUDY allowance, the PGA allowance ($250) is exempt from income tax as it is a fringe benefit. If a PGA award-holder claims the administration charge as a self-education expense, the claim should be disallowed.

AIC

9. AIC payments are made under administrative authority

exercised by DEET. The payments may represent :

- boarding allowance - for students who have to live away from home to attend school;

- correspondence allowance - for students living at home and studying by correspondence; and

- second home allowance - to help towards the cost of maintaining a second home that gives the student daily access to school.

10. AIC payments for students 16 years of age or over are taxable when paid for a period commencing on or after 1 January 1987. The legislation that amended the Assessment Act to give effect to this change - and to a number of other related matters covered later in this ruling - is contained in the Taxation Laws Amendment Act (No. 3) 1987, which received the Royal Assent on 13 November 1987 (Act No.108 of 1987). AIC payments for students under 16 years of age continue to be exempt from income tax under paragraph 23(zaa) of the Assessment Act.

VCES

11. VCES payments are made under Part VII of the Veterans' Entitlements Act 1986, which is administered by the Department of Veterans' Affairs. The scheme is administered by the Repatriation Commission and replaces, from January 1987, the former Soldiers' Children Education Scheme (SCES). Payments of income under VCES may represent :

- an annual education allowance, payable in respect of primary students;

- a fortnightly education allowance, payable in respect of secondary, tertiary, technical or further education students living at home;

- a boarding allowance, payable in respect of a secondary student;

- a living away from home allowance, payable in respect of tertiary, technical or further education students;

- a fares allowance, similar to that payable under AUSTUDY; and

- a higher education administration charge allowance, which covers the cost of the new higher education administration charge.

12. The fares allowance and higher education administration charge allowance payable under VCES are, as with AUSTUDY, fringe benefits for fringe benefits tax purposes and, accordingly, are exempt from income tax. The other allowances payable under VCES are taxable when paid for a period commencing on or after 1 January 1987 in respect of a student 16 years of age or more.

The exemption previously available was removed by the Taxation Laws Amendment Act (No.3) 1987 - see paragraph 10 above. VCES payments for students under 16 years of age, and SCES payments for a period that commenced before 1 January 1987, continue to be exempt under paragraph 23(z) or (zaa) of the Assessment Act.

Assessment of allowances

13. The current payment arrangements for AUSTUDY, AIC and VCES allowances are such that the allowances are payable direct to a student 18 years or older and either direct to the student, or to the parent or guardian of the student, where the student is under 18 years of age. When paid direct to the student, a taxable allowance will be assessable income of the student. When paid to a parent or guardian of a student under 18 years of age (or to a person or institution providing board or accommodation for such a student), the taxable allowance is to be treated as assessable income of the student in respect of whom the allowance is paid. In these cases the parent or guardian (or other person or institution) is considered to be acting as an agent for the student.

Beneficiary rebates

14. The beneficiary rebate provisions in subsection 160AAA(2) of the Assessment Act apply where a taxpayer's assessable income includes payments received under AUSTUDY (except, for 1986-87, AUSTUDY (General Secondary) payments). For 1987-88 and subsequent income years, a beneficiary rebate is also available under the subsection to recipients of assessable allowances under AIC or VCES. The legislation giving effect to this extension of subsection 160AAA(2) is included in the Taxation Laws Amendment Act (No.3) 1987.

Separate net income

15. AUSTUDY and VCES payments, to the extent that they are for maintenance or accommodation, are separate net income of the student regardless of whether the payments are made direct to the student, a parent or guardian, or a person or institution providing board or accommodation for the student.
The payments concerned are :

- in the case of AUSTUDY - living allowance ; and
- in the case of VCES - education allowance, boarding allowance and living away from home allowance.

The ruling in Taxation Ruling No. IT 2114 that the family allowance component of TEAS living allowance should not be regarded as separate net income no longer has any application, because the AUSTUDY living allowance does not contain a family allowance component.

16. Because of the terms of subparagraph (b)(i) of the definition of "separate net income" in subsection 159J(6) of the Assessment Act, the other allowances payable under AUSTUDY and VCES are to

be treated as excluded by implication from the concept of "separate net income". Taxation Ruling No. IT 2391 is to be read subject to this qualification.

17. Amendments of the definition of "separate net income" in subsection 159J(6) made by the Taxation Laws Amendment Act (No.3) 1987 operate to ensure that AIC payments that are taxable from 1 January 1987 (that is, those payable in respect of a student 16 years of age or older), and are made for the purpose of maintaining or accommodating the student, form part of the "separate net income" of the student from 1 January 1987.

Division 6AA

18. AUSTUDY, AIC and VCES payments are efficiently excluded from Division 6AA of Part III of the Assessment Act by the operation of section 102AF, as the payments are included in the term "salary or wages" in subsection 221A(1).

Deductibility of education expenses

19. Taxation Ruling No. IT 2412 addressed the extent to which income tax deductions are allowable for the education expenses of students receiving AUSTUDY assistance. With the exception of claims for expenditure on the higher education administration charge in cases where a student is reimbursed for that expenditure by way of payment of the higher education administration charge allowance (see paragraph 7 above), the advice in that Ruling concerning the deductibility of expenditures may be applied in all cases where a taxpayer's assessable income includes payments made under AUSTUDY, AIC or VCES. In this regard, where payments assessable to a student are made to a parent or guardian of the student (see paragraph 13), and the parent or guardian incurs education expenses on behalf of the student that would be deductible as self-education expenses if they were incurred by the student, those expenses may be treated as deductible self-education expenses of the student.

20. In addition to the items of deductible expenditure mentioned in Taxation Ruling No. IT 2412, it has been decided that expenditure on school uniforms may be allowed as expenses of self-education.

COMMISSIONER OF TAXATION
14 January 1988