TD 95/16 - Income tax: when should a Diesel Fuel Rebate paid under the Australian Government Diesel Fuel Rebate Scheme be included in the assessable income of a recipient?

Australian Taxation Office

Taxation Determination TD 95/16

Taxation Determination

Income tax: when should a Diesel Fuel Rebate paid under the Australian Government Diesel Fuel Rebate Scheme be included in the assessable income of a recipient?

1. The price of all diesel fuel purchased includes an amount referable to Commonwealth taxes in the form of Customs/Excise duty. A rebate of this duty is made available through the provisions of the *Customs Act 1901* and *Excise Act 1901*. The rebate is payable to a person who purchases diesel fuel and uses that fuel, otherwise than for the purposes of propelling a road vehicle on a public road:

- in mining operations;
- in primary production;
- at residential premises providing specific amenities for residents;
- at hospitals, nursing homes or other institutions providing medical or nursing care; and
- at homes for the aged.

2. In order to claim a rebate, an eligible person must lodge an Application for Diesel Fuel Rebate with the Australian Customs Service. The claim is based on the quantity of diesel fuel purchased for use by the applicant for approved 'off road' purposes.

3. The rebate will be assessable income in the hands of the recipient if it is paid as a consequence of the recipient's income producing activities. For example, if a taxpayer is carrying on a farming business and the diesel fuel, which gave rise to the entitlement to the rebate, is consumed in the course of farming then the rebate will have the character of assessable income in the farmer's hands.

4. The rebate received by the recipients is income under ordinary concepts, but would be included in assessable income under paragraph 26(g) of the *Income Tax Assessment Act 1936* as a bounty or subsidy in any case. The rebate was introduced as an industry assistance measure payable by the Commonwealth and hence is in the nature of a bounty or subsidy. In the case *Reckitt and Coleman Pty Ltd v. FC of T* 74 ATC 4185; (1975) 4 ATR 501 it was held that the terms 'bounty' and 'subsidy' include a financial grant made by the State to encourage a particular activity in the field of trade and commerce.

5. As paragraph 26(g) is a more specific provision than section 25(1), and as that paragraph includes in assessable income amounts 'received', the rebate should not be included in the assessable income of the recipient until the year in which actual receipt occurs.

Commissioner of Taxation
4 May 1995

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Related Determinations:
Related Rulings:
Subject Ref: bounty or subsidy; mining operations; primary production
Legislative Ref: ITAA 25(1); ITAA 26(g)
Case Ref: Reckitt and Coleman Pty Ltd v. FC of T 74 ATC 4185; (1975) 4 ATR 501
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