IT 255 - Calculation of separate net income of dependants

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TAXATION RULING NO. IT 255

CALCULATION OF SEPARATE NET INCOME OF DEPENDANTS

F.O.I. EMBARGO: May be released

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I 1070427	CONCESSIONAL REBATES SEPARATE NET INCOME LUMP SUM PAYMENTS ON RETIREMENT	159J

FACTS 1. The question has been raised whether and/or the extent to which lump sum payments received by a taxpayer on retirement in lieu of accrued annual leave, sick leave or long service leave form part of separate net income for the purposes of the concessional rebate for dependants.

RULING 2. Lump sum payments of these kinds are considered to be of an income nature and should be taken into account in determining the separate net income of a dependant in a year. Clearly lump sum payments in lieu of annual leave, sick leave or long service leave received by an employee during the course of the employment would constitute the receipt of income - the payments would be part and parcel of the rewards of the employment.

3. The fact that such payments may be made on retirement is not considered to alter their essential character as income. There is no commutation or capitalisation involved. The amounts paid are simply a straightforward aggregation of the employee's entitlements. In essence they are no different to arrears of salary paid in a lump sum, to arrears of workers compensation paid in a lump sum, etc. all of which represent receipts of income and would form part of the separate net income of a dependant.

4. This is not to say that all lump sum payments made to an employee in consequence of retirement from or termination of an office or employment are to be taken into account in calculating the separate net income of a dependant in a year. Many lump sum payments made in consequence of retirement from or termination of an office or employment are of a capital nature, e.g. a lump sum payment from a provident or superannuation fund, a payment to which section 78(1)(c) applies, compensation for loss of office, etc. Notwithstanding that section 26(d) might operate to include 5% of such lump sums in the recipient's assessable income, no part of a lump sum receipt of a capital nature is to be taken into account for separate net income purposes. It will be a question in each case of deciding the character of the receipt in question, i.e.

whether it is a receipt of income or of capital.

COMMISSIONER OF TAXATION