

EXPLANATORY STATEMENT

STATUTORY RULES 1990 No. 152

Issued By The Authority Of The Treasurer

INCOME TAX ASSESSMENT ACT 1936

INCOME TAX REGULATIONS (AMENDMENT)

These regulations amend the Income Tax Regulations that prescribe the form of the return that is required to be lodged under the Income Tax Assessment Act 1936 (the Act). The amending regulations authorise the re-design of certain parts of return forms, including the declaration by a person who charges a fee for preparing the return. The amendments also take account of the fact that certain return forms are to be simplified as part of the move to 'self-assessment' (that is, the requirement on companies to calculate their own taxable income and the tax payable thereon). The regulations amend regulations 10, 11, and 11A of the Income Tax Regulations and also repeal parts of those regulations and regulation 33 in its entirety.

A feature of the changes to return forms is that a company will now only be required to lodge a simplified one page (front and back) return containing a summary of the taxpayer's income, deductions, adjustments, balance sheet and specified statistical information.

Notes on each of the amending regulations are set out below -

Principal Regulations

Regulation 1 facilitates reference to the Income Tax Regulations which, in these amending regulations, are referred to as the "Principal Regulations".

Returns by persons other than companies

Regulation 2 amends regulation 10 of the Principal Regulations. Regulation 10 specifies the form of return required to be used by persons other than companies, detailing the information and documentation required to be provided in the return.

In accordance with current drafting practices paragraph (a) of Regulation 2 inserts the word 'and' at the end of each of the existing paragraphs (a), (b) and (c) of subregulation 10(1) of the Principal Regulations.

By paragraph 10(1)(d) of the Principal Regulations, the form of return for persons other than companies shall include details of the Sources of Information used to prepare the return and a

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Certificate to be signed by Tax Agents as detailed in regulation 33 of the Principal Regulations. In the new return forms proposed for the 1989-90 year of income the Statement relating to Sources of Information will no longer be required and the Tax Agents' Certificate will be changed (refer to the notes on paragraph 2(c) of the amending Regulations). Paragraph (b) of Regulation 2 omits from paragraph 10(1)(d) of the Principal Regulations the reference to "Sources of Information and Certificate to be signed by Tax Agents".

Paragraphs (c) and (d) of Regulation 2 add new paragraph (1)(f) to subregulation 10(1) and new subregulation (3) to regulation 10.

New paragraph 10(1)(f), inserted by paragraph (c) of Regulation 2, requires that a return form, where an agent has charged a fee for preparing or assisting in the preparation of the return, incorporate a certificate, signed in accordance with section 165 of the Act, in the form specified in subregulation 10(3).

Subregulation 10(3), which is being added at the end of regulation 10 of the Principal Regulations by paragraph (d) of Regulation 2, will prescribe for the purposes of subsection 165(1) of the Act, the form of an agent's certificate that is required to be incorporated in the non-company return by new paragraph (f) of subregulation 10(1).

The certificate is to the effect that the return has been prepared in accordance with information supplied by the taxpayer and requires the agent to specify the books of accounts maintained by or on behalf of the taxpayer. This certificate will replace the statement of sources of information and agents certificate previously required under regulation 33 of the Principal Regulations to be completed in accordance with Form 7 to the First Schedule of those regulations.

Returns by companies

Regulation 3 amends regulation 11 of the Principal Regulations. Regulation 11 sets out the form of a company income tax return and other documentation required to be lodged with the return form.

Paragraphs (a) to (g) of subregulation 11(1) require that a company return include statements of specified information (including a statement of dividends and interest paid or credited to non-residents, a statement of salaries, wages and commission paid and allowances to employees and in the case of private companies a statement of all dividends paid or credited), a certificate by a Tax Agent (where appropriate) and a declaration by the Public Officer. Under self-assessment of companies proposed for the 1989-90 and subsequent income years the statements of certain information will no longer be required to be lodged with the return and the form of the Tax Agent certificate and the Public Officer declaration is to be altered.

Paragraph (a) of Regulation 3 omits subregulation 11(1) of the Principal Regulations and substitutes a new subregulation (1).

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New subregulation (1) sets out new requirements for the information and documentation to be included with the company return form.

New paragraph 11(1)(a) requires that a company return must include a statement reconciling the net profit and loss account with the taxable income of the taxpayer.

By new paragraph 11(1)(b), where an agent has charged a fee for preparing or assisting in the preparation of a company return, the return must incorporate a certificate, in the form specified in new subregulation (5) (refer to notes on paragraph (c) of Regulation 3), signed by the agent in accordance with section 165 of the Act.

New paragraph 11(1)(c) requires that a company return provide a declaration by the Public Officer that the particulars shown in the return and the relevant records used to ascertain the taxable income derived by the company from all sources in and out of Australia during the year of income are true and correct.

Existing subregulation 11(2) of the Principal Regulations requires that every company return be accompanied by statements containing specified information about dividend and interest payments made by the company during the year preceding the year of tax and certain information in respect of debentures payable to bearer. An important feature of the move to self-assessment of companies is that taxpayers will only be required to lodge minimal documentation in a return and further information as and when required. The statements required under subregulation 11(2) will now only be required when requested by the Commissioner.

Paragraphs (b) and (c) of Regulation 3 give effect to the changed requirements by amending subregulation 11(2) of the Principal Regulations and inserting new subregulations 11(4) and (5).

The amendment made by paragraph (b) makes subregulation 11(2) of the Principal Regulations subject to new subregulation 11(4). New subregulation 11(4), added to the Principal Regulations by paragraph (c), provides that the requirement in existing subregulation 11(2) that a return be accompanied by certain statements will be satisfied if the statements are lodged, when called for by the Commissioner by a general notice published in the Commonwealth of Australia Gazette or by a direct notice to the company, at the same place as the company's return is lodged or at such other place as is specified in the notice.

Paragraph (c) also adds new subregulation (5) to regulation 11 of the Principal Regulations. New subregulation (5) specifies the form of the agent's certificate for the purposes of subsection 165(1) of the Act. New paragraph (b) of subregulation 11(1) (refer earlier notes) requires that the agent's certificate be incorporated in company return forms prepared by agents. The agent's certificate prescribed by new subregulation (5) is to the effect that the return has been prepared in accordance with information supplied by the taxpayer.

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Simplified return forms

Regulation 4 of the amending regulations amends regulation 11A of the Principal Regulations. Under regulation 11A the Commissioner may provide forms of returns which omit any of the items, parts, particulars or statements specified in regulations 10 and 11. The amendment made by Regulation 4 inserts the words 'or alter' into regulation 11A and has the effect of giving the Commissioner more flexibility in dealing with circumstances relating to the design of the return form as they arise under self-assessment.

Repeal

Regulation 5 of the amending regulations repeals regulation 33 of the Principal Regulations. Regulation 33 set out the particulars required in the statement relating to sources of information that was required to be made by an agent who charges a fee and business taxpayers who prepare their own returns. The statement relating to sources of information by business taxpayers will no longer be required in return forms and the agent's certificate is to be replaced by a new certificate in the form prescribed by new subregulations 10(3) and 11(5) which are added to the Principal Regulations by these amending Regulations.

First Schedule

Regulation 6 of the amending regulations amends the First Schedule to the Principal Regulations to omit Form 7 consequential upon the repeal of regulation 33 of the Principal Regulations by Regulation 5.