

EXPLANATORY STATEMENT

STATUTORY RULES 1989 No. 11

ISSUED BY THE AUTHORITY OF THE TREASURER

The existing fringe benefits tax legislation applies broadly to Commonwealth Departments as though each Department was a company. Staff who are paid out of the annual appropriation for that Department are, for the purposes of the fringe benefits tax legislation, treated as being an employee of that Department. In addition, the Fringe Benefits Tax (Application to the Commonwealth) Act 1986 (the Act) provides that the Fringe Benefits Tax Assessment Act 1986 (the Assessment Act) is to apply as if each Department were related to all other Departments, and are associates for the purposes of the Assessment Act.

An "employee" for the purposes of the Assessment Act is defined to include current, future or former employees. Accordingly, by operation of the Act, the Department of Defence is treated as being the employer of current, future or former members of the Defence Force and will be liable for fringe benefits tax on fringe benefits it provides.

As a consequence, under the existing legislation, benefits provided to current former and future, members of the Defence Force (including veterans and mariners) by the Department of Veterans' Affairs will be treated as benefits provided by an associate of the Department of Defence; making the Department of Defence liable to fringe benefits tax in respect of such benefits. Similarly, if benefits are provided by a third party under an arrangement with the Department of Defence, the Department of Defence would be liable to pay fringe benefits tax on the benefits provided.

These regulations will modify the Act so as to exempt from fringe benefits tax a range of benefits provided to, and in respect of certain Commonwealth employees, being current, former or future members of the Defence Force. The exemptions are to apply with effect from 1 July 1986.

The first class of benefits to be exempted are those benefits provided in respect of a Commonwealth employee because one of the pensions specified below is payable in respect of that employee under the Veterans' Entitlements Act 1986 (the Entitlements Act) or the Seamen's War Pensions and Allowances Act 1940.

Broadly, benefits provided to the Commonwealth employee or an associate of that employee will be exempt from fringe benefits tax, if the benefit is provided because a pension is payable in respect of that employee under;

- . Part II or III of the Entitlements Act,
- . section 68 of the Entitlements Act or;

Part III of the Seamen's War Pensions and Allowances Act 1940.

Examples of such benefits are discount telephone rental, motor vehicle registration, and transport provided to the widow of a veteran because the widow receives a pension under the Entitlements Act as a result of the death of her husband.

The second class of benefits to be exempted are fringe benefits provided to, or in respect of a Commonwealth employee under the Entitlements Act.

The final class of benefits to be exempted by these regulations is health care provided in respect of the employment of a Commonwealth employee because that employee is, was formerly or will become a member of the Defence Force. An example would be the provision of dental treatment to a serving member of the Defence Force.

The modifications to the Act made by these regulations will not, in any way, alter the existing rules relating to the treatment of benefits provided under the Defence Services Homes Act 1986, contained in section 6 of the Act.

Citation

Regulation 1 allows the regulations to be cited as the Fringe Benefits Tax (Application to the Commonwealth) Regulations.

Commencement

Regulation 2 provides for the regulations to come into effect as from 1 July 1986.

Interpretation

Regulation 3 facilitates references to the Fringe Benefits Tax (Application to the Commonwealth) Act 1986 by use of the term 'the Act'.

Modifications

Regulation 4 specifies that for the purposes of subsection 4(1) of the Act, the modifications contained in the Schedule forming part of these regulations are prescribed.

Paragraph (1) of the Schedule inserts a new definition in the appropriate alphabetical position in subsection 3(1) of the Act. For the purposes of the Act, the term "the Entitlements Act" means the Veterans' Entitlements Act 1986.

Paragraph (2) of the Schedule proposes to insert three new sections into the Act. The first two sections combine to exempt from fringe benefits tax benefits provided pursuant to the Entitlements Act (a defined term, see the notes on paragraph (1) of the Schedule) or benefits provided as a result of one of the pensions specified below being payable in respect of the employment of a Commonwealth employee under the Entitlements Act or the Seamen's War Pensions and Allowances Act 1940.

The third section to be inserted into the Act will exempt from fringe benefits tax health care provided to members of the Defence Force.

Exemption of benefits provided to certain persons

Proposed section 6A operates to detail the circumstances under which certain benefits will be exempt from fringe benefits tax. Broadly, benefits provided because a Commonwealth employee is entitled to receive one of the pensions described below, or another person (such as the spouse or dependant of the employee) is entitled to receive a pension in respect of that employee.

Section 6A specifically excludes benefits relating to benefits provided under Defence Service Homes Act 1918 from the operation of the proposed exemption. These types of benefits are dealt with under section 6 of the Act. Benefits provided in respect of a Commonwealth employee will be exempt under proposed section 6A if one of the following conditions are satisfied :

. the employee is a veteran (as defined in Section 5 of the Entitlements Act) who is entitled to receive a disability pension under Part II of the Entitlements Act or where a disability pension is payable to another person in respect of that employee

(subsection (a))

. the employee is a veteran (defined in section 35(1) of the Entitlements Act) who is entitled to receive a service pension under Part III of the Entitlements Act or where a service pension is payable to another person in respect of that employee

(subsection (b))

. the employee is a member of the forces, or a member of a Peacekeeping Force (as defined in section 68 of the Entitlements Act) who is entitled to receive a pension under Part IV of the

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Entitlements Act or where a pension under Part IV of the Entitlements Act is payable to another person in respect of that employee

(subsection (c))

the employee is an Australian mariner, who is entitled to receive, or another person is entitled to receive a pension in respect of that employee under Part III of the Seamen's War Pensions and Allowances Act 1940

(subsection (d))

It is not necessary for the particular pensions to be paid to the employee directly. The pension may be paid to another person, such as the employee's spouse or dependant. In such cases the pension would be payable in respect of the employee.

An example would be a pension payable under Part III of the Entitlements Act as a result of the war related death of the employee. The pension is not paid to the employee, but it may be payable to the dependant of the employee. The pension would be treated as being paid in respect of the employee.

Proposed section 6B will operate to exempt from fringe benefits tax all benefits provided pursuant to the Entitlements Act in respect of a Commonwealth employee. The exemption applies regardless of whether the recipient of the benefit is the employee. The final section proposed to be inserted into the Act by these regulations is section 6C.

Subsection (1) proposes to exempt from fringe benefits tax health care provided to a Commonwealth employee (or another person such as the employee's spouse) because that employee is a member of the Defence Force. Subsection (1) makes it clear that section 6C will not apply to benefits that are already exempt under other provisions of the Act or the Assessment Act.

Health care is defined in section 136(1) of the Assessment Act, broadly, to be any examination, test or form of care that is related to the health of a person.

Subsection (2) defines a member of the Defence Force to be an employee who is, was formerly or will become a member of the Defence Force.