

Fringe Benefits Tax Regulations 1992 No. 130

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 130

Issued by the Authority of the Treasurer

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Regulations

These regulations are made under the *Fringe Benefits Tax Assessment Act 1986* (the Act) and will facilitate the Act's administration. The regulations are machinery in nature and modelled on comparable regulations made under the *Income Tax Assessment Act 1936*.

The regulations relate principally to procedural or evidentiary matters regarding the lodgement of returns, the information required to be submitted with returns, and the payment and recovery of tax.

The regulations also deal with matters such as the notification of an address for service and change of address, service of notices, and the manner of signing documents. The regulations also authorise the payment of expenses of persons required to attend and give evidence before the Commissioner or his officers.

An explanation of the regulations appears below.

Citation

Regulation 1 provides for these regulations to be cited as the Fringe Benefits Tax Regulations.

Commencement

Regulation 2 makes it clear that Regulations 3 and 15 will be taken to have commenced on 1 July 1986, the date the *Fringe Benefits Tax Assessment Act 1986* (the Act) commenced. The commencement of these regulations on 1 July 1986 does not impose a liability on any person, nor does it adversely affect any persons rights (other than the Commonwealth).

Interpretation

Regulation 3 provides that "branch of the Australian Taxation Office" unless a contrary intention appears, refers to any place of business of the Commissioner or a Deputy Commissioner which is open to the public. For example, branches, regional offices and shop fronts would be considered to be a branch of the Australian Taxation Office (ATO). The ATO's computer centres would not fall within this definition as they are located separately and are not open to the public.

Regulation 3 also provides that unless the contrary intention appears, a reference in these regulations to the *Fringe Benefits Tax Assessment Act 1986* is facilitated by referring to it as "the Act". The regulation further defines a "return" as a return referred to in sections 68 and 69 of the Act.

Returns

Paragraph 70(b) of the Act requires fringe benefits returns to be furnished in accordance with the regulations. Accordingly, **regulation 4** provides that where the Commissioner notifies a

person of an address at which a fringe benefits tax return must be lodged, the return must be lodged at that address **[subregulation 4(1)]**.

Subregulation 4(2) requires a person who has not been notified of an address for lodgement, to lodge the return at a branch of the Australian Taxation Office (see regulation 3) that has facilities for the collection of returns.

Subregulation 4(3) makes it clear that regulation 4 will apply to returns lodged pursuant to section 69 of the Act, subject to anything specified by the Commissioner in a notice issued under that section, as to the manner of lodging the return. Section 69 allows the Commissioner to require a return to be lodged. Effectively, this means that unless a notice issued under section 69 of the Act tells a person where to lodge the relevant return, the return must be lodged in accordance with subregulation 4(2) above.

Certificate of sources of information

Section 71 of the Act requires a tax agent, who charges any fee for preparing or assisting in the preparation of a fringe benefits tax return, to sign an agent's certificate setting out the sources of information available for the completion of the return. Subsection 71(3) further provides that an employer not furnishing an agent's certificate with a return must show details of relevant information sources. The Act provides that the form of the certificate and the information as to the sources available for preparation of the return are to be prescribed.

Regulation 5 specifies that the certificate required under section 71 of the Act as to sources of information used in compiling the return are to be in accordance with Form 1 of Schedule 1.

Subregulation 5(1) deals with the case where a tax agent charges a fee for preparing or assisting in the preparation of a fringe benefits tax return. In this situation -

- the agent's certificate to be furnished under subsection 71(1) of the Act must be in accordance with Part 2 of Form 1 in Schedule 1 of these Regulations **[paragraph 5(1)(a)]**; and
- the prescribed information as to the sources available for preparing the return is the information needed to answer all the questions in Part 1 of Form 1 of Schedule 1 **[paragraph 5(1)(b)]**.

Subregulation 5(2) deals with the case where the return is not prepared by a tax agent, and is therefore not accompanied by an agent's certificate. In this situation -

- the employer will be required to furnish details as to the sources of information used to prepare the return in the manner set out in Part 1 of Form 1 of Schedule 1 of these Regulations **[paragraph 5(2)(a)]**; and
- the prescribed information as to the sources available for preparing the return is the information needed to answer questions (i) to (iv) (inclusive) of Part 1 of Form 1 of Schedule 1 **[paragraph 5(2)(b)]**.

The information required to be furnished in Form 1 includes what records have been kept, by or on behalf of the employer in respect of fringe benefits provided to employees and associates. The Form requires the name and address of the person who keeps the records, and information as to whether declarations supporting the reduction in taxable value of any fringe benefit were given to or maintained by the employer.

The person completing the agent's certificate is also required to certify whether the return was prepared in accordance with those records and statutory evidentiary documents. If the return is

not in accordance with those records, the person completing the certificate must give details of what information was used to prepare the return.

If the certificate is completed by a registered tax agent, the agent will be required to state if they satisfied themselves, and if so how, that the records, statutory evidentiary documents and other information used to prepare the return is accurate and shows the net taxable value of all fringe benefits for the year.

Tax agents will also be required to declare that the information they provided in the certificate of sources of information is true and correct.

Documents accompanying returns to be identified

Subregulation 6(1) requires that any document accompanying a return lodged with the Commissioner must be endorsed to the effect that it accompanies and identifies that return **[paragraph 6(1)(a)]**. The document must also be signed by the employer furnishing it **[paragraph 6(1)(b)]**.

Subregulation 6(2) creates an offence where the document accompanying a return does not comply with subregulation 6(1). The offence carries a fine not exceeding \$500.

Annotations on returns

Subregulation 7(1) provides that the Commissioner may authorise an officer to mark a return as the Commissioner approves.

Subregulation 7(2) provides that any marks, figures and annotations so made are to be in different coloured ink from that used in the return. This subregulation is designed to permit information provided by the maker of the return to be easily distinguished from marks, figures or annotations made by the Commissioner's officers.

Subregulation 7(3) creates an offence where a person marks a return contrary to the manner stipulated by this regulation. The offence carries a fine not exceeding \$500.

Recovery of Tax

Section 94 of the Act provides that when fringe benefits tax becomes due and payable, it is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

Regulation 8 states how and where the payment of fringe benefits tax must be made.

Payments can be made at any branch of the Australian Taxation Office (see regulation 3) that has facilities for collecting the payments which can be made by -

- bank drafts, cheques or money orders **[paragraph 8(a)]** or
- cash **[paragraph 8(b)]**.

Payment of tax can be made also

- by depositing the funds into a branch of the Reserve Bank with whom the Commissioner has made prior arrangements **[paragraph 8(c)]**; or
- by paying the amount at any other place, for example, a Post Office where electronic lodgement service is offered **[paragraph 8(d)]**.

Receipts

Regulation 9 empowers persons authorised by the Commissioner or a Deputy Commissioner to issue receipts for payments made to the Commissioner. This regulation also provides that receipts need only be issued upon request by the person making the payment.

Cheques

Regulation 10 sets out the basic rule that, where an amount of tax is paid by cheque, the amount is not paid until the cheque has been cleared. Further, it deprives of effect any receipt issued for a payment by cheque where, for whatever reason, the cheque is not met. In those circumstances a receipt cannot act as a barrier to the effective collection of tax which this regulation is intended to facilitate.

Order where no administration of deceased employer's estate

Subsection 98(5) of the Act provides that the Commissioner may issue an order to levy property of a deceased employer where there is no administration of the estate.

Regulation 11 requires the order to take the form described in Form 2 of Schedule 1 of these regulations.

Variation of notional tax amount of employers

Subregulation 12(1) achieves the same result as the existing subregulation 3(1) by setting a formula to be followed in calculating the notional tax amount of an employer under subsection 110(2) of the Act when the rate of tax for a year of tax differs from the rate for the preceding year. The notional tax amount of an employer is used to calculate an employer's FBT instalments for a year of tax (see **regulation 24**).

Subregulation 12(2) sets the prescribed date for the purposes of subsection 110(2) of the Act as 1 April 1992. The rate of tax for the year commencing 1 April 1992 was increased from 47% to 48.25%.

Expenses of person required to attend before Commissioner

Subsection 128(4) of the Act provides that the regulations may prescribe scales of expenses for persons who are required to attend before the Commissioner or an authorised officer, to answer questions and/or produce documents.

Subregulation 13(1) specifies that the expenses are to be determined in accordance with the scale in Schedule 2 of the Regulations. The expenses prescribed in Schedule 2 are the amounts provided in the High Court Rides for expenses of witnesses.

Subregulation 13(2) restricts the category of persons entitled to be paid expenses. Expenses are not to be paid to the person whose business or affairs the questions or books, etc., relate, as well as that person's current employees and representatives.

Supplementary car rate

The Act requires that a "supplementary car rate" be prescribed for the purposes of subsection 136(1). The rate, prescribed as 0.63 of a cent per kilometre in **regulation 14**, is used by employers to reduce the taxable value of certain fringe benefits such as remote area holiday transport fringe benefit under subsection 60A(4) of the Act.

Postage to be pre-paid

Subregulation 15(1) requires that every article of mail posted to a branch of the Australian Taxation Office carry the correct prepaid postage.

Subregulation 15(2) covers the situation where there is a postage surcharge because of incorrect postage and an amount is received in payment of tax. In that situation, the amount to be credited towards the payment of tax is the amount received, less the surcharge.

Evidentiary certificate

Regulation 16 provides that in any proceedings against a person for the recovery of tax, a certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner, will be evidence of the facts stated. Information that is to be included in the certificate is as follows

- that the person is liable to pay tax [**paragraph 16(a)**],
- that the tax was properly assessed or deemed to have been properly assessed [**paragraph 16(b)**],
- details of the assessment [**paragraph 16(c)**],
- that the notice of assessment was served properly or deemed under section 95 of the Act to have been served properly [**paragraph 16(d)**], and
- that the amount specified in the certificate is a debt owed to the Commonwealth as at the date of the certificate [**paragraph 16(e)**].

Evidence by affidavit

Regulation 17 permits evidence to be given by affidavit in any action for recovery of an amount payable to the Commissioner. It also empowers the Court to require the person making the affidavit to attend for the purpose of being cross-examined on the evidence it contains, or to give any other evidence in relation to the matter at hand.

Notification of address for service

Subregulation 18(1) requires a person who furnishes a return under the Act to notify the Commissioner in writing of an address in Australia for service of notices.

Subregulation 18(2) permits a person furnishing a return to satisfy this requirement by specifying the address on the return form.

Subregulation 18(3) provides that where an address for service is notified to the Commissioner by the person furnishing a return under the Act, the address on the return is the person's address for service, subject to any changes to that address under regulations 19 or 20.

Address for service - change of address

Subregulation 19(1) details the circumstances under which an employer who has notified the Commissioner of an address for service must notify the Commissioner if that address subsequently changes.

Subregulation 19(2) provides that

- an employer who changes his or her address for service during a year of tax in which a taxable fringe benefit has been provided, on or before the date of the change, must notify the Commissioner of the change of address within one month of that change.

Subregulation 19(3) covers the situation where a taxable fringe benefit is provided after the change of address and provides that

- the employer must notify the Commissioner of that change within one month of the day on which the first taxable fringe benefit was provided after the change.

Address for Service

Subregulation 20(1) states that, subject to this regulation, the last address notified to the Commissioner will be treated as the address for service of that person.

Subregulation 20(2) allows the Commissioner to treat an address of a person in a record held by the Commissioner as that person's address for service when:

- that person has not notified the Commissioner of an address for service and the address has, or is likely to have been changed [**paragraph 20(2)(a)**]; or
- the records of the Commissioner show that the person has not notified the Commissioner of that change [**paragraph 20(2)(b)**].

Last-known place of business or residence

Regulation 21 provides that the address for service of a person shall be treated as the last-known place of business or residence of the person in Australia.

Failure to notify change of address

Regulation 22 prevents an employer, who changes his or her address for service without advising the Commissioner in accordance with regulation 19 from using the change of address as a defence in any proceeding instituted against that employer under the Act or Regulations.

The Act requires notice to be given, for example, in section 77 of the Act, where the Commissioner is required to serve a notice of assessment on the person liable to pay the tax.

Commissioner's signature

Subregulation 23(1) provides that a notice under the Act purporting to be signed by the authority of the Commissioner will be as effective as if the notice has been personally signed by the Commissioner.

Subregulation 23(2) makes it clear that a certificate, notice or other document required by the Act to be signed by the Commissioner, Second Commissioner or a Deputy Commissioner will be treated as being so signed if it bears the written, printed, stamped name, or a facsimile of the signature of a person who is, or was at the relevant time, the Commissioner, Second Commissioner or a Deputy Commissioner.

Repeal of the former Fringe Benefits Tax Regulations

Regulation 24 repeals Statutory Rules No 68 of 1990 and No 76 of 1992. These rules form the current regulation 3 which is now replaced by **regulation 12**. Statutory Rule No 68 applied to FBT instalments for the year of tax commencing 1 April 1990 when the rate of tax was reduced for 49% to 47%, and Statutory Rule No 76 applied for the year of tax commencing 1 April 1992 when the rate of tax was increased from 47% to 48.25%.