


TR 93/D9 - Income tax: transfer of pensioner rebate between partners

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This document has been finalised by TR 93/31.

Draft Taxation Ruling

Income tax: transfer of pensioner rebate between partners

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Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling explains:

(a) when the unused portion of a partnered pensioner's rebate may be transferred to the other partner;

(b) how to calculate the unused portion of the pensioner rebate to be transferred to the other partner;

(c) how to calculate the pensioner rebate for a partner to whom some unused pensioner rebate has been transferred; and

(d) how to calculate the adjusted pensioner threshold for a partner to whom some unused pensioner rebate has been transferred.

2. A number of terms used in this Ruling are explained in the Definitions section of the Ruling (see paragraph 10).

Ruling

(a) when the unused portion of a partnered pensioner's rebate may be transferred to the other partner

3. Where;

(a) two people are members of a couple;

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- (b) one partner is in receipt of a Social Security or Veteran's Entitlement rebatable partnered pension and the other is in receipt of either a Social Security or Veteran's Entitlement rebatable partnered pension or exempt pension;
- (c) neither partner is
 - (i) entitled to a greater benefit from a beneficiary rebate, or
 - (ii) in receipt of job search, Austudy, Abstudy, or sickness benefits on the last day of that financial year; and
- (d) the tax calculated on a partner's taxable income is less than the pensioner rebate;

then the unused portion of the pensioner rebate may be transferred to the other partner.

(b) how to calculate the unused portion of the pensioner rebate to be transferred to the other partner

4. The unused portion of the pensioner rebate is the difference between the maximum available partnered pension rebate and the tax calculated on the greater of the taxable income or notional taxable income.

5. By notional taxable income we mean the taxable income plus any exempt pension income.

(c) how to calculate the pensioner rebate for a partner to whom some unused pensioner rebate has been transferred

6. The pensioner rebate for a partner to whom some unused pensioner rebate has been transferred is referred to as the maximum adjusted rebate. The maximum adjusted rebate is

the partnered pensioner rebate
plus

the unused portion of the pensioner rebate transferred from the other partner.

(d) how to calculate the adjusted pensioner threshold for a partner to whom some unused pensioner rebate has been transferred

7. The adjusted pensioner threshold is the tax free threshold

plus

the maximum adjusted rebate divided by the lowest marginal tax rate.

8. Finally, the rebate to which this partner is now entitled to is

(a) the maximum adjusted rebate less

(b) the difference between

(i) the taxable income, and

(ii) the adjusted pensioner threshold, all divided by 8.

Date of effect

9. 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).

Definitions

10. The following definition of key terms apply for this Ruling:

partner or partnered

- means a person who is a member of a couple which is defined as a person who is

(a) legally married to another person and not living separately and apart from the other person; or

(b) not legally married but living in a marriage-like relationship with a member of the opposite sex and both parties are above the age of consent and the relationship is not a prohibited relationship under 23 B of the *Marriage Act 1961*

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rebatable pension

- has the same meaning as appears in subsection 160AAA(1) i.e.

means a pension, allowance or benefit under

- (a) the *Veteran's Entitlements Act 1986* (other than Part VII); or
- (b) the *Social Security Act 1991* (other than Part 2.11, 2.12, 2.14 or 2.15)

rebatable partnered pension

- means a rebatable pension paid to;

. partnered pensioners where the pensioner receives the partnered rate of pension during the year; or

. partnered pensioners where the pensioner receives the separated rate of pension during the year, because as a result of illness or infirmity the couple are unable to live together.

pensioner rebate

- has the same meaning as appears in subsection 160AAA(2) and for the following years is;

	1990/91	1991/92	1992/93
Single rate		912	932
	972		
Partnered rate		599	
618	654		
Partnered rate (Separated by illness)		859	
880	920		

pensioner threshold

- means the maximum taxable income at which the pensioner is entitled to the full rebate. That is, the rebate reduces by 12.5 cents for each dollar of additional taxable income when the taxable income exceeds those thresholds. The thresholds for the following years are

	1990/91	1991/92	1992/93
Single rate		9,699	10,060
	10,260		

Partnered rate	8,172
8,490 8,670	
Partnered rate (Separated by illness)	9,441
9,800 10,000.	

exempt pension income

- means a Social Security or Veteran's Entitlement pension which is not normally subject to tax and includes amongst other pensions;

- (a) an invalid pension and equivalent service pension paid to a man less than 65 years of age or a woman less than 60 years of age;
- (b) a carer's pension and carer's service pension where both the carer and the pensioner being cared for is either a woman less than 60 years of age or a man less than 65 years of age; and
- (c) a partner's pension where it is paid to the partner of an invalid pensioner (including a service pension) to a woman less than 60 years of age and a man less than 65 years of age

Note: This list is not exhaustive.

notional taxable income

- means the sum of the taxable income plus any exempt pension income.

rebatable benefit

- has the same meaning as appears in subsection 160AAA(1)

beneficiary rebate

- has the same meaning as appears in subsection 160AAA(3)

Examples**Example 1.**

11. The year is the 1991/92 year.

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Mr and Mrs Young are both pensioners in receipt of rebatable partnered rate pensions.

Mr Young's Taxable Income is \$6,900.

Mrs Young's Taxable Income is \$14,000.

Neither Mr nor Mrs Young are in receipt of exempt pension income.

The maximum pensioner rebate available to Mr Young is \$618.

The tax calculated on his taxable income of \$6,900 is \$300.

How to calculate the unused portion of the rebate to be transferred to Mr Young's partner.

The unused portion of the pensioner rebate is the difference between

the maximum available partnered pension rebate and the tax

calculated on the taxable income or notional taxable income.

In Mr Young's case because he receives no exempt income it is the difference between \$618 and \$300 which is \$318.

How to calculate the pensioner rebate for Mrs Young.

Mrs Young's maximum adjusted rebate is the partnered pensioner rebate plus

the unused portion of the pensioner rebate transferred from Mr Young.

That is, \$618 plus \$318, which is \$936

How to calculate the adjusted pensioner threshold for Mrs Young.

Mrs Young's adjusted pensioner threshold is

the tax free threshold	\$5,400
plus	
the maximum adjusted rebate divided	\$936
by the lowest marginal tax rate.	.20
\$4,680	

That is,
\$10,080

The rebate to which Mrs Young is now entitled to is

the maximum adjusted rebate		\$936
less		
the difference between		
the taxable income and	\$14,000	
the adjusted pensioner threshold		<u>\$10,080</u>
all divided by 8.	\$3,920	<u>\$490</u>

That is,
\$446

Example 2.

The year is the 1991/92 year.

Mr and Mrs Oddfellow are both pensioners in receipt of rebatable partnered rate pensions.

Mr Oddfellow's Taxable Income is \$6,900.

Mrs Oddfellow's Taxable Income is \$9,000.

Mr Oddfellow is also in receipt of an exempt pension of \$1,000.

The maximum pensioner rebate available to Mr Oddfellow is \$618.

The tax calculated on his notional taxable income of \$6,900 plus \$1,000 is \$500.

How to calculate the unused portion of the rebate to be transferred to Mr Oddfellow's partner.

The unused portion of the pensioner rebate is the difference between

the maximum available partnered pension rebate and

the tax calculated on the taxable income or notional taxable income.

In Mr Oddfellow's case because he receives an exempt pension it is the difference between \$618 and \$500 which is \$118.

How to calculate the pensioner rebate for Mrs Oddfellow.

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Mrs Oddfellow's maximum adjusted rebate is
the partnered pensioner rebate
plus
the unused portion of the pensioner rebate
transferred from Mr Oddfellow.
That is \$618 plus \$118, which is \$736

How to calculate the adjusted pensioner threshold for Mrs Oddfellow.

Mrs Oddfellow's adjusted pensioner threshold is
the tax free threshold \$5,400
plus
the maximum adjusted rebate divided \$736
by the lowest marginal tax rate. .20
\$3,680

That is,
\$9,080

The rebate to which Mrs Oddfellow is now
entitled to is

the maximum adjusted rebate \$736
less
the difference between
the taxable income, and \$9,000
the adjusted pensioner threshold \$9,080
all divided by 8. -\$80 Nil

That is
\$736

As Mrs Oddfellow's taxable income is less than
the adjusted pensioner threshold no adjustment
is necessary to the maximum adjusted rebate.

Because the tax calculated on her taxable
income is less than the rebate available no tax
will be payable nor is any refund due.

Example 3.

The year is the 1991/92 year.

Mr Single and Ms Alone are both pensioners in
receipt of rebatable partnered rate pensions.

Mr Single's Taxable Income is \$5,000.

Ms Alone's Taxable Income is \$11,580.

Neither Mr Single nor Ms Alone are in receipt of an exempt pension.

The maximum pensioner rebate available to Mr Single is \$618.

The tax calculated on his taxable income is nil.

How to calculate the unused portion of the rebate to be transferred to Mr Single's partner.

The unused portion of the pensioner rebate is the difference between

the maximum available partnered pension rebate and

the tax calculated on the taxable income or notional taxable income.

In Mr Single's case because he receives no exempt income it is the difference between \$618 and 0 which is \$618.

How to calculate the pensioner rebate for Ms Alone.

Ms Alone's maximum adjusted rebate is

the partnered pensioner rebate

plus

the unused portion of the pensioner rebate transferred from Mr Alone.

That is, \$618 plus \$618, which is \$1,236

How to calculate the adjusted pensioner threshold for Ms Alone.

Ms Alone's adjusted pensioner threshold is

the tax free threshold \$5,400

plus

the maximum adjusted rebate divided \$1,236

by the lowest marginal tax rate. .20
\$6,180

That is,
\$11,580

The rebate to which Ms Alone is now entitled to is

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the maximum adjusted rebate		\$1,236
less		
the difference between		
the taxable income, and	\$11,580	
the adjusted pensioner threshold,		<u>\$11,580</u>
all divided by 8.	Nil	<u>Nil</u>

That is
\$1,236

As Ms Alone's taxable income is equal to the adjusted pensioner threshold no adjustment is necessary to the maximum adjusted rebate.

Because the tax calculated on her taxable income is equal to the rebate available no tax will be payable nor is any refund due.

Commissioner of Taxation

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- ITAA 160AAA

case references