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Department of
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Statutory Rules 1992 No. 14

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Fringe Benefits Tax Regulations

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Statutory Rules 1992 No. 1

130

Fringe Benefits Tax Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Fringe Benefits Tax Assessment Act 1986*.

Dated 21 MAY 1992.

BILL HAYDEN

Governor-General

By His Excellency's Command,

John Dawkins

Treasurer

Citation

1. These Regulations may be cited as the Fringe Benefits Tax Regulations.

Commencement

2. Regulations 3 and 15 are taken to have commenced on 1 July 1986.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s.48.]

Interpretation

3. In these Regulations, unless the contrary intention appears:
“branch of the Australian Taxation Office” means a place of business of the Commissioner or a Deputy Commissioner:

- (a) which is open to the public; or
- (b) part of which is open to the public;

“return” means a return mentioned in section 68 or 69 of the Act;

“the Act” means the *Fringe Benefits Tax Assessment Act 1986*.

Returns

4. (1) For the purposes of paragraph 70 (b) of the Act, if the Commissioner serves a notice on a person of an address to which a return must be furnished, the person must furnish the return to that address.

Penalty: \$500.

(2) For the purposes of paragraph 70 (b) of the Act, if the Commissioner does not serve a notice on a person of an address to which a return must be furnished, the person must furnish the return to a branch of the Australian Taxation Office that has facilities for the collection of returns.

Penalty: \$500.

(3) This regulation has effect subject to anything specified in a notice given by the Commissioner under section 69 of the Act as to the manner of furnishing a return.

Certificate of sources of information

5. (1) For the purposes of subsection 71 (1) of the Act:

- (a) the prescribed form of agent’s certificate is prescribed in Part 2 of Form 1; and
- (b) the prescribed information as to the sources available for the compilation of a return is the information required to be provided in answering all the questions in that Form.

(2) For the purposes of subsection 71 (3) of the Act:

- (a) Part 1 of Form 1 is prescribed; and
- (b) the prescribed particulars as to the sources available for the compilation of a return are the particulars required to be

provided in answering questions (i) to (iv) (inclusive) in that Form.

Documents accompanying returns to be identified

6. (1) A document accompanying a return furnished to the Commissioner must:

- (a) bear an endorsement:
 - (i) to the effect that it accompanies the return; and
 - (ii) that identifies the return; and
- (b) be signed by the employer furnishing the return.

(2) It is an offence, punishable on conviction by a fine not exceeding \$500, for an employer to furnish to the Commissioner a return that is accompanied by a document that does not comply with subregulation (1).

Annotations on returns

7. (1) The Commissioner may authorise an officer to make on a return any mark that the Commissioner approves.

(2) A mark, figure or annotation on a return must be made in ink of a different colour from that used in the return .

(3) It is an offence, punishable on conviction by a fine not exceeding \$500, for a person to make a mark, otherwise than in accordance with this regulation, on a return that has been furnished to the Commissioner.

Recovery of tax

8. For the purposes of paragraph 94 (1) (a) of the Act, an amount of tax payable to the Commissioner must be paid:

- (a) by sending a bank draft, cheque or money order for the amount to a branch of the Australian Taxation Office that has facilities for the collection of bank drafts, cheques and money orders; or
- (b) by delivering the amount, in cash, to a branch of the Australian Taxation Office that has facilities for the receipt of payments in cash; or

- (c) by depositing the amount at a branch of the Reserve Bank in accordance with the arrangements made by the Commissioner with that Bank; or
- (d) by paying the amount at another place in accordance with the arrangements made by the Commissioner for paying tax at that place.

Receipts

9. If a person who pays an amount to the Commissioner under the Act asks for a receipt for the payment, a person authorised by the Commissioner or a Deputy Commissioner to issue receipts must give a receipt to the person.

Cheques

10. If a cheque is provided in payment of an amount to the Commissioner under the Act, the amount is not taken to be paid for the purposes of the Act unless the cheque is honoured on presentation, whether or not a receipt is issued for the amount.

Order where no administration of deceased employer's estate

11. An order given by the Commissioner under subsection 98 (5) of the Act must be in accordance with Form 2.

Variation of notional tax amount of employers

12. (1) The notional tax amount of an employer ascertained under paragraph 110 (1) (b) of the Act for the year of tax beginning on 1 April 1992 is varied by applying the formula:

$$NT = \frac{AT \times 48.25}{47}$$

where:

NT is the notional tax amount of the employer in respect of the year of tax beginning on 1 April 1992;

AT is the amount equal to the fringe benefits tax assessed in respect of the employer for the year of tax beginning on 1 April 1991.

(2) For the purposes of subsection 110 (2) of the Act, the prescribed date is 1 April 1992.

Expenses of person required to attend before Commissioner

13. (1) Subject to subregulation (2), a person attending before the Commissioner, or before an officer authorised by the Commissioner, in compliance with a notice under subsection 128 (1) of the Act must be paid expenses in accordance with the scale set out in Schedule 2.

(2) Expenses are not payable under these Regulations for an attendance by a person to answer questions, or produce documents, relating to the business or affairs of an employer if the person is:

- (a) the employer; or
- (b) a current employee of the employer; or
- (c) a representative of the employer.

Supplementary car rate

14. For the purposes of the definition of supplementary car rate in subsection 136 (1) of the Act, the rate of 0.63 of a cent per kilometre travelled is prescribed.

Postage to be pre-paid

15. (1) The full amount of postage on a letter addressed to a branch of the Australian Taxation Office in relation to a matter must be pre-paid by the sender.

(2) If:

- (a) the Commissioner contributes to the cost of postage of an unstamped, or insufficiently stamped, letter; and
- (b) the Commissioner receives a payment in relation to tax payable by the sender;

only the amount of the payment remaining after deduction of the Commissioner's contribution is to be credited towards payment of the tax.

Evidentiary certificate

16. In an action for the recovery of tax, a certificate in writing signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that:

- (a) the person named in the certificate is liable to pay tax; and

- (b) an assessment of tax payable by the person was duly made, or is taken under section 72 of the Act to have been made, in respect of the year specified in the certificate; and
- (c) the particulars of the assessment are as stated in the certificate; and
- (d) notice of the assessment was duly served, or is taken under section 95 of the Act to have been served, on the person; and
- (e) the amount specified in the certificate is, at the date of the certificate, a debt in respect of tax due by the person to the Commonwealth;

is, in the absence of contrary evidence, sufficient evidence of the facts stated in the certificate.

Evidence by affidavit

17. In an action for the recovery of an amount payable under the Act:

- (a) evidence may be given by a person by affidavit; and
- (b) the court may, if it thinks fit, require the person to attend before the court:
 - (i) to be cross-examined on the evidence; or
 - (ii) to give other evidence in relation to the matter before the court.

Notification of address for service

18. (1) A person furnishing a return under the Act must notify the Commissioner in writing, at the time the person furnishes the return, of an address in Australia as the person's address for service.

Penalty: \$500.

(2) If a form of return provided or authorised by the Commissioner for the purposes of section 68 or 69 of the Act requires the specification of an address in Australia as the address for service of the person making the return:

- (a) the specification in the form of such an address is compliance with subregulation (1); and
- (b) the address specified is, subject to regulations 19 and 20, the person's address for service.

(3) If a person notifies the Commissioner under subregulation (1) of an address as the person's address for service, that address is, subject to regulations 19 and 20, the person's address for service.

Address for service—change of address

19. (1) If an employer:

- (a) provides an address for service under subregulation 18 (1) or (2) in relation to a return; and
- (b) changes that address;

subregulations (2) and (3) apply.

(2) If a taxable fringe benefit was provided in relation to the employer:

- (a) during the year of tax in which the change of address occurred; and
- (b) before, or at the same time as, the change;

the employer must notify the Commissioner in writing of a new address for service within one month after the change.

(3) If a taxable fringe benefit is provided in relation to the employer:

- (a) during the year of tax in which the change of address occurred; and
- (b) after the change;

the employer must notify the Commissioner in writing of a new address for service within the month commencing on the day on which the first fringe benefit is so provided.

(4) An employer who fails to comply with an applicable requirement of subregulation (2) or (3) is guilty of an offence punishable on conviction by a fine not exceeding \$500.

Address for service

20. (1) Subject to subregulation (2), the address last notified to the Commissioner under these Regulations by a person as the person's address for service is the person's address for service for the purposes of the Act and these Regulations.

(2) Subject to regulation 21, where records available to the Commissioner show:

- (a) that a person's address for service has been, or is likely to have been, changed; and
- (b) that the person has not notified the Commissioner of the change in accordance with these Regulations;

the person's address in Australia as shown in that record is the person's address for service for the purposes of the Act and these Regulations.

Last-known place of business or residence

21. A person's last-known place of business or residence in Australia is the person's address for service for the purposes of the Act and these Regulations.

Failure to notify change of address

22. An employer who fails to notify the Commissioner under regulation 19 of a change of address may not plead the change as a defence in proceedings (whether civil or criminal) against the employer under the Act or these Regulations.

Commissioner's signature

23. (1) A document under the Act that purports to be signed by the authority of the Commissioner is as effective for all purposes as if it had been signed personally by the Commissioner.

(2) A document required by the Act to be signed by the Commissioner, a Second Commissioner or a Deputy Commissioner is taken to have been so signed if it bears:

- (a) the written, printed or stamped name; or
- (b) a facsimile of the signature;

of the person who is the Commissioner, a Second Commissioner or a Deputy Commissioner, as the case may be, when it is so required to be signed.

Repeal of the former Fringe Benefits Tax Regulations

24. Statutory Rules 1990 No. 68 and 1992 No. 76 are repealed.

SCHEDULE 1**FORMS****FORM 1**

Subregulations 5 (1) and (2)

COMMONWEALTH OF AUSTRALIA**PART 1 — PARTICULARS RELATING TO SOURCES OF INFORMATION***Questions (i) to (iv) (inclusive) must be completed by or on behalf of all employers**Question (v) and the tax agent's certification must be completed only by tax agents*

Question	Answer
(i) What records of fringe benefits provided to current, future and former employees and associates are kept by, or on behalf of, the employer?	
(ii) What is the name and address of the person who keeps those records?	
(iii) If the reduction in the taxable value of any benefit, or the exemption of any benefit, is dependent on a statutory evidentiary document being given to, or maintained by, the employer, has that statutory evidentiary document been given to or maintained by the employer?	
(iv) Is the return in accordance with those records and statutory evidentiary documents, and, if not, what information was used to prepare the return?	

SCHEDULE 1—continued

This question should only be completed by Tax Agents

- (v) Have you satisfied yourself, and if so how, that the records, statutory evidentiary documents and other information used to prepare the return are accurate and that the return discloses the net taxable value of all fringe benefits provided to current, future and former employees and associates during the period to which the return relates?

PART 2 — AGENT'S CERTIFICATE

I, _____, having charged a fee for preparing, or assisting in the preparation of, the return on which this certificate is endorsed (*or* to which this certificate is annexed) certify, for the purposes of subsection 71 (1) of the *Fringe Benefits Tax Assessment Act 1986*, that the information provided in the answers to all the above questions is true and correct in every particular.

*Signature of agent:

Date: 19

Registered number of agent:

*Note: In the case of a partnership, or a company, registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*:

- (a) the certificate must be signed in the name of the partnership or company by a person who is registered as a nominee of that partnership or company for the purposes of that Part; and
 - (b) that person's name must also be appended.
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SCHEDULE 1—continued

FORM 2

Regulation 11

COMMONWEALTH OF AUSTRALIA

ORDER UNDER SUBSECTION 98 (5) OF THE FRINGE BENEFITS TAX
ASSESSMENT ACT 1986

To _____ of _____

WHEREAS:

- (a) (*Name and former address of deceased employer*) is a deceased employer within the meaning of section 98 of the *Fringe Benefits Tax Assessment Act 1986*; and
- (b) a grant has not been made of probate of the will, or of letters of administration of the estate, of the deceased employer within 6 months after that person's death; and
- (c) an assessment has been made under subsection 98 (2) of the *Fringe Benefits Tax Assessment Act 1986* of the fringe benefits taxable amount, or amounts, in respect of which tax was payable by the deceased employer; and
- (d) the amount of tax payable on that amount, or those amounts, has been assessed at \$ _____; and
- * (e) notice of the assessment has been published in accordance with subsection 98 (2) of that Act;

I, _____, under subsection 98 (5) of that Act, authorise you to levy \$ _____, the amount of the tax as so assessed, plus your costs, by distress and sale of any property of the deceased employer.

Dated _____

19 _____

Commissioner of Taxation

**Omit if inapplicable*

SCHEDULE 2

Subregulation 13 (1)

SCALE OF EXPENSES

1. A person attending to give evidence because of his or her professional, scientific or other special skill or knowledge—the amount provided in the High Court Rules for the expenses of witnesses possessing such skill or knowledge.

SCHEDULE 2—continued

2. A person, not referred to in item 1, remunerated by wages, salary or fees—the amount provided in the High Court Rules for the expenses of witnesses so remunerated.

3. A person not referred to in items 1 and 2—the amount provided in the High Court Rules for the expenses of witnesses generally.

4. A person attending to give expert evidence—the sum of:

- (a) a reasonable amount for qualifying to give that evidence; and
- (b) an amount allowed under item 1, 2 or 3.

5. A person referred to in item 1, 2 or 3—a reasonable amount:

- (a) for travel by the person to and from the place of attendance; and
- (b) if the person is required to be absent overnight from his or her usual place of residence, for meals and accommodation.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

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1992.

27 May