


***TD 92/133 - Income tax: who is assessable on weekly payments made under subsection 17(5) of the Commonwealth Employees Rehabilitation and Compensation Act 1988 (CERCA)? Does Division 6AA of Part III of the Income Tax Assessment Act 1936 (ITAA) apply?***

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

## Taxation Determination

### **Income tax: who is assessable on weekly payments made under subsection 17(5) of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* (CERCA)? Does Division 6AA of Part III of the *Income Tax Assessment Act 1936* (ITAA) apply?**

1. Compensation paid under subsection 17(5) of the CERCA is assessable to the child of the deceased employee and not the child's parent or guardian. The payment is outside the scope of Division 6AA.
2. Under subsection 17(5) of the CERCA, a dependent child of an employee (as defined in the CERCA) who dies as a result of an accident is entitled to compensation of \$40 per week. From the wording of this subsection, it is the child, and not a parent or guardian, who benefits from the compensation; that is, the subsection indicates that the compensation is for the benefit of the child. Even if the parent or guardian actually receives the money, we consider there is a constructive receipt of the compensation by the child because it is payable by law for the benefit of the child or, alternatively, section 19 of the ITAA applies. Therefore, the compensation is assessable to the dependent child.
3. Division 6AA sets down various rules to determine what rates of tax should apply to different types of income for a taxpayer under the age of 18 years. Employment income, including 'salary or wages' as defined in subsection 221A(1), is 'excepted assessable income' for the purposes of Division 6AA and is excluded from the special rates of tax set down by Division 6AA by virtue of paragraph 102AE(2)(a). We consider that weekly compensation payments under subsection 17(5) of the CERCA are received in the form of a pension and are therefore within paragraph (c) of the definition of 'salary or wages' in subsection 221A(1) of Division 2 of Part VI of the ITAA. By the provisions of section 102F, the compensation payments are therefore employment income and the special rates of tax set down in Division 6AA do not apply.

**Note:** Periodic payments made under other accident or compensation legislation (e.g. section 59 of the *Transport Accident Act 1986* (Vic) ) to dependent children of deceased persons are also considered to be a pension and are taxed at normal rates.

**Commissioner of Taxation**

09/07/92

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