

Fringe Benefits Tax Amendment Regulations 2001 (No. 1) 2001 No. 36

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 36

Issued by authority of the Assistant Treasurer

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Amendment Regulations 2001 (No. 1)

Section 135 of the *Fringe Benefits Tax Assessment Act 1986* (the Act) provides that the Governor-General may make regulations for giving effect to the Act.

Employers are required to report fringe benefit amounts of more than \$1,000 on their employees' payment summaries. However, for equity and compliance cost reasons, subsection 5E(3) of the Act identifies certain fringe benefits that do not need to be reported. These benefits are referred to as 'excluded fringe benefits'. Paragraph 5E(3)(i) provides that certain fringe benefits may be excluded by way of regulation.

Subregulation 3B(5) of the Fringe Benefits Tax Regulations 1992 (the Regulations) already prescribes, as excluded fringe benefits, various fringe benefits provided to members of the Defence Force.

In accordance with the Government's decision, the Regulations are amended to prescribe, as excluded fringe benefits, certain benefits provided to Australian Defence Force (ADF) members. These benefits relate to the removal and storage of household effects as a result of relocations within the same locality, occurring at the direction of the Department of Defence. Such Defence-directed removals are common, due to the unique nature of military service, including the need for frequent and compulsory relocations of personnel to meet ADF operational requirements.

As a result, these benefits will not be taken into account when determining an individual's eligibility for certain government payments or concessions, nor when determining certain tax liabilities, such as the medicare levy and superannuation surcharges.

The Regulations will not apply to benefits exempt by virtue of section 58B of the Act. Section 58B provides that where a Defence Force employee is required to change his or her usual place of residence -in order to perform the duties of their employment, the removal and storage of household effects will be exempt from fringe benefits tax. This is provided the removal or storage takes place within 12 months of the employee commencing their duties at the new place of employment.

The Regulations commenced on 1 April 2000. Therefore, removal and storage fringe benefits received by ADF members for Defence-directed moves will not be reported in payment summaries issued for the year of income ended 30 June 20 01 and later income years.

As the Regulations remove the obligation to report these fringe benefits, they benefit ADF members and do not contravene subsection 48(2) of the *Acts Interpretation Act 1901*. Subsection 48(2) prohibits the retrospective operation of regulations which adversely affect the rights of, or impose liabilities on, a person.