

# Taxation Laws Amendment Regulations 2001 (No. 1) 2001 No. 289

## EXPLANATORY STATEMENT

### STATUTORY RULES 2001 No. 289

Issued by authority of the Assistant Treasurer

*Income Tax Assessment Act 1936*

*Fringe Benefits Tax Assessment Act 1986*

*Taxation Administration Act 1953*

*Superannuation Guarantee (Administration) Act 1992*

*A New Tax System (Australian Business Number) Act 1999*

Taxation Laws Amendment Regulations 2001 (No. 1)

The Governor-General may make regulations under section 266 of the *Income Tax Assessment Act 1936*, section 135 of the *Fringe Benefits Tax Assessment Act 1986*, section 18 of the *Taxation Administration Act 1953*, section 80 of the *Superannuation Guarantee (Administration) Act 1992*, and section 31 of the *A New Tax System (Australian Business Number) Act 1999*.

The main purpose of the Regulations is to introduce a more flexible regime for the provision of information to the Commissioner of Taxation (Commissioner) by taxpayers.

The Regulations amend the *Income Tax Regulations 1936*, *Fringe Benefits Tax Regulations 1992*, *Superannuation Guarantee (Administration) Regulations 1993*, *Taxation Administration Regulations 1976* and the *Australian Business Number Regulations 1999*. The amendments relate to:

- the 'approved form' for the provision of information by taxpayers;
- address for service of notices;
- presumptions as to documents having been signed by the Commissioner or the relevant Deputy Commissioners;
- investment bodies reporting any interest amounts greater than \$1 to the Commissioner; and
- fees for certified copies of entries in the Australian Business Register.

On 1 July 2000 the standardised administrative provisions under Division 388 of Schedule 1 to the *Taxation Administration Act 1953* commenced. These provisions introduce a regime that allows the Commissioner to be more flexible in requiring certain information from different classes of taxpayers. For example, e-mail is now an acceptable format for many official communications between the Commissioner and taxpayers or their representatives. In particular, the concept of an 'approved form' (section 388-50 of Schedule 1 to the *Taxation Administration Act 1953*) has rendered a number of Income Tax, Fringe Benefits Tax and Tax Administration Regulations either redundant or overly prescriptive in their language. The majority of these amendments generally bring the various Regulations up to date with these changes.

More specifically, to cater for the increase in taxpayer demand for transacting business electronically, and the Commissioner now being able (as above) to officially accept these communications, the Regulations are brought up to date. These Regulations allow taxpayers to have an electronic address as their 'preferred address for service' of notices.

These Regulations also amend subregulation 56(5) of the *Income Tax Regulations 1936* to ensure that investment bodies report, any interest amounts greater than \$1 to the Commissioner. This is consistent with the interest reporting requirements on all other accounts. Previously, an investment body was required to report interest on ordinary interest bearing accounts greater than \$120, as investment bodies did not have the technological capability to report interest on low interest bearing accounts.

These Regulations also amend the *Taxation Administration Regulations 1976* and the *Superannuation Guarantee Regulations 1993* to streamline the proving of authenticity of documents in courts. The Regulations presume documents bearing the signatures of the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner were properly signed.

These Regulations also amend the *Australian Business Number Regulations 1999* to prescribe fees for certified copies of entries in the Australian Business Register. The Commissioner is also given the discretion to waive fees in circumstances of financial hardship.

The amending Regulations will commence on gazettal.

Detailed explanations of the amendments are attached.

## **ATTACHMENT**

### **TAXATION LAWS AMENDMENT REGULATIONS 2001 (No. 1)**

#### **Regulation 1 - Name of regulations**

The amending regulations are called the Taxation Laws Amendment Regulations 2001 (No. 1).

#### **Regulation 2 - Commencement**

The regulations commence on gazettal.

#### **Regulation 3 - Amendment to the Income Tax Regulations 1936 (ITR 1936)**

Regulation 3 amends the ITR 1936 by the amendments contained in Schedule 1 to the amending Regulations.

##### *Schedule 1, item 1*

##### *Income Tax Regulation 2: Interpretation*

Item 1 of Schedule 1 to the amending Regulations inserts a definition of the term 'effective' into Regulation 2 of the ITR 1936. The term is defined, in relation to the term 'preferred address for service', to mean that the person to whom the address relates will receive documents at that address.

In addition, item 1 inserts a definition of the term 'preferred address for service' into Regulation 2 of the ITR 1936. The explanation of this term is outlined in the explanation of item 4 of Schedule 1.

##### *Schedule 1, item 2*

##### *Income Tax Regulations 15 to 18 Returns*

Item 2 of Schedule 1 to the amending Regulations omits Income Tax Regulations 15 to 18 inclusive from the ITR 1936.

The 'approved form' provisions under Subdivision 388-B of Schedule 1 to the *Taxation Administration Act 1953 (TAA 1953)* have provided wider scope to allow the Commissioner of Taxation (Commissioner) to request documents, such as returns, in any form and manner of lodgement approved by the Commissioner. Consequently, the specific return requirements expressed in former Income Tax Regulations 15 to 18 are no longer necessary.

##### *Schedule 1, item 3*

##### *Income Tax Regulations 20 to 28: Returns*

Item 3 of Schedule 1 to the amending Regulations omits Income Tax Regulations 20 to 28 inclusive from the ITR 1936.

The 'approved form' provisions of Subdivision 388-B of Schedule 1 to the TAA 1953 now allow the Commissioner to request returns in any form and manner of lodgement he requires.

Consequently, the former Regulations that provided for returns from:

- partnerships (Regulation 20);
- partners (Regulation 21);
- trustees (Regulation 22); and
- agents and not sole agents (Regulations 23 and 24),

and provided generally for:

- special returns (Regulation 25);
- substantially similar form (Regulation 26);
- statements accompanying returns (Regulation 27); and
- where to lodge returns (Regulation 28),

are no longer required.

*Income Tax Regulation 32: Source of mortgage interest*

Item 3 also omits Income Tax Regulation 32 from the ITR 1936.

Former Regulation 32 addressed tax revenue issues relating to its source from each state in Australia. The former Regulation was drafted at the time when each Australian state had their own Deputy Commissioner of Taxation (Deputy Commissioner) and taxpayers in each State or Territory addressed correspondence and lodged returns to the Deputy Commissioner in that State. Nowadays, source of income is referred to at the national level and not the state level.

*Income Tax Regulation 33: Territories*

Item 3 also omits Income Tax Regulation 33 from the ITR 1936.

Former Regulation 33 supplemented former Regulation 32 in which, for the purposes of geographically sourcing the origin of taxation revenue, a number of Territories administered by the Commonwealth of Australia were either allocated to the closest Australian State or deemed to be a State.

*Income Tax Regulation 34: When taxpayer taken to have furnished return*

Item 3 also omits Income Tax Regulation 34 from the ITR 1936.

Former Regulation 34 stated that a taxpayer was not taken to have furnished a return to the Commissioner unless all the requirements listed in Regulation 34 had been satisfied. The former Regulation is no longer necessary because the 'approved form' provisions of Subdivision 388-B of Schedule 1 to the TAA 1953 provide generically for similar requirements.

*Income Tax Regulation 35: Persons must ensure return is received*

Item 3 also omits Income Tax Regulation 35 from the ITR 1936.

Former Regulation 35 required a person to take reasonable steps to ensure that a return was received by the Commissioner at a place prescribed by the Commissioner. In view of the other

'approved form' changes in the ITR 1936 contained in these amending Regulations, it is considered that this Regulation is no longer necessary.

#### *Income Tax Regulations 36 to 40: Address for service*

Item 3 also omits Income Tax Regulations 36 to 40 inclusive from the ITR 1936.

Former Regulations 36 to 40 related to the provision of an address for service of notices to the Commissioner. These amending Regulations replace Regulations 36 to 40 with new Regulations that will permit a taxpayer to have an electronic address for service as well as conventional physical addresses. The new Regulations are outlined below at the explanation of item 4 of Schedule 1.

#### *Income Tax Regulation 41: Annotations on returns*

Item 3 also omits Income Tax Regulation 41 from the ITR 1936.

Former Regulation 41 dealt with marks, figures and annotations made to income tax returns. These types of actions are no longer applicable to the way the tax law is presently administered.

#### *Schedule 1, item 4*

Item 4 of Schedule 1 to the amending Regulations inserts a Part 4A: *Preferred address for service and service of documents* into the ITR 1936. Part 4A comprises Income Tax Regulations 35 to 40 inclusive.

#### *Regulation 35: References to Act include references to the Income Tax Assessment Act (ITAA 1997)*

Regulation 35 provides that references to the term 'the Act' in Part 4A of the ITR 1936 include the ITAA 1997. The term 'the Act' in the ITR 1936 normally only includes the ITAA 1936. In Part 4A, Regulation 35 also provides that any reference to 'these Regulations' includes both Regulations made under the ITAA 1936 and the ITAA 1997.

#### *Regulation 36: Preferred address for service*

Former Regulation 36 required that a person who furnished a return must have given, in the return, an address in Australia for service. The term 'address' referred to physical addresses in line with former Regulation 170 which is removed by these Regulations. Former Regulation 170 referred to service of notices in terms of serving documents either by post or in person.

New Regulation 36 performs a broadly similar function as former Regulation 36, but differs in some important aspects:

- The new Regulation does not require an address/es for service of notices to be provided. The 'approved form' provisions, of Subdivision 388-B of Schedule 1 to the TAA 1953, now encompass this requirement. That is, an approved form may or may not require the provision of such an address.
- The concept of 'address for service' is replaced with 'preferred address for service'. This term is more technically accurate in its meaning than the former. This is because other addresses, required or allowed by other laws, are not precluded from use by providing such an address. Further, a person may provide more than one preferred address for service. The significance of a preferred address for service is that the Commissioner will use such an address

in preference to other addresses of a person where circumstances dictate it is appropriate to do so.

- The new Regulation also acknowledges that provision of an address, requested usually in an 'approved form' in terms such as 'address for service', 'preferred address' and 'address for correspondence', will satisfy the requirement.
- The new Regulation makes it possible for a person to nominate an electronic address, in addition to physical addresses also given to the Commissioner as their 'preferred address for service'. An electronic address includes an email address or other secure electronic site that a person can access to obtain a document. This increased flexibility is necessary because of the trend towards administering the tax laws by electronic means.
- The concept of 'furnishing a return' is replaced with the more broad concept of "...in a form or correspondence..." to acknowledge and facilitate greater flexibility in communications, both general and specific, between taxpayers, and the Commissioner.

#### *Regulation 37: Change or withdrawal of preferred address for service*

Former Regulation 37 required that a person, whose address for service of notices provided to the Commissioner changed, was to notify the Commissioner in writing of his new address for service within one month of the change.

New Regulation 37 is similar to former Regulation 37 except in 4 respects:

- The reference to 'address for service' is changed to reflect 'preferred address for service' in line with new Regulation 36.
- The one month time limit is changed to 28 days in line with current standards and practice in Commonwealth statutes generally.
- When an address change is notified, the new Regulation requires notification of the status of the address being replaced. In addition, a person may only withdraw a preferred address for service if an effective preferred address for service, that is a postal address, remains.
- A person is able to use means such as email, telephone or any other way approved by the Commissioner in writing to notify of a change in preferred address for service.

#### *Regulation 37A: Requirement to maintain a preferred address for service*

New Regulation 37A performs a similar function to former Regulation 37 in respect to the requirement to maintain an address for service.

The new Regulation requires a person, who has given a preferred address for service to the Commissioner, to notify the Commissioner within 28 days of any change. That is, a preferred address for service must be kept current.

#### *Regulation 38: Substitute preferred address for service*

New Regulation 38 replaces former Regulations 38 and 39.

The new Regulation largely re-expresses former Regulation 38. The only difference is that the terminology used has been updated to incorporate the term 'preferred address for service' in line with new Regulation 36.

Former Regulation 39 provided that the address the Commissioner settled upon, in line with former Regulation 38, was deemed the taxpayer's last known place of business or abode. In light of the more flexible scheme for communication between the Commissioner and taxpayers such a circumstance is catered for without the need for this Regulation. This flexibility is provided by the 'approved form' provisions, in Subdivision 388-B of Schedule 1 to the TAA 1953, and these Regulations generally.

New Regulation 38 confirms that the Commissioner may use another address of the taxpayer, that he is aware of, to serve a notice. The Commissioner may do so even though it may not be the taxpayer's nominated preferred address for service. Situations where the Commissioner may do so include:

- a person may not have specified a preferred address for service;
- the specified preferred address for service is found to be ineffective; or
- the Commissioner may wish to serve notice to a postal address rather than a preferred address that happens to be an electronic address.

*Regulation 39: Failure to notify change of address*

New Regulation 39 is similar to former Regulation 40. The only difference is that the terminology used has been updated to incorporate the term 'preferred address for service'.

The new Regulation provides that a person cannot use as a defence, in legal proceedings brought under the ITAA 1936, the ITR 1936, the ITAA 1997 or the Income Tax Assessment Regulations 1997, the fact that they did not maintain an effective preferred address for service with the Commissioner.

*Regulation 40: Service of documents*

New Regulation 40 replaces former Regulation 170 (which is removed by item 7 of Schedule 1) but also extends to service of documents by electronic means where appropriate. New Regulation 40 and former Regulation 170 provide for the manner in which the Commissioner may serve a document.

The Commissioner retains his discretion to personally serve a notice on a taxpayer by virtue of section 28A of the *Acts Interpretation Act 1901* should circumstances dictate that it is appropriate to do.

*Schedule 1, item 5*

Item 5 of Schedule 1 to the amending Regulations replaces Subregulation 56(5) of the ITR 1936.

The substituted Subregulation ensures that investment bodies report any interest amounts greater than \$1 to the Commissioner. Previously, an investment body was required to report interest on ordinary interest bearing accounts greater than \$120. On all other accounts the requirement to report is on amounts greater than \$1. This Subregulation was enacted in 1988 because investment bodies did not, at that time, have the technological processing ability to report interest earned on low interest bearing accounts.

The amended Subregulation ensures consistent reporting requirements on all accounts.

*Schedule 1, item 6*

Item 6 of Schedule 1 to the amending Regulations omits Subregulation 56(8) because it relies on lodging a report in association with a return under former Regulation 17. The Subregulation is no longer necessary because Regulation 17 is omitted by the amending Regulations at item 2 of Schedule 1.

*Schedule 1, item 7*

Item 7 of Schedule 1 to the amending Regulations omits Regulation 170 from the ITR 1936 because its function is encompassed by new Regulation 40 as outlined in the explanation of item 4 of Schedule 1.

**Regulation 4 - Amendment to the Fringe Benefits Tax Regulations 1992 (FBTR 1992)**

Regulation 4 amends the FBTR 1986 by the amendments contained in Schedule 2 to the amending Regulations.

*Schedule 2, items 1 and 2*

*Fringe Benefits Tax Regulation 3: Definitions*

Item 1 of Schedule 1 to the amending Regulations inserts a definition of the term 'effective' into Regulation 3 of the FBTR 1992. The term is defined, in relation to the term 'preferred address for service', to mean that the person to whom the address relates will receive documents at that address.

Item 2 of Schedule 2 inserts the meaning of the term 'preferred address for service' into Regulation 3 of the FBTR 1992. The explanation of this term is outlined at the explanation of item 4 of Schedule 1 amendments to the ITR 1936.

*Schedule 2, item 3*

*Fringe Benefits Tax Regulations 4 to 7: Returns*

Item 3 of Schedule 2 to the amending Regulations omits Fringe Benefits Tax Regulations 4 to 7 inclusive from the FBTR 1992.

As described in the explanation of the Schedule 1 amendments to the ITR 1936, the 'approved form' provisions contained in Subdivision 388-B of Schedule 1 to the TAA 1953 now allow the Commissioner to request returns in any form and manner of lodgement he requires.

Consequently, Regulations that generally provided for:

- returns (Regulation 4);
- tax agent's certification (Regulation 5);
- documents accompanying returns (Regulation 6); and
- annotations on returns (Regulation 7),

are no longer required.

*Schedule 2, item 4*



Item 4 of Schedule 2 to the amending Regulations replaces Fringe Benefits Tax Regulations 18 to 22 inclusive in the FBTR 1992 with the following:

- Regulation 18 - Preferred address for service;
- Regulation 19 - Change or withdrawal of preferred address for service;
- Regulation 19A - Requirement to maintain a preferred address for service;
- Regulation 20 - Substitute preferred address for service;
- Regulation 21 - Failure to notify change of address; and
- Regulation 22 - Service of documents.

For further details about the new Regulations, refer to the explanation of the Schedule 1 amendments to the ITR 1936. However, there are 2 differences in the FBTR 1992 that need to be taken into consideration when looking at the Schedule 1 explanation:

- new Fringe Benefits Tax Regulations 18, 20 and 22 apply to a 'person' and new Fringe Benefits Tax Regulations 19, 19A and 21 apply to an 'employer'. Fringe Benefits Tax Regulations referring to 'person' relate to obligations that can be discharged by an employer or by people other than an 'employer', and Fringe Benefits Tax Regulations referring to 'employer' relate to obligations relevant to an employer only; and
- the requirement to maintain a preferred address for service is unconditional under new Income Tax Regulation 37A. However, under new Fringe Benefits Tax Regulation 19A, the requirement to maintain a preferred address for service is conditional upon an employer providing a taxable fringe benefit during a financial year.

### ***Schedule 2, item 5***

Item 3 of Schedule 2 to the amending Regulations omits Fringe Benefits Tax Regulation 5 from the FBTR 1992. Form 1, specified in Schedule 1 of the FBTR 1992, was provided for the purposes of Regulation 5. The removal of the Regulation makes the specification of the form redundant.

### **Regulation 5 - Amendment to the Taxation Administration Regulations 1976 (TAR 1976)**

Regulation 5 amends the TAR 1976 by the amendments contained in Schedule 3 to the amending Regulations.

### ***Schedule 3, items 1 and 2***

#### *Tax Administration Regulation 2: Definitions*

Item 1 of Schedule 3 to the amending Regulations inserts the meaning of the term 'effective' into Taxation Administration Regulation 2 of the TAR 1976. This term is defined to mean that, in relation to an address, the person to whom the address relates will receive documents at that address.

In addition, item 2 inserts the meaning of the term 'preferred address for service' into Regulation 2. The background and explanation of this term is outlined in more detail in the explanation of the Schedule 1 amendments to the ITR 1936.

### *Schedule 3, item 3*

Former Taxation Administration Regulation 10 relates to the requirement for an 'address for service' for tax clearance certificates. This Regulation is replaced by new Regulation 10 requiring a person to specify a 'preferred address for service' in accordance with item 4 of Schedule 3 to the amending Regulations.

### *Schedule 3, item 4*

Item 4 of Schedule 3 to the amending Regulations inserts a Part 2A into the TAR 1976. Part 2A addresses service of documents in general and the details are outlined as follows.

### *Regulations 12A to 12F*

New Part 2A of the TAR 1976 contains new Taxation Administration Regulations 12A to 12F:

- Regulation 12A - Preferred address for service;
- Regulation 12B - Change or withdrawal of preferred address for service;
- Regulation 12C - Requirement to maintain a preferred address for service;
- Regulation 12D - Substitute preferred address for service;
- Regulation 12E - Failure to notify change of address; and
- Regulation 12F - Service of documents.

New Part 2A is necessary to ensure that a notice can be successfully served under the TAA 1953. This is so because many of the administrative provisions that once existed under the ITAA 1936 are now operative under the TAA 1953.

For further details about these Regulations, refer to the explanation of the Schedule 1 amendments to the ITR 1936.

### *Schedule 3, item 5*

Former Regulation 16 outlined the service of notices relating to private rulings. The function of this Regulation is encompassed by the new Regulations relating to preferred address for service (Regulation 12A) and the service of documents (Regulation 12F). Consequently, it was necessary to omit Regulation 16 from the TAR 1976.

### *Schedule 3, item 6*

#### *Regulation 45: Presumption on signatures of the Commissioner, Second Commissioner, Deputy Commissioner or a delegate of the Commissioner*

Item 6 of Schedule 3 to the amending Regulations inserts Taxation Administration Regulation 45 into the TAR 1976.

The Regulation requires a court (or other body acting judicially) to take notice of the names and signatures of the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.

This Regulation also provides for a presumption that a document bearing the name (including a facsimile of the signature) of the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner was duly signed by that person. The presumption can be rebutted by proving that the document was issued without authority.

The Regulation has a similar effect to former Regulation 12 of the TAR 1976. This Regulation is different from the former Regulation 12 in that it also applies to the name and the signature of a delegate of the Commissioner. This makes the rule consistent with Regulation 172 of the ITR 1936.

Former Regulation 12 was omitted on the basis that it was redundant because of section 150 of the *Evidence Act 1995*. However, upon review, it has been concluded that the former Regulation may have had a broader effect than section 150 and so it is reinstated in the new Regulation.

This Regulation is necessary to streamline the proving of authenticity of documents, especially in courts. Otherwise, the Commissioner, Second Commissioner, Deputy Commissioner or a delegate of the Commissioner would have to testify to numerous documents in court to prove their validity.

### **Regulation 6 - Amendment to the Superannuation Guarantee Regulations 1993 (SGR 1993)**

Regulation 6 amends the SGR 1993 by the amendments contained in Schedule 4 to the amending Regulations.

#### *Schedule 4, items 1 and 2*

##### *Superannuation Guarantee Regulation 2: Definitions*

Item 1 of Schedule 4 to the amending Regulations inserts the meaning of the term 'effective' into Regulation 2 of the SGR 1993. This term is defined to mean that, in relation to an address, the person to whom the address relates will receive documents at that address.

In addition, item 2 of Schedule 4 to the amending Regulations inserts the meaning of the term 'preferred address for service' into Regulation 2 of the SGR 1993. The background and explanation of this term is outlined in more detail in the explanation of the Schedule 1 amendments to the ITR 1936.

#### *Schedule 4, item 3*

##### *Regulations 13 to 13E*

Item 3 of Schedule 4 to the amending Regulations inserts Regulations 13 to 13E into the SGR 1993. The Regulations are as follows:

- Regulation 13 - Preferred address for service;
- Regulation 13A - Change or withdrawal of preferred address for service;
- Regulation 13B - Requirement to maintain a preferred address for service;
- Regulation 13C - Substitute preferred address for service;
- Regulation 13D - Failure to notify change of address; and

- Regulation 13E - Service of documents.

It is necessary to insert these new Regulations into the SGR 1993 to ensure notices served under the principal Superannuation Guarantee legislation are effective.

For details about the Regulations, see the explanation of the Schedule 1 amendments to the ITR 1936.

*Schedule 4, item 4*

*Regulation 15: Presumption on signatures of the Commissioner, Second Commissioner, Deputy Commissioner or a delegate of the Commissioner*

Item 4 of Schedule 4 to the amending Regulations inserts Superannuation Guarantee Regulation 15 into the SGR 1993.

For details about the Regulation, see the explanation of item 6 in Schedule 3.

### **Regulation 7 - Amendment to the Australian Business Number Regulations 1999 (ABNR 1999)**

Regulation 7 of the amending Regulations amends the ABNR 1999 by the amendments contained in Schedule 5 to the amending Regulations.

*Schedule 5, items 1 to 3*

*Regulation 7: Fee for copies*

Items 1 and 2 of Schedule 5 to the amending Regulations replace current Subregulation 7(1) of the ABNR 1999.

Regulation 7 provides for 'fees for copies' in respect of provision of ordinary copies of entries in the Australian Business Register.

The new Subregulation 7(1) also encompasses the charging of fees for certified copies of entries in the Australian Business Register. The fee itself is the same as for ordinary copies.

Item 3 of Schedule 5 to the amending Regulations inserts Subregulation 7(3). The Subregulation provides the Registrar of the Australian Business Register with the ability to reduce or waive the fee for copies if satisfied the payment will cause financial hardship on the payer.