Income Tax Regulations 1991 No. 301

EXPLANATORY STATEMENT

STATUTORY RULES 1991 No. 301

Issued by the authority of the Treasurer

Income Tax Assessment Act 1936

Income Tax Regulations

These regulations will amend the Income Tax Regulations governing the application of the tax instalment deduction provisions of the Income Tax Assessment Act 1936 (the Act) in respect of a purchased superannuation pension or annuity.

Section 27H of the Act allows an amount, equal to that part of the purchase price (the undeducted purchase price) for which no tax concession (e.g., a tax deduction) has ever been given, to be returned tax-free to the pensioner or annuitant over the term of the pension or annuity. This is done by not counting a part of the annual pension or annuity as assessable income. Broadly, the annual tax-free amount (the deductible amount) is calculated by dividing the undeducted purchase price by the number of years during which the pension or annuity is expected to be paid.

Superannuation pensioners and annuitants who have a deductible amount have often sought a reduction in the ordinary rates of PAYE deductions. Up until now the Commissioner of Taxation has granted individual requests by exercising the discretion in section 221D of the Act, which allows the Commissioner to vary the prescribed rates of PAYE deductions.

The regulations will allow recipients of superannuation pensions and annuities to give a declaration to the relevant payer in order to obtain a reduction in tax instalment deductions to take account of the deductible amount.

Throughout this statement, in order to be consistent with existing regulations, the term "employer" has been used to refer to the payer of a purchased superannuation pension or annuity and likewise, "employee" should be taken as referring to the recipient of such a pension or annuity even if the person would not be an employee of the payer in the ordinary sense of the word.

Regulation 1 provides for these amending regulations to come into effect on 1 November 1991.

Reguulation 2 provides for the Income Tax Regulations to be amended in the manner set out in these amending Regulations.

Regulation 3 amends regulation 70 by inserting new paragraph 70(4)(d). Existing paragraphs (a), (b) and (c) of subregulation 70(4) list the types of declaration that an employee may furnish with their employer in order to have the general rates of tax instalment deductions reduced to take account of an entitlement to the general exemption (i.e., the tax-free threshold), a concessional rebate in respect of a dependant, a zone rebate, a medicare levy variation or a rebate under section 159SM or 159SU of the Act.

Recipients of superannuation pensions and annuities may be entitled to have an amount, equal to that part of the purchase price for which no tax concession has ever been given, returned tax-free over the term of the pension or annuity.

Under an amendment being made by regulation 4, employees who are entitled to this exclusion (under section 27H of the Act) are able to give a declaration (under new regulation 88A or paragraph 92(d)) to the relevant employer seeking a reduction in the amount of tax instalment deductions that would otherwise be made.

The amendment made by regulation 3 extends the list in subregulation 70(4) to include a declaration furnished by a taxpayer under new regulation 88A.

Regulation 4 inserts new regulation 82A, which provides the basis for determining the reduced rate of PAYE deductions to be made from an amount of superannuation pension or annuity. Paragraphs (a) and (b) of new regulation 82A set down the tests to be met before the regulation will apply. They are that the salary or wages of an employee comprise an amount of superannuation pension or annuity, and that the employee has lodged a declaration under new regulation 88A (see notes on regulation 6).

Where the tests in paragraphs (a) and (b) are met, the amount of PAYE deduction that would otherwise be made may be reduced.

The amount of PAYE deduction from a superannuation pension or annuity payment is the amount presently prescribed in the income tax regulations if the pension or annuity payment is reduced by an amount calculated in accordance with the formula

$$\frac{\text{Deductible 27H amount}}{\text{Number of instalments}}$$

"Deductible 27H amount" means the deductible amount calculated in accordance with section 27H of the Act. In broad terms, this amount is calculated by dividing that part of the purchase price of the pension or annuity that has not attracted a tax deduction (the undeducted purchase price) by the number of years during which the pension or annuity is expected to be paid. The deductible amount is an annual amount of the pension or annuity that is treated as tax-free.

"Number of instalments" means the number of instalments of superannuation pension or annuity that are payable to the employee in the year of income.

Regulation 5 makes minor technical amendments to existing regulation 83.

Regulation 6 inserts new regulation 88A. An employee who is entitled to exclude a deductible amount from an amount of superannuation pension or annuity may have the exclusion taken into account in determining the appropriate rate of PAYE deductions.

To do so, the employee must furnish a declaration under subregulation 88A(1) to the employer specifying that the employee is entitled to the exclusion.

In the event that circumstances pertaining to an exclusion of the deductible amount change, new subregulation 88A(2) allows the employee to furnish another declaration to the employer setting out the circumstances as changed.

New subregulation (3) simply requires that declarations must be lodged in a form provided by the Commissioner of Taxation, be signed by the employee, and dated. Subregulations (4) and (5) allow the declaration to be combined with other forms on which similar declarations may be made, e.g. to spouse rebate entitlement or a rebate under section 159SM or 159SU of the Act.

Regulation 7 amends existing subregulation 90(4) to include reference to a declaration under regulation 88A. Subregulation 90(4) provides that any declaration lodged with an employer by an employee is overridden by any subsequent declaration lodged by the employee.

Regulation 8 amends regulation 92. Regulation 92 applies where an employee furnishes a declaration to the Commissioner of Taxation instead of an employer. Existing regulation 91 allows for declarations to be lodged with the Commissioner :n this way where it as impracticable for the employee to lodge a declaration with the employer, or where the employee does not desire to lodge a declaration with the employer.

New paragraph 92(d) specifies that where a declaration referred to in paragraph 70(4)(d) is furnished by an employee, the Commissioner may issue to the employee a certificate specifying that a declaration under regulation 88A has been furnished to the Commissioner. The certificate issued by the Commissioner may also specify the amount referred to in subregulation 88A(1) that applies to the employee. This amount is the deductible amount calculated in accordance with section 27H of the Act. The certificate is also to specify the date on which it is to cease to have effect, being a date not more than 13 months after the date of issue of the certificate.

Regulation 9 amends regulation 93 which deals with the effect of a certificate issued to an employee by the Commissioner of Taxation under regulation 92. New paragraph (1)(h) specifies that where the Commissioner has issued a certificate to an employee under new paragraph 92(d)), it is given effect to as though it were a declaration furnished under regulation 88A.

Regulation 10 amends regulation 94 which deals with the operation of a certificate issued to an employee by the Commissioner of Taxation under regulation 92. Subregulation 94(1) is amended to include a reference to a Commissioner's certificate issued to the employee under new paragraph 92(d) (see notes on regulation 8).