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Taxation Laws Amendment Regulations 2001 (No. 1)¹

Statutory Rules 2001 No. ²

289

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1936*, the *Fringe Benefits Tax Assessment Act 1986*, the *Taxation Administration Act 1953*, the *Superannuation Guarantee (Administration) Act 1992* and the *A New Tax System (Australian Business Number) Act 1999*.

Dated 27 SEP 2001 2001

PETER HOLLINGWORTH
 Governor-General

By His Excellency's Command

C. R. KEMP
 Assistant Treasurer

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1 Name of Regulations

These Regulations are the *Taxation Laws Amendment Regulations 2001 (No. 1)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Income Tax Regulations 1936*

Schedule 1 amends the *Income Tax Regulations 1936*.

2 *Taxation Laws Amendment Regulations 2001 (No. 1)* 2001, 1 289

- 4** **Amendment of *Fringe Benefits Tax Regulations 1992***
Schedule 2 amends the *Fringe Benefits Tax Regulations 1992*.
- 5** **Amendment of *Taxation Administration Regulations 1976***
Schedule 3 amends the *Taxation Administration Regulations 1976*.
- 6** **Amendment of *Superannuation Guarantee (Administration) Regulations 1993***
Schedule 4 amends the *Superannuation Guarantee (Administration) Regulations 1993*.
- 7** **Amendment of *A New Tax System (Australian Business Number) Regulations 1999***
Schedule 5 amends the *A New Tax System (Australian Business Number) Regulations 1999*.

Schedule 1 **Amendments of *Income Tax Regulations 1936***

(regulation 3)

[1] **Regulation 2, after definition of *ABN***

insert

effective, in relation to an address, means that the person to whom the address relates will receive documents delivered to the address.

preferred address for service has the meaning given by regulation 36.

[2] **Regulations 15 to 18**

omit

[3] **Regulations 20 to 41**

omit

[4] **After Part 4**

insert

Part 4A Preferred address for service and service of documents

**35 References to Act include references to 1997
Act**

In this Part, unless the contrary intention appears:

- (a) a reference to *the Act* includes a reference to the *Income Tax Assessment Act 1997*; and

- (b) a reference to *these Regulations* includes a reference to regulations made under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

36 Preferred address for service

- (1) An address in Australia used by or associated with a person is a *preferred address for service* of the person if:

- (a) it is of one of the following kinds of address:
- (i) a physical address;
 - (ii) a postal address;
 - (iii) an electronic address; and

Note 1 An address may be both a physical address and a postal address (eg. a street address).

Note 2 The following are examples of an electronic address:

- (a) an e-mail address;
 - (b) a secure website that the person can access to obtain a document.
- (b) the person has given it to the Commissioner as an address for the service of documents by the Commissioner under the Act or these Regulations; and
- (c) the designation of the address or other circumstances indicate that the person wishes the address to be used by the Commissioner in preference to other addresses of the person, whether generally or in specific circumstances.
- (2) The designation of an address in a form or correspondence as an 'address for service', a 'preferred address', an 'address for correspondence' or similar term satisfies paragraph (1) (c).

37 Change or withdrawal of preferred address for service

- (1) A person may change or withdraw a preferred address for service only by giving the Commissioner notice in accordance with this regulation.
- (2) The notice must state whether or not the former address is still effective.
- (3) The notice must be given to the Commissioner in one of the following ways:
 - (a) orally, including by telephone;
 - (b) in writing, including electronically;
 - (c) any other way approved by the Commissioner in writing.
- (4) If the person is required to maintain a preferred address for service under the Act or these Regulations, the person may withdraw a preferred address for service only if another effective preferred address for service that is a postal address remains.
- (5) If the person is required to maintain a preferred address for service under the Act or these Regulations, and a preferred address for service becomes ineffective, the person must change or withdraw the ineffective address within 28 days.

37A Requirement to maintain a preferred address for service

If a person is required to give the Commissioner a preferred address for service for a purpose (for example, by the approved form for a return), the person must subsequently maintain a preferred address for service for the purpose.

38 Substitute preferred address for service

- (1) This regulation applies if:
 - (a) a person has not given the Commissioner a preferred address for service; or

(b) the Commissioner is satisfied that none of a person's preferred addresses for service is effective.

(2) If the Commissioner has a record of another address relating to the person (whether or not a physical address), and it appears to the Commissioner that it is likely that the address is effective, the Commissioner may treat that address as the person's preferred address for service for all purposes under the Act and these Regulations.

39 Failure to notify change of address

A person whose preferred address for service is no longer effective, and who has not changed or withdrawn the address under regulation 37, may not plead the fact that the address was not effective as a defence in any proceedings instituted against the person under the Act or these Regulations.

40 Service of documents

- (1) The Commissioner may serve a document on a person for the purposes of the Act and these Regulations by:
- (a) if the person has given a preferred address for service that is a physical address — leaving a copy of the document at that address; or
 - (b) if the person has given a preferred address for service that is a postal address — posting a copy of the document to that address; or
 - (c) if the person has given a preferred address for service that is an electronic address — delivering an electronic copy of the document to that address.
- (2) This regulation also applies to the service of a notice:
- (a) for the purposes of section 451 of the Act — by an attributable taxpayer upon a company that is a CFC within the meaning of Part X; and

- (b) for the purposes of section 452 of the Act — by a company that is a CFC within the meaning of that Part upon a partnership;

in the same way as it applies to the Commissioner serving a document on a person.

- (3) This regulation does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that deals with the service of documents.

Note For an example of another law that deals with the service of documents, see sections 28A and 29 of the *Acts Interpretation Act 1901*.

[5] Subregulation 56 (5)

substitute

- (5) Subject to subregulation (5B), subregulation (1) does not apply to an investment in relation to a financial year if the total amount of income paid on the investment is less than \$1.

[6] Subregulation 56 (8)

omit

[7] Regulation 170

omit

Schedule 2 **Amendments of *Fringe Benefits Tax Regulations 1992***

(regulation 4)

[1] **Regulation 3, after definition of *branch of the Australian Taxation Office***

insert

effective, in relation to an address, means that the person to whom the address relates will receive documents delivered to the address.

[2] **Regulation 3, after definition of *member of the Defence force***

insert

preferred address for service has the meaning given by regulation 18.

[3] **Regulations 4 to 7**

omit

[4] **Regulations 18 to 22**

substitute

18 Preferred address for service

(1) An address in Australia used by or associated with a person is a *preferred address for service* of the person if:

(a) it is of one of the following kinds of address:

- (i) a physical address;
- (ii) a postal address;
- (iii) an electronic address; and

Note 1 An address may be both a physical address and a postal address (eg. a street address).

Note 2 The following are examples of an electronic address:

- (a) an e-mail address;
 - (b) a secure website that the person can access to obtain a document.
 - (b) the person has given it to the Commissioner as an address for the service of documents by the Commissioner under the Act or these Regulations; and
 - (c) the designation of the address or other circumstances indicate that the person wishes the address to be used by the Commissioner in preference to other addresses of the person, whether generally or in specific circumstances.
- (2) The designation of an address in a form or correspondence as an 'address for service', a 'preferred address', an 'address for correspondence' or similar term satisfies paragraph (1) (c).

19 Change or withdrawal of preferred address for service

- (1) An employer may change or withdraw a preferred address for service only by giving the Commissioner notice in accordance with this regulation.
- (2) The notice must state whether or not the former address is still effective.
- (3) The notice must be given to the Commissioner in one of the following ways:
 - (a) orally, including by telephone;
 - (b) in writing, including electronically;
 - (c) any other way approved by the Commissioner in writing.
- (4) If the employer is required to maintain a preferred address for service under the Act or these Regulations, the employer may withdraw a preferred address for

service only if another effective preferred address for service that is a postal address remains.

- (5) If the employer is required to maintain a preferred address for service under the Act or these Regulations, and a preferred address for service becomes ineffective, the employer must change or withdraw the ineffective address within 28 days.

Penalty: 5 penalty units.

19A Requirement to maintain a preferred address for service

- (1) An employer must maintain a preferred address for service during a financial year in which the employer provides a taxable fringe benefit.
- (2) For subregulation 19 (3), if a preferred address for service becomes ineffective in a financial year at a time when the employer has not provided any taxable fringe benefit, the address is taken to become ineffective on the day when the first taxable fringe benefit is provided.

20 Substitute preferred address for service

- (1) This regulation applies if:
 - (a) a person has not given the Commissioner a preferred address for service; or
 - (b) the Commissioner is satisfied that none of a person's preferred addresses for service is effective.
- (2) If the Commissioner has a record of another address relating to the person (whether or not a physical address), and it appears to the Commissioner that it is likely that the address is effective, the Commissioner may treat that address as the person's preferred address for service for all purposes under the Act and these Regulations.

21 Failure to notify change of address

An employer whose preferred address for service is no longer effective, and who has not changed or withdrawn the address under regulation 19, may not plead the fact that the address was not effective as a defence in any proceedings instituted against the employer under the Act or these Regulations.

22 Service of documents

- (1) The Commissioner may serve a document on a person for the purposes of the Act and these Regulations by:
 - (a) if the person has given a preferred address for service that is a physical address — leaving a copy of the document at that address; or
 - (b) if the person has given a preferred address for service that is a postal address — posting a copy of the document to that address; or
 - (c) if the person has given a preferred address for service that is an electronic address — delivering an electronic copy of the document to that address.
- (2) This regulation does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that deals with the service of documents.

Note For an example of another law that deals with the service of documents, see sections 28A and 29 of the *Acts Interpretation Act 1901*.

[5] Schedule 1, Form 1

omit

Schedule 3 **Amendments of *Taxation Administration Regulations 1976***

(regulation 5)

[1] **Regulation 2, after definition of *deposit-taking institution***

insert

effective, in relation to an address, means that the person to whom the address relates will receive documents delivered to the address.

[2] **Regulation 2, after definition of *Medicare levy surcharge***

insert

preferred address for service has the meaning given by regulation 12A.

[3] **Regulation 10**

substitute

10 Address for service — tax clearance certificates

A person who applies to the Commissioner under section 14B of the Act for a tax clearance certificate must specify in or with the application a preferred address for service.

Penalty: 5 penalty units.

[4] After Part 2*insert***Part 2A Service of documents in general****12A Preferred address for service**

(1) An address in Australia used by or associated with a person is a *preferred address for service* of the person if:

- (a) it is of one of the following kinds of address:
- (i) a physical address;
 - (ii) a postal address;
 - (iii) an electronic address; and

Note 1 An address may be both a physical address and a postal address (eg. a street address).

Note 2 The following are examples of an electronic address:

- (a) an e-mail address;
 - (b) a secure website that the person can access to obtain a document.
 - (b) the person has given it to the Commissioner as an address for the service of documents by the Commissioner under the Act or these Regulations; and
 - (c) the designation of the address or other circumstances indicate that the person wishes the address to be used by the Commissioner in preference to other addresses of the person, whether generally or in specific circumstances.
- (2) The designation of an address in a form or correspondence as an 'address for service', a 'preferred address', an 'address for correspondence' or similar term satisfies paragraph (1) (c).

12B Change or withdrawal of preferred address for service

- (1) A person may change or withdraw a preferred address for service only by giving the Commissioner notice in accordance with this regulation.
- (2) The notice must state whether or not the former address is still effective.
- (3) The notice must be given to the Commissioner in one of the following ways:
 - (a) orally, including by telephone;
 - (b) in writing, including electronically;
 - (c) any other way approved by the Commissioner in writing.
- (4) If the person is required to maintain a preferred address for service under the Act or these Regulations, the person may withdraw a preferred address for service only if another effective preferred address for service that is a postal address remains.
- (5) If the person is required to maintain a preferred address for service under the Act or these Regulations, and a preferred address for service becomes ineffective, the person must change or withdraw the ineffective address within 28 days.

12C Requirement to maintain a preferred address for service

If a person is required to give the Commissioner a preferred address for service for a purpose (for example, by regulation 10), the person must subsequently maintain a preferred address for service for the purpose.

12D Substitute preferred address for service

- (1) This regulation applies if:
 - (a) a person has not given the Commissioner a preferred address for service; or

- (b) the Commissioner is satisfied that none of a person's preferred addresses for service is effective.
- (2) If the Commissioner has a record of another address relating to the person (whether or not a physical address), and it appears to the Commissioner that it is likely that the address is effective, the Commissioner may treat that address as the person's preferred address for service for all purposes under the Act and these Regulations.

12E Failure to notify change of address

A person whose preferred address for service is no longer effective, and who has not changed or withdrawn the address under regulation 12B, may not plead the fact that the address was not effective as a defence in any proceedings (whether civil or criminal) instituted against the person under the Act or these Regulations.

12F Service of documents

- (1) The Commissioner may serve a document on a person for the purposes of the Act and these Regulations by:
 - (a) if the person has given a preferred address for service that is a physical address — leaving a copy of the document at that address; or
 - (b) if the person has given a preferred address for service that is a postal address — posting a copy of the document to that address; or
 - (c) if the person has given a preferred address for service that is an electronic address — delivering an electronic copy of the document to that address.

- (2) This regulation does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that deals with the service of documents.

Note For an example of another law that deals with the service of documents, see sections 28A and 29 of the *Acts Interpretation Act 1901*.

[5] Regulation 16

omit

[6] After Part 5

insert

Part 6 Miscellaneous

45 Presumption as to signatures

- (1) Judicial notice must be taken of the names and signatures of the persons who are, or were at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.
- (2) A certificate, notice or other document bearing the written, printed or stamped name (including a facsimile of the signature) of a person who is, or was at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner in the place of the person's signature is taken to have been duly signed by the person, unless it is proved that the document was issued without authority.

**Schedule 4 Amendments of
Superannuation Guarantee
(Administration) Regulations
1993**

(regulation 6)

[1] Regulation 2, after definition of *charge*

insert

effective, in relation to an address, means that the person to whom the address relates will receive documents delivered to the address.

[2] Regulation 2, after definition of *minimum requisite benefit*

insert

preferred address for service has the meaning given by regulation 13.

[3] Regulation 13

substitute

13 Preferred address for service

- (1) An address in Australia used by or associated with a person is a *preferred address for service* of the person if:
- (a) it is of one of the following kinds of address:
 - (i) a physical address;
 - (ii) a postal address;
 - (iii) an electronic address; and

Note 1 An address may be both a physical address and a postal address (eg. a street address).

Note 2 The following are examples of an electronic address:

- (a) an e-mail address;
 - (b) a secure website that the person can access to obtain a document.
 - (b) the person has given it to the Commissioner as an address for the service of documents by the Commissioner under the Act or these Regulations; and
 - (c) the designation of the address or other circumstances indicate that the person wishes the address to be used by the Commissioner in preference to other addresses of the person, whether generally or in specific circumstances.
- (2) The designation of an address in a form or correspondence as an 'address for service', a 'preferred address', an 'address for correspondence' or similar term satisfies paragraph (1) (c).

13A Change or withdrawal of preferred address for service

- (1) A person may change or withdraw a preferred address for service only by giving the Commissioner notice in accordance with this regulation.
- (2) The notice must state whether or not the former address is still effective.
- (3) The notice must be given to the Commissioner in one of the following ways:
 - (a) orally, including by telephone;
 - (b) in writing, including electronically;
 - (c) any other way approved by the Commissioner in writing.
- (4) If the person is required to maintain a preferred address for service under the Act or these Regulations, the person may withdraw a preferred address for service only if another effective preferred address for service that is a postal address remains.

-
- (5) If the person is required to maintain a preferred address for service under the Act or these Regulations, and a preferred address for service becomes ineffective, the person must change or withdraw the ineffective address within 28 days.

13B Requirement to maintain a preferred address for service

If a person is required to give the Commissioner a preferred address for service for a purpose (for example, by section 33 of the Act), the person must subsequently maintain a preferred address for service for the purpose.

13C Substitute preferred address for service

- (1) This regulation applies if:
- (a) a person has not given the Commissioner a preferred address for service; or
 - (b) the Commissioner is satisfied that none of a person's preferred addresses for service is effective.
- (2) If the Commissioner has a record of another address relating to the person (whether or not a physical address), and it appears to the Commissioner that it is likely that the address is effective, the Commissioner may treat that address as the person's preferred address for service for all purposes under the Act and these Regulations.

13D Failure to notify change of address

A person whose preferred address for service is no longer effective, and who has not changed or withdrawn the address under regulation 13A, may not plead the fact that the address was not effective as a defence in any proceedings instituted against the person under the Act or these Regulations.

13E Service of documents

- (1) The Commissioner may serve a document on a person for the purposes of the Act and these Regulations by:
 - (a) if the person has given a preferred address for service that is a physical address — leaving a copy of the document at that address; or
 - (b) if the person has given a preferred address for service that is a postal address — posting a copy of the document to that address; or
 - (c) if the person has given a preferred address for service that is an electronic address — delivering an electronic copy of the document to that address.
- (2) This regulation does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that deals with the service of documents.

Note For an example of another law that deals with the service of documents, see sections 28A and 29 of the *Acts Interpretation Act 1901*.

[4] After regulation 14

insert

15 Presumption as to signatures

- (1) Judicial notice must be taken of the names and signatures of the persons who are, or were at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.
- (2) A certificate, notice or other document bearing the written, printed or stamped name (including a facsimile of the signature) of a person who is, or was at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner in the place of the person's signature is taken to have been duly signed by the person, unless it is proved that the document was issued without authority.

Schedule 5 **Amendments of A New Tax
System (Australian Business
Number) Regulations 1999**
(regulation 7)

[1] Regulation 7, heading

substitute

7 Fee for copies (Act s 26, s 27)

[2] Subregulation 7 (1)

substitute

(1) For subsections 26 (1) and 27 (4) of the Act, the fee payable for a copy of an entry in, or a certified copy of or extract from, the Australian Business Register is the sum of:

- (a) \$20 for the first page of the copy, certified copy or extract; and
- (b) \$0.10 per page for any subsequent page.

[3] After subregulation 7 (2)

insert

(3) In any particular case, the Registrar may reduce or waive the fee mentioned in subregulation (1) if the payment of the fee would impose financial hardship on the payer.

Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1936 No. 94, as amended by 1939 Nos. 6 and 42; 1940 Nos. 138 and 289; 1941 Nos. 120 and 327; 1942 Nos. 339 and 553; 1943 Nos. 80, 127 and 151; 1944 Nos. 90 and 124; 1945 Nos. 12, 85, 169 and 192; 1946 No. 135; 1947 Nos. 77 and 173; 1948 Nos. 115 and 162; 1949 Nos. 25 and 50; 1950 Nos. 63 and 101; 1951 Nos. 136 and 157; 1952 Nos. 89, 90 and 102; 1953 Nos. 55 and 88; 1954 Nos. 11, 99 and 112; 1955 No. 23; 1956 Nos. 34, 35 (repealed by 1956 No. 96) and 96; 1957 Nos. 39 and 74; 1958 Nos. 27 and 70; 1959 Nos. 25 and 81; 1960 Nos. 44 and 74; 1962 Nos. 15, 44 and 112; 1963 Nos. 53 and 92; 1964 Nos. 74, 121 and 134; 1965 Nos. 133 and 187; 1966 No. 156; 1967 Nos. 112 and 126; 1968 No. 1; 1969 No. 68; 1970 Nos. 43, 126, 168 and 213; 1971 Nos. 120 and 148; 1972 Nos. 48, 50 and 137; 1973 No. 266; 1974 Nos. 193, 226 and 267; 1975 Nos. 88, 89, 99, 101 and 213; 1976 Nos. 115, 188 and 212; 1977 Nos. 77, 107 and 248; 1978 Nos. 85 and 193; 1979 Nos. 126 and 239; 1980 Nos. 86, 137 and 149; 1981 Nos. 116 and 360; 1982 Nos. 115, 128, 267 and 280; 1983 Nos. 79, 87, 111, 213 and 319; 1984 Nos. 172, 286, 408 and 416; 1985 Nos. 21, 148, 274 and 278; 1986 No. 325; Acts Nos. 28, 49 and 112, 1986; Statutory Rules 1987 Nos. 92 and 120; 1988 Nos. 196, 208, 262, 381, 382, 383 and 384; Act No. 97, 1988; Statutory Rules 1989 Nos. 67, 80, 115 (as amended by 1989 No. 358), 123, 124, 141, 250 and 358; 1990 Nos. 19, 126, 151, 152, 192, 347, 390, 398 and 468; 1991 Nos. 20, 121, 156, 158, 240, 300, 301, 390 and 391; 1992 Nos. 38, 129, 216, 313 and 449; 1993 Nos. 15, 46, 47, 65, 91, 159, 202, 216, 275, 288 and 370; 1994 Nos. 95, 96, 127, 174, 195, 219, 399, 412, 460, 461 and 462; 1995 Nos. 58, 107, 139, 152, 153, 194, 316, 356, 381, 382, 383 and 447; Act No. 30, 1995; Statutory Rules 1996 Nos. 38, 56, 114, 124, 133, 150, 185, 274, 320, 345 and 346; 1997 Nos. 68, 141, 148, 169, 176, 191, 196, 197, 270, 338, 368 and 416; 1998 Nos. 14, 92, 129, 163, 313 and 348; 1999 Nos. 79, 80 and 114; Act No. 60, 1999; Statutory Rules 2000 Nos. 39, 72, 90, 117, 229 and 262; 2001 Nos. 81, 100, 104, 107 and 163.

These Regulations also amend (in Schedule 2) Statutory Rules 1992 No. 130, as amended by 1993 Nos. 105 and 148; 1994 No. 196; 2000 Nos. 40, 127, 228 and 251; 2001 Nos. 36 and 188.

These Regulations also amend (in Schedule 3) Statutory Rules 1976 No. 129, as amended by 1984 Nos. 407 and 415; 1989 No. 73; 1992 No. 317; 1993 No. 194; 1994 Nos. 55, 198 and 340; 1996 No. 347; 2000 Nos. 73, 109, 152 and 184; 2001 No. 164.

These Regulations also amend (in Schedule 4) Statutory Rules 1993 No. 52, as amended by 1996 No. 148; Act No. 96, 1999; Statutory Rules 1999 No. 316; 2001 Nos. 87, 210 and 214.

These Regulations also amend (in Schedule 5) Statutory Rules 1999 No. 231.

2. Notified in the *Commonwealth of Australia Gazette* on 6 2001. 5 October