

EXPLANATORY STATEMENT

Select Legislative Instrument No. 39, 2015

Issued by authority of the Assistant Treasurer

A New Tax System (Goods and Services Tax) Act 1999

A New Tax System (Wine Equalisation Tax) Act 1999

Corporations Act 2001

Fringe Benefits Tax Assessment Act 1986

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

Product Grants and Benefits Administration Act 2000

Superannuation Contributions Tax (Assessment and Collection) Act 1997

Superannuation Contributions Tax (Members of Constitutionally Protected

Superannuation Funds) Assessment and Collection Act 1997

Superannuation (Government Co-contribution for Low Income Earners) Act 2003

Superannuation Guarantee (Administration) Act 1992

Superannuation (Unclaimed Money and Lost Members) Act 1999

Taxation Administration Act 1953

Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, section 27-35 of the *A New Tax System (Wine Equalisation Tax) Act 1999*, section 1364 of the *Corporations Act 2001*, section 135 of the *Fringe Benefits Tax Assessment Act 1986*, section 266 of the *Income Tax Assessment Act 1936*, section 909-1 of the *Income Tax Assessment Act 1997*, section 60 of the *Product Grants and Benefits Administration Act 2000*, section 42 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, section 37 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*, section 55 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, section 80 of the *Superannuation Guarantee (Administration) Act 1992*, section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, and section 18 of the *Taxation Administration Act 1953* (the Authorising Acts) each provide that the Governor-General may make regulations prescribing matters required or permitted by each of the Authorising Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to each of the Authorising Acts.

The *Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015* (the Amending Regulation) amends various regulations as detailed below.

Sunsetting of the Income Tax Regulations 1936

Sunsetting provisions in legislation provide that the Act or legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend the operation of that legislative instrument or Act. The legislative action taken is usually to remake the instrument or Act.

Most jurisdictions in Australia have automatic sunseting regimes for legislative instruments. The Commonwealth legislative instrument sunseting regime is set out

in Part 6 of the *Legislative Instruments Act 2003*. This regime provides for instruments to sunset 10 years after their registration on the Federal Register of Legislative Instruments unless the instrument falls within certain special categories of legislative instruments, the relevant Act modifies the sunset regime or Parliament passes a motion to extend the life of the instrument ('rolling over' the instrument).

Sunsetting is an important mechanism for the Australian Government to implement policies to reduce red tape, deliver clearer laws, and align existing legislation with current government policy by requiring ongoing review of legislative instruments.

In most cases, Australian Government agencies must plan for sunset well in advance of an instrument's sunset date, as the process to review an instrument and implement any review recommendations for each instrument can be lengthy.

An initial review of instruments that are due to sunset is an essential part of the process. The review is to inform the rule-maker's decision about whether the instrument should be left to sunset, be remade with amendments, be remade without amendments or be rolled over by the Parliament.

While instruments that are clearly spent or redundant do not require a thorough review, where it is not immediately apparent that an instrument serves no further function, a more comprehensive examination needs to be undertaken.

As part of Treasury's initial review of the *Income Tax Regulations 1936*, a number of provisions in the principal law and regulations were identified as duplicative, inoperative or spent. A number of provisions contained in the regulations were also identified as being more appropriately incorporated into the primary law.

The Government introduced the *Treasury Legislation Amendment (Repeal Day) Act 2015* to implement the first tranche of reforms resulting from the review. The Act simplifies the taxation laws by:

- consolidating duplicated taxation administration provisions contained in various taxation Acts into a single set of provisions in Schedule 1 to the *Taxation Administration Act 1953*;
- repealing spent or redundant taxation laws; and
- moving longstanding regulations into the primary law.

Schedule 1 to the Amending Regulation makes similar changes to those contained in the Bill by consolidating duplicated regulations, repealing spent or redundant regulations and updating and modernising older regulations.

Updating the cents per kilometre method for calculating car expenses

Car expenses incurred in the course of deriving assessable income or carrying on a business are deductible for income tax purposes under the income tax law. There are four methods available to calculate deductions: the cents per kilometre method, the 12% of original value method, the one-third of actual expenses method, and the log book method.

Section 28-25 of the ITAA 1997 provides that the rates for deductions calculated using the cents per kilometre method may be set out in the regulations. These rates also affect taxpayers' fringe benefits tax (FBT) liabilities for the relevant FBT year.

Schedule 2 to the Amending Regulation amends the *Income Tax Regulations 1997* to specify updated rates for the 2014-15 year to take account of increases in the consumer price index.

Technical correction

Subdivision 30-C of the *Income Tax Regulations 1936* sets out special rules for particular gifts of property to deductible gift recipients.

Paragraph 30-212.02(c) of the *Income Tax Regulations 1936* contains a grammatical error. Schedule 2 to the Amending Regulation corrects this error.

Low Income Superannuation Contribution reporting

Following the passage of the *Mineral Resource Rent Tax Repeal and Other Measures Act 2014*, individuals will no longer be eligible for the low income superannuation contribution (LISC) from the financial year from the 2017-18 financial year. Also, contributions relating to an eligible financial year (that is financial years inclusively from 1 July 2013 to 30 June 2016) will no longer be paid by the Australian Taxation Office after 1 July 2019. This followed an earlier election commitment from the Government to repeal the LISC from 1 July 2013.

Presently, the *Corporation Regulations 2001* require superannuation funds need to separately report amounts of the LISC and the superannuation co-contribution received during a reporting period on periodic statements to members.

Given the Government's election commitment to repeal the LISC, on 27 November 2014 the Australian Securities and Investment Commission issued class order CO13/1420, permitting superannuation funds to report an aggregate LISC and superannuation co-contribution amount. The class order expires on 30 June 2015. To comply with the current regulations superannuation funds will need to separately report LISC and the superannuation co-contribution amounts for reporting periods ending after the day the order expires (that is, after 30 June 2015).

Schedule 3 to the Amending Regulation amends the *Corporations Regulations 2001* to give superannuation funds the option of either separately reporting the amount of superannuation co-contributions and the amount of LISC received during a reporting period or alternatively reporting these two amounts as an aggregate amount on periodic statement to members. This provides superannuation funds with continued flexibility in reporting these amounts to members and will remove the need for information technology changes to be made to reporting systems and avoid funds incurring significant compliance costs.

Consultation

Public consultation on an exposure draft of the amendments in Schedule 1 took place from 17 December 2014 to 6 February 2015. Only one submission was received, which supported the changes. Treasury undertook a targeted two week consultation on the amendments made by Schedule 3 from 5 February 2015 to 19 February 2015 with key industry stakeholders. Some concerns were raised in this consultation process that funds might be prevented from reporting the amounts of LISC and co-contributions separately. The explanatory material has now been expanded to clarify that funds may choose to report these amounts separately.

No consultation was conducted on the amendments made by Schedule 2 as they are both minor and machinery in nature.

Revenue and compliance cost impacts

The changes made by the Amending Regulation have no impact on revenue over the forward estimates.

All of the changes made by the Amending Regulation are minor and/or machinery in nature and result in an unquantifiable but expected small reduction in compliance costs.

Details and commencement

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*

Details of the Amending Regulation, including a Statement of Compatibility with Human Rights, are set out in the Attachment. Finding tables for the provisions rewritten or consolidated by Schedule 1 are set out in the Appendix.

Part 1 of Schedule 1 to the Amending Regulation commences on 1 July 2015 - at the same time as Division 2 of Part 1 of Schedule 2 to the *Treasury Legislation Amendment (Repeal Day) Act 2015*. Part 2 of Schedule 1 to the Amending Regulation as well as Schedules 2 and 3 commenced on the day after registration.

ATTACHMENT

Details of the Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015* (the Amending Regulation).

Section 2 – Commencement

This section provides that Part 1 of Schedule 1 to the Amending Regulation commences on 1 July 2015 – the same time as Division 2 of Part 1 of Schedule 2 to the *Treasury Legislation Amendment (Repeal Day) Act 2015*. Part 2 of Schedule 1, as well as Schedules 2 and 3 to the Amending Regulation commence the day after registration.

Section 3 – Authority

This section provides that the Regulation is made under the:

- *A New Tax System (Goods and Services Tax) Act 1999*;
- *A New Tax System (Wine Equalisation Tax) Act 1999*;
- *Corporations Act 2001*;
- *Fringe Benefits Tax Assessment Act 1986*;
- *Income Tax Assessment Act 1936*;
- *Product Grants and Benefits Administration Act 2000*;
- *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;
- *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;
- *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
- *Superannuation Guarantee (Administration) Act 1992*;
- *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
- *Taxation Administration Act 1953*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Sunsetting amendments

Part 1 of Schedule 1 – Amendments commencing on 1 July 2015

Schedule 1 amends the *Fringe Benefits Tax Regulations 1992*, the *Income Tax (Excluded STBs) Regulations*, the *Income Tax Regulations 1936*, the *Income Tax (Farm Management Deposits) Regulations 1998*, the *Product Grants and Benefits Administration Regulations 2000*, the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997*, the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004*, the *Superannuation Guarantee (Administration) Regulations 1993*, the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* and the *Taxation Administration Regulations 1976* to:

- repeal existing spent or redundant regulations;
- repeal regulations that will become spent or redundant following the commencement of the *Treasury Legislation Amendment (Repeal Day) Act 2015*;
- consolidate duplicated taxation administration provisions into the *Taxation Administration Regulations 1976*; and
- update and modernise regulations to reflect modern drafting practices and the modern commercial environment.

Repeal of existing spent or redundant regulations

Schedule 1 repeals a number of spent or redundant regulations. *[items 4, 7, 9 to 13, 15 to 17, 20 to 25, 35, 36, 39, 41, 43, 45, 48, 50, 53, 57, 58, 60 and 74 to 78 in Part 1 of Schedule 1 (in whole or in part)]*

Repeal of regulations that have or will become spent or redundant following the commencement of the Treasury Legislation Amendment (Repeal Day) Act 2015

Schedule 1 also repeals a number of regulations that have or will become spent or redundant upon the commencement of Schedule 2 to the *Treasury Legislation Amendment (Repeal Day) Act 2015*. *[items 7, 8, 12, 14, 17, 19, 32 to 34, 37 to 42, 46, 48, 51, 53 to 56, 59, 71 and 80 in Part 1 of Schedule 1 (in whole or in part)]*

Further, Schedule 1 also updates the *Taxation Administration Regulations 1976* to reflect the consolidation of a number of duplicated taxation administration provisions made by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. *[items 59 and 79 to 81 in Part 1 of Schedule 1 (in whole or in part)]*

Consolidate duplicated taxation administration provisions into the Taxation Administration Regulations 1976

Schedule 1 consolidates a number of duplicated taxation administration provisions contained in various regulations into the *Taxation Administration Regulations 1976*. These provisions include rules about approved forms and address for service. *[items 4, 7, 12, 18, 30, 39, 41, 44, 47, 49, 52, 53, 58, 61 to 70 and 80 in Part 1 of Schedule 1 (in whole or in part)]*

Updated and modernised regulations

Finally, Schedule 1 updates and modernises various regulations that are out of date or do not reflect current drafting practice. *[items 1 to 3, 5 to 6, 26 to 29, 31, 72 to 73 and 82 to 83 in Part 1 of Schedule 1 (in whole or in part)]*

Part 2 of Schedule 2 – Amendments commencing on the day after registration

Part 2 of Schedule 1 amends the *A New Tax System (Goods and Services Tax) Regulations 1999*, the *A New Tax System (Wine Equalisation Tax) Regulations 2000* and the *Taxation Administration Regulations 1976* to update terminology to reflect changes made by the *Treasury Legislation Amendment (Repeal Day) Act 2015* and to update cross-referencing to reflect previous changes to the taxation laws.

Schedule 2 – car expense rates

Car expenses

Motor vehicle expenses incurred in the course of deriving assessable income or carrying on a business are deductible for income tax purposes under section 8-1 of the ITAA 1997. Division 28 of the ITAA 1997 outlines the rules for calculating and substantiating deductions for car expenses. The taxpayer can calculate a deduction for car expenses using one of four specified methods. The ‘cents per kilometre’ method in section 28-25 is one of the four methods available to taxpayers. Under the ‘cents per kilometre’ method, the number of business kilometres the car travelled during the income year, up to a maximum of 5,000 km, is multiplied by the cents per kilometre rate for the car. The relevant cents per kilometre rate is determined in relation to the car’s engine capacity and is prescribed in the regulations.

Regulation 28-25.01 of the *Income Tax Assessment Regulations 1997* provides that the rates for calculating deductions for car expenses are set out in Part 2 of Schedule 1 to these regulations. The rates currently prescribed apply only up to and including the 2013-14 income year. It is necessary to update the rates for calculating car expense deductions for the 2014-15 year.

The rates are also relevant for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986). The definition of ‘basic car rate’ in subsection 136(1) of the FBTAA 1986 provides that the rate is the same as that prescribed for the purposes of section 28-25 of the ITAA 1997. ‘Basic car rate’ is used in the calculation of the taxable values of a number of fringe benefits.

The cents per kilometre rates are generally updated every year in the regulations in accordance with the annual movement of the Private Motoring Subgroup of the consumer price index (CPI) to the end of September rounded to the nearest whole cent.

Generally, where a decline in the index series has occurred, the relevant rates are those of the previous year, with any growth after that point in time calculated from the previous high point in the series.

For example, there was no change in the cents per kilometre rates from 2008-09 to 2012-13 (if strict indexation had been adhered to the rates would have fallen in 2009-10 to 59 cents for small cars, 70 cents for medium cars and 71 cents for large cars, and remained at these levels for 2010-11, and then risen to 62 cents for small cars, 73 cents for medium cars and 74 cents for large cars in 2011-12 and 62 cents for

small cars, 74 cents for medium cars and 75 cents for large cars in 2012-13). The rates are reviewed each year.

The regulation is updated with new rates each year.

Schedule 2 to the Amending Regulation amends the *Income Tax Assessment Regulations 1997* to specify the following rates for the 2014-15 income year:

Year of income	Small car	Medium car	Large car
2014-15	65.00	76.00	77.00

The rates for the 2014-15 income year are the same as those for the 2013-14 income year, as there was a decline in the relevant component of the CPI.

Consistent with the definition of ‘basic car rate’ in the FBTAA 1986, this rate will also apply when calculating the value of certain fringe benefits provided in the 2014-15 fringe benefit tax year.

Technical correction

Subdivision 30-C of the *Income Tax Assessment Regulations 1997* sets out special rules for particular gifts of property to deductible gift recipients. Amongst other things, section 30-212 of the ITAA 1997 requires that in some cases the person making such a gift or contribution must seek a valuation from the Commissioner, for which the Commissioner may charge an amount worked out in accordance with the regulations.

Division 30 of the *Income Tax Assessment Regulations 1997* sets out how this amount is to be determined, including specifying that applications must include the application fee specified by the approved form, which must not be more than \$1,000.

Paragraph 30-212.02(c) of the Regulations previously provided: ‘include the application fee required by the approved form, which must not be more \$1,000’.

This sentence was missing a ‘than’ before the \$1,000. Schedule 2 to the Amending Regulation amended the sentence to read: ‘include the application fee required by the approved form, which must not be more *than* \$1,000’.

Schedule 3 – Low Income Superannuation Contribution reporting

Subregulation 7.9.20(1) of the *Corporations Regulation 2001* prescribes specific reporting requirements for periodic statements provided by superannuation funds (other than self-managed superannuation funds) to members. Paragraph 7.9.20(1)(m) requires a periodic statement to report the net amount of government co-contributions received during the reporting period. Subregulation 7.9.20(2A) requires that for the purposes of paragraph 7.9.20(1)(m), a superannuation fund must separately state the amount of government co-contribution and the amount of the Low Income Superannuation Contribution (LISC) received. A note to subregulation 7.9.20(2A) refers to section 12B of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* that applies laws in relation to a government co-contribution in the same way to a LISC.

Item 1 of Schedule 3 of the Amending Regulation amends subregulation 7.9.20(2A) to permit rather than require superannuation funds to separately state the amount of government co-contribution and LISC received during a reporting period. Superannuation fund trustees that do not separately disclose these amounts will still

be required to include the combined amount of the government co-contribution and the LISC received in the net amount of government co-contributions for the reporting period.

This amendment will enable superannuation funds to continue to use their existing reporting systems for superannuation co-contribution amounts until payments of the LISC are no longer received. Where a fund reports an aggregate amount on a periodic statement it should be accompanied by additional information to assist the member in understanding the nature of the contribution amount included on the periodic statement. Importantly, superannuation funds that have concerns about the clarity of reporting an aggregated amount can choose to separately report the LISC and the superannuation co-contribution.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Treasury Laws Amendment (2015 Measures No. 1) Regulation 2015* (the Amending Regulation) amends various taxation and superannuation regulations to:

- repeal spent or redundant taxation and superannuation laws;
- consolidate duplicated taxation administration provisions contained in regulations under various taxation Acts into a single set of provisions in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953);
- update the regulations to reflect changes made by Schedules 2 and 4 to the *Treasury Legislation Amendment (Repeal Day) Act 2015*.
- specify rates to be used in calculating car expenses for the income tax law and fringe benefits tax law;
- correct a minor grammatical error; and
- give superannuation funds the option of either separately reporting the amount of superannuation co-contribution and the amount of Low Income Superannuation Contribution (LISC) received during a reporting period on periodic member statements or alternatively reporting these two amounts as an aggregate amount until the repeal of the LISC from 1 July 2017;

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

APPENDIX

FINDING TABLES

This Explanatory Statement includes finding tables to assist in identifying which provision in the Amending Regulation corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to old law in the finding tables are to the provisions in the existing taxation regulations as set out in the tables below.

References to the new law are to provisions of the *Taxation Administration Regulations 1976*, unless otherwise indicated. Also, in the finding tables:

- *No equivalent* means that this is a new provision that has no equivalent in the old law. Typically, these would be guide material.
- *Omitted* means that the provision of the old law has not been rewritten into the new regulations (however, it may have been moved into the primary law – for some examples of this see the *Treasury Legislation Amendment (Repeal Day) Act 2015*).

Finding table — old law to new law

<i>Old law</i>	<i>New law</i>
<i>Fringe Benefits Tax Regulations 1992</i>	
11	Omitted
13	11
18 to 22	Part 2A
23	45
Schedule 1	Omitted
Schedule 2	Schedule 2
<i>Income Tax (Excluded STBs) Regulations</i>	
All provisions	Omitted
<i>Income Tax Regulations 1936</i>	
7	Omitted
13	Omitted
14AA	Omitted
19	Omitted
Part 4A	Part 2A
Part 6	Omitted
171	45
172	45
174	11
175	Omitted
Schedule 5	Schedule 2

<i>Old law</i>	<i>New law</i>
<i>Product Grants and Benefits Administration Regulations 2000</i>	
4	Omitted
4A	Omitted
4AA	Omitted
4AB	Omitted
5	Omitted
7	11
8	Omitted
Schedule 1	Omitted
<i>Superannuation Contributions Tax (Assessment and Collection) Regulations 1997</i>	
6 to 8	Part 2A
11	Omitted
13	Omitted
14	Part 2A
15	45
18	11
Schedule 10	Schedule 2
<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Fund) Assessment and Collection Regulations 1997</i>	
8 and 9	Part 2A
12	Omitted
14	Omitted
15	Part 2A
16	45
19	11
Schedule 5	Schedule 2
<i>Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004</i>	
6	Omitted
13 to 16	Part 2A
19	Omitted
20	Omitted
21	Omitted
22	Part 2A
23	45
Schedule 1	Omitted
<i>Superannuation Guarantee (Administration) Regulations 1993</i>	

<i>Old law</i>	<i>New law</i>
8	Omitted
9	18
12	11
13 to 13E	Part 2A
14	Omitted
15	45
Schedule 3	Schedule 2
<i>Superannuation (Unclaimed Money and Lost Members) Regulations 1999</i>	
10	11
Schedule 1	Schedule 2
<i>Taxation Administration Regulations 1976</i>	
3	Omitted
9	45
10	Part 2A
12	Omitted
32 and 33	Omitted