


***CR 2009/40 - Income tax: payments assigned to representative public dentists who are employed by community health services to provide public dental services under the Medicare Teen Dental Plan***

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## Class Ruling

Income tax: payments assigned to representative public dentists who are employed by community health services to provide public dental services under the Medicare Teen Dental Plan

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### **ⓘ 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

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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 representative public dentists (RPDs) as defined in paragraph 18 of this Ruling who:

- are employed by a not for profit community health service or public health service that receives funding from a State or Territory to provide public dental services;
- are not directly employed by a State or Territory;
- are assigned dental benefits by patients under the Medicare Teen Dental Plan; and
- are provided with a separate Medicare Provider Number for the provision of public dental services under the Medicare Teen Dental Plan.

In this Ruling a RPD belonging to this class of entities is referred to as a community health service RPD.

## **Qualifications**

4. The Commissioner makes this Class Ruling based on the precise arrangement identified in the Class 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 9 to 18 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.

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## Date of effect

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8. This Class Ruling applies for the income year ended 30 June 2009 and subsequent years. 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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9. 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:

- application for Class Ruling dated 25 July 2008;
- *Dental Benefits Act 2008*;
- Dental Benefits Rules 2008;
- Medicare approved forms:
  - DB1N-DB;
  - DB2-DB; and
  - DB4-DB,
- additional information received from the applicant between 8 May 2009 and 28 May 2009.

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

10. The Medicare Teen Dental Plan (the Plan) provides financial assistance to eligible families to help assess the health of their teenagers' teeth, and to introduce preventative strategies to encourage lifetime good oral health habits.

11. The Plan operates under the statutory framework provided by the *Dental Benefits Act 2008*:

- a dental benefit is payable if dental expenses are incurred in respect of a 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 Dental Benefits Rules 2008;

- if a dental benefit is payable, it is payable by the Medicare Australia CEO to the person who incurs the dental expenses in respect of the dental service, or, if there has been an assignment of dental benefits, to the dental provider;
- claims for dental benefits must be lodged with the Medicare Australia CEO;
- the Medicare Australia CEO is to issue vouchers in relation to a dental service to persons who qualify for a voucher;
- a person qualifies for a voucher if the person meets the requirements of the *Dental Benefits Act 2008* or if the Dental Benefits Rules 2008 provide that the person qualifies for a voucher; and
- a person in respect of whom a voucher is in effect is an eligible dental patient. The Dental Benefits Rules 2008 may also provide that certain eligible persons are eligible dental patients.

12. The Plan enables eligible teenagers to use a voucher to obtain an annual preventative dental check costing up to a certain value (indexed annually).

13. The preventative dental checks must be performed by, or on behalf of, a dental provider. A dental provider is defined in the Dental Benefits Rules 2008 as a dentist or dental specialist who is registered or licensed to practice as such under a law of a State or Territory, and who is registered with Medicare Australia.

14. 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 Dental Benefits Rules 2008 and if the service is provided, in accordance with accepted dental practice, under the supervision of the dental provider. Under the Dental Benefits Rules 2008, a dental service may be rendered on behalf of a dental provider by a dental hygienist, or a dental therapist.

15. The preventative dental checks are billed under a single preventative dental check item (Item 88000) in Schedule 1 of the Dental Benefits Schedule 2008 administered by Medicare Australia.

16. All preventative dental checks provided by public sector dental providers under the Plan are bulk billed. Public sector dental provider is defined in the Dental Benefits Rules 2008.

17. The bulk billing arrangement is governed by administrative arrangements between the Commonwealth Department of Health & Ageing, Medicare Australia and the States and Territories, and operates in accordance with the *Dental Benefits Act 2008*, and the Dental Benefits Rules 2008.

18. The bulk billing arrangement works as follows:
- One or more public sector dental providers, as defined in the Dental Benefits Rules 2008, in each State or Territory are nominated as representative public dentists (RPDs) for the provision of preventative dental checks under the Plan.
  - Medicare Australia issues each RPD with a new and separate Medicare Provider Number for each practice location for the provision of this preventative dental check. This separate Medicare Provider Number can only be used for the provision of preventative dental checks under the Plan.
  - The preventative dental check (service) is provided to the eligible dental patient. The eligible dental patient and the RPD by whom, or on whose behalf, the preventative dental check (service) is rendered enter into an agreement, in accordance with the approved form, under which the eligible dental patient assigns his or her 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 person in respect of the dental service.
  - The approved 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 approved form by which benefits are claimed is lodged with Medicare Australia – form DB1N-DB (together with one or more DB4-DB or DB2-DB assignment forms) – including the statement signed by the RPD 'The professional services specified on the attached assignment forms or claims transmission summary sheet were provided by me or on my behalf'.
  - All the claimed assigned dental benefits are paid into a separately identifiable bank account, nominated by the RPD.

- Where the RPD is a community health service RPD (that is, they are employed by a community health service or public health service):
  - the nominated account is held by the community health service or public health service that employs the RPD;
  - the RPD does not receive any of the benefits payable for these dental checks; and
  - it is an implied or express term of the contract between the RPD and the community health service or public health service that all the claimed assigned dental benefits will be paid into the nominated bank account held by the community health service or public health service.

## Ruling

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### Assigned dental benefits

19. The dental benefit assigned by the patient to a community health service RPD using the separate Medicare Provider Number for the provision of public dental services under the Plan is income according to ordinary concepts, and is assessable income of the RPD under section 6-5 of the ITAA 1997.

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

### Deductibility of amounts paid by Medicare

21. The amount paid by Medicare Australia to the nominated bank account in respect of the bulk billed dental benefit assigned to a community health service RPD using the separate Medicare Provider Number for the provision of public dental services is an allowable deduction to the RPD under section 8-1 of the ITAA 1997.

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**Commissioner of Taxation**

5 August 2009

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## Appendix 1 – Explanation

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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**

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

23. In relation to the scheme the subject of this Ruling, the *Dental Benefits Act 2008* 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.

24. Under the *Dental Benefits Act 2008*, 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 Dental Benefits Rules 2008, and if the service is provided, in accordance with accepted dental practice, under the supervision of the dental provider. Under the Dental Benefits Rules 2008, a dental service may be rendered on behalf of a dental provider by a dental hygienist, or a dental therapist.

25. Under the scheme, a dental service may be provided to a patient, by a community health service 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 the benefits to the RPD.

26. 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).

27. The community health service RPD does not receive the money, because, pursuant to an agreement between the RPD and the community health service or public health service, the claimed assigned dental benefits are paid into a separately identifiable bank account, advised to Medicare by the RPD, which account is held by the community health service or public health service.

28. The community health service RPD derives the claimed assigned benefits as income according to ordinary concepts.

29. Neither the State or Territory nor the community health service/public health service is a party to the contract the community health service 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 derogate from this conclusion. The decisions in *Case T44 86 ATC 366*; 29 CTBNR (NS) 319 and *Ho v. Federal Commissioner of Taxation* [2008] AATA 783 are in accordance with this.

### **The GST component**

30. The amount included in assessable income under section 6-5 of the ITAA 1997 excludes any goods and services tax (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;
- increasing adjustment in the GST payable on 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 Medicare**

31. 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.

32. It is a term of the contract the community health service RPD has with the community health service or public health service that all the claimed assigned benefits are paid directly into the nominated bank account. That same contract (whether of employment or not) is the framework pursuant to which the community health service RPD provides services and is paid amounts under the contract.

33. 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.

34. It is a term of the employment or labour contract which the community health service RPD has with the community health service/public health service that all the claimed assigned benefits are paid directly into the nominated bank account. Performing services under that employment or labour contract gives rise to assessable income by the community health service RPD. The payment of the claimed assigned benefits to the community health service/public health service is incurred in gaining or producing the assessable income under the employment or labour contract.

35. The payment of the claimed assigned benefits to the relevant community health service/public health service is an allowable deduction pursuant to section 8-1 of the ITAA 1997.

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

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*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

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

*Case references:*

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

*Other references:*

- Dental Benefits Schedule 2008
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## ATO references

NO: 2009/6967

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ business and professional income – Australian sourced