Income Tax Regulations (Amendment) 1993 No. 91

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 91

Issued by Authority of the Assistant Treasurer

Income Tax Assessment Act 1936

Income Tax Regulations (Amendment)

These regulations amended the *Income Tax Regulations* to:

- provide for new rates of tax instalment deductions (PAYE deductions) effective from 1 July 1993;

- vary the formula in the regulations which provides for calculation of the notional tax of a company for a year in which the company rate of tax changes;

- change the rate of deduction from prescribed payments where a payee fails to either quote a reporting exemption or to provide a payee declaration to a payer, and

- extend eligibility for the beneficiary rebate to recipients of Textile, Clothing and Footwear Special Allowance and make some technical amendments to provisions for pensioner and beneficiary rebates.

Tax Instalment (PAYE) Deductions

The amended regulations prescribe the rates at which PAYE tax instalments are to be deducted from salary or wages paid on or after 1 July 1993. They give effect to increased low income thresholds below which Medicare levy will not be payable and to the increase in the rate of Medicare levy from 1.25 per cent to 1.4 per cent.

The increased levels of the low income thresholds below which Medicare levy will not be payable by an individual, a married couple or a sole parent in the 1992-93 financial year were announced in the 1992-93 Budget. The shading-in of the levy above a threshold at the rate of 20 cents in the dollar of the excess of the income above the threshold will continue. For the 1992-93 financial year, individuals with taxable income of $11,887 or less and married couples or sole parents with family incomes of $20,070 or less will be exempt from the levy. The income threshold for couples will increase by a further $2,100 for each dependent child or student The new low income thresholds were enacted in *Medicare Levy Amendment Act 1992.*

The increase in the rate of Medicare levy from 1.25 per cent to 1.4 per cent was announced in the 1992-93 Budget to take effect from 1 July 1993 and was enacted in *Medicare Levy Amendment Act (No. 2 Medicare) 1992.*

Variation of Amounts of Notional Tax of Companies

Where no estimate of a particular company's level of tax liability has been submitted, the payment arrangements applicable to the company depend on its amount of "notional tax". The tax law provides that the notional tax of a company in respect of a year of income is an amount equal to the income tax assessed in respect of the taxable income of the company for the previous year. For example, the notional tax of a company in respect of its 1993-94 year of income would be the income tax assessed in respect of the 1992-93 year of income.

Where the rate of income tax payable by companies for a financial year differs from the rate declared by the Parliament for the next succeeding financial year, the law authorises the variation of the amount of notional tax. This is achieved by amending the Income Tax Regulations to reflect the different rate of tax.

The amending regulation ensured that instalments of company tax in respect of income of the 1993-94 year, and notified to companies and payable by them on or after 1 July 1993 are calculated having regard to the new 33 per cent rate of tax that is to apply in calculating the tax payable by companies on income of the 1993-94 year.

Deduction from Prescribed Payments

Where a payee fails to either quote a reporting exemption or provide a payee declaration to a payer before a prescribed payment is made the payer is required to deduct the "nondeclaration percentage" from the payment. To reflect the increase in the Medicare levy from 1.25 per cent to 1.4 per cent the amending regulation increased the "non-declaration percentage" from 48.25 per cent to 48.4 per cent for prescribed payments made on or after 1 July 1993.

Pensioner and Beneficiary Rebates

The amending regulations extended entitlement to the beneficiary rebate to recipients of the Textile, Clothing and Footwear (TCF) Special Allowance. Retrenchees from the TCF industries may be eligible to participate in one of two training programs: the TCF Special Allowance or the Formal Training Assistance programs. Under the Regulations, participants in the Formal Training Assistance program already were entitled to beneficiary rebate as recipients of Job Search or Newstart Allowance. The amending regulations also effected technical amendments, including a simplification of the style of expression of definitions, relating to pensioner and beneficiary rebates.

General

Notes on the amending regulations are set out below:

Regulation 1 - Commencement

Subregulation 1.1 provided that the amending regulations 3, 4, 5, 7 and 12 were to commence on 1 July 1993.

Subregulation 1.1 provided that the amending regulations 8 and 10 were taken to have commenced on 1 July 1992.

*Sub*regulation 1.3 provided that the amending regulation 9 is taken to have commenced on 1 July 1991.

The retrospectivity of regulations 8 and 10 which are taken to have commenced on 1 July 1992 and regulation 9 which is taken to have commenced on 1 July 1991 do not affect the rights of any person (other than the Commonwealth) in a manner prejudicial to that person. Nor do they impose any liability on such a person. They are, therefore, in accord with subsection 48 (2) of the *Acts Interpretation Act 1901.*

The remainder commence on gazettal.

Regulation 2 - Amendment

Subregulation 2.1 provided that the Income Tax Regulations be amended as set out in the amending Regulations.

Regulation 3 - Regulation 70 (Interpretation)

A single employee whose taxable income does not exceed a threshold prescribed in the Levy Act is not liable to pay the Medicare levy. Where the taxable income exceeds the figure prescribed but does not exceed a "shading out point" prescribed in that Act the taxpayer pays the levy at the rate of 20 per cent. On taxable income above the prescribed shading out point the taxpayer pays the normal rate of levy. At the shading out point the amount of levy payable at a rate of 20 per cent is the same as if levy had been payable on the whole of the taxable income.

For families the assessment is more complicated. One reason is that the "shading out point " is not prescribed in the Medicare Levy Act as it Will vary with the number of children in the care of a couple. For the purpose of calculating weekly PAYE instalment deductions the "shading out point" for families is defined in subregulation 70 (1) in terms of a formula. The formula sets the shading out point so that the amount of levy payable at the point is equivalent to the amount that would have been payable if the normal rate of levy had been payable on the family income. Before it was amended the formula was:

20A/18.75

where A is the "weekly family income threshold" of the employee. The denominator is the shading out rate minus the Medicare levy rate, both in percentage terms.

The weekly family income threshold, also defined in subregulation 70 (1), is based on the family income threshold set by definition in the Levy Act.

Subregulation 3.1 amended the definition of "shading out point" in subregulation 70 (1) to take account of the increase in the rate of Medicare levy from 1.25 per cent to 1.4 per cent. This was achieved by substituting "18.6" for "18.75" in the formula.

Regulation 4 - Regulation 72 (Rate of deductions - employee claiming general exemption only and employee, not being a prescribed person, claiming general exemption and Medicare levy variation)

Regulation 4 amended regulation 72 of the Principal Regulations which operates to determine the rate of deductions to be made from an employee's weekly earnings where -

- the employee claims the general exemption (the exemption from deduction on the salary or wages of a week that do not exceed $99 only, including an employee who may also be exempt from Medicare levy (a "prescribed person") but who has not furnished a Medicare levy variation declaration in which the employee claims exemption from the levy (paragraph 72 (1) (c)); or

- the employee, not being a prescribed person, claims the general exemption and furnishes a Medicare levy variation declaration claiming exemption from the levy (paragraph 72 (1) (d)).

Paragraph (1) (c) of regulation 72 applies where paragraph (1) (d) does not apply, that is, where the employee has not furnished a Medicare levy variation declaration or where the employee has furnished a variation declaration and the employee's relevant amount of earnings is less than the $225 (previously $222) or is equal to or greater than the "shading out point". The tax instalment amount is calculated using the formula in subregulation 71(3), and the components for the formula relevant to paragraph 72 (1) (c), as set out in Table 1 of Schedule 3.

The "shading out point" in relation to an employee is the maximum amount the employee may earn in a week or part of a week before full Medicare levy, or in the case of a "prescribed person", half levy, is incorporated in his or her weekly tax instalment deduction amount. It is calculated in accordance with the definition of that expression in subregulation 70(1).

Paragraph (1) (d) of regulation 72 applies when an employee, not being a prescribed person, furnishes a Medicare levy declaration form to his or her employer and the relevant amount of earnings of the employee is within the Medicare levy shading-in range for the employee. That is, the employee's earnings are not less than $225 previously $222) but less than the employee's "shading out point". The tax instalment amount is the amount calculated in accordance with paragraph 1 (c) reduced by the Medicare levy adjustment amount determined under subregulation 72(2) and (3).

Paragraphs (2) (a) and 2 (b) of regulation 72 operate to remove from the amount of tax instalment deductions calculated for subparagraph 72 (1) (d) (iii) the amount of Medicare levy already included in the instalment deductions by the operation of the formula in regulation 71. The reason for removal is that the level of the weekly earnings is below the Medicare levy threshold (that is, the weekly family income threshold). Paragraph 2 (c) operates to shade-in the levy when the weekly earnings of the employee are just above the level of the weekly family income threshold.

Amending regulation 4 contained the necessary amendments to subparagraph 72 (1) (d) (ii), paragraph 72 (2) (a) and paragraph 72 (2) (b) to account for the new low income threshold for individuals above which the Medicare levy is included in instalment deductions. The amendments substitute references to threshold amounts determined on the basis of the new Medicare levy thresholds.

The amounts varied were as follows:

Item	Regulation Reference	Amending Subregulation	1992-93	1993-94
Individual Threshold	72 (1) (d) (ii)	4.1	$222	$225
Individual "Shading Out Point"	72 (2) (a)	4.2	$237	$242
Individual Threshold	72 (2) (a)	4.3	$222.42	$225.11
Individual "Shading Out Point"	72 (2) (b)	4.4	$237	$242

Corresponding increases to reflect the 1992-93 Medicare levy low income thresholds are reflected in components in items numbered 2, 3 and 4 in the new Table 1 of Schedule 3 inserted in the Principal Regulations by amending subregulation 12.1.

Paragraph 72 (2) (b) contains a formula to calculate the amount removed from the amount of tax instalment deductions, where the latter amount is not less than $242 (previously $237) but is less than the weekly family income threshold. In this formula the relevant amount of earnings of the employee in respect of the particular week or part thereof is multiplied by the rate of Medicare levy. The formula as it is expressed, A/80, is equivalent to A x 0.0125 where A is the relevant amount of earnings.

<u>Subregulation 4.5</u> amended paragraph 72 (2) (b) to take account of the increase in the Medicare levy from 1.25 per cent to 1.4 per cent by expressing the formula as follows:

A x 0.014

where A is the relevant amount of earnings of the employee in respect of that week or part thereof and 0.014 is the rate of Medicare levy.

The amount removed from the amount of tax instalment deductions by paragraph 72 (2) (c) in shading in the levy is also calculated by use of a formula which was also recast.

Subregulation 4.6 accounted for the increase in the rate of Medicare levy and recast the formula in paragraph 72 (2) (c) as follows:

B x 0.014 - (A - B) x 0.186

where:

A is the relevant amount of earnings of the employee in respect of that week or part thereof:

B is the weekly family income threshold in relation to the employee;

0.014 is the rate of Medicare levy; and

0.186 is the difference between the shading out rate, 0.20 (20 percent), and the normal rate of Medicare levy, 0.014 (1.4 per cent).

Regulation 5 - Regulation 73 (Rate of deductions - employee, being a prescribed person, claiming general exemption and Medicare levy variation

Regulation 5 amended regulation 73 of the Principal Regulations. Regulation 73 prescribes the tax instalment amount for an employee who is a prescribed person that is a person exempt from Medicare levy) and who

- claims the general exemption; and

- furnishes a Medicare levy variation declaration to his or her employer in which the employee declares

.. that he or she is exempt from Medicare levy by virtue of being a "prescribed person" with no dependants or with dependants who are also prescribed persons, or

.. that he or she has a dependant who is not a "prescribed person" and the employee is entitled to full or partial relief from the levy.

Paragraph (c) of subregulation 73 (1) applies where the employee has no dependants for Medicare levy purposes or has one or more dependants, each of whom is also a "prescribed person". Where paragraph (c) applies, the tax instalment amount is calculated using the formula in subregulation 71 (3), and the components for the formula relevant to paragraph 73 (1) (c) as set out in Table 2 of Schedule 3.

Paragraphs (d) and (c) of subregulation 73 (1) apply where an employee has a dependent spouse who is not a "prescribed person" or one or more dependent children who am not prescribed persons.

By paragraph (d) where the employee's relevant amount of earnings is less than $380 (previously $361) or is equal to or greater than the "shading out point" in relation to the employee, the tax instalment amount is calculated by using the formula and the components shown in Table 3 of Schedule 3. By the components of the formula specified, no Medicare levy is included in the tax instalment deductions for earnings less than $380. Where the relevant amount of earnings exceeds the employee's "shading out point", levy at half the 1.4 per cent rate is included.

Paragraph (e) of subregulation 73 (1) applies where the employee's relevant amount of earnings is within the range where Medicare levy is shaded-in. The tax instalment amount is the amount calculated as if paragraph (d) applied, by the operation of the formula specified in regulation 71, Medicare levy is included in the tax instalment deductions at the relevant level of earnings and it is necessary to make a reduction to shade-in the levy.

Subregulations (2) and (3) of regulation 73 set out the basis for the calculation of the Medicare levy adjustment amount (the reduction) referred in paragraph 73(1) (e) in much the same way as the Medicare levy adjustment amount is calculated in accordance with subregulations 72 (2) and (3) (see earlier notes for an explanation of the operation of those subregulations). The formulae in paragraphs (a), (b) and (c) of subregulation 73 (2) allow for the operation of sections 8 and 9 of the Medicare Levy Act 1986 that provide for levy to shade-in for an employee who is not a "prescribed person".

Regulation 5 amended paragraphs 73 (1) (e), 73 (2) (a) and 73 (2) (b) to account for the new low income family threshold. The amendments will omit references to the present weekly equivalent Medicare levy thresholds and will substitute references to the threshold amounts determined on the basis of the new Medicare levy thresholds.

The amounts varied were:

Item	Regulation Reference	Amending Subregulation	Qld	Amended
Family Threshold	73 (1) (e)	5.1	$361	$380
Family, no Dependants "shading out point"	73 (2) (a)	5.2	$384	$408
Family Threshold	73 (2) (a)	5.3	360.66	380.07
Family, no Dependants "shading out point"	73 (2) (b)	5.4	$384	$408

Corresponding increases to reflect the 1992-93 Medicare levy thresholds are reflected in items 2, 3 and 4 in new Table 3 of Schedule 3 inserted in the Principle Regulations by regulation 12.2.

Paragraph 73 (2) (b) contains a formula to calculate the amount removed from the amount of tax instalment deductions, where the latter amount is not less than ($408 previously $384) but is less than the weekly family income threshold. In this formula the relevant amount of earnings of the employee in respect of the particular week or part thereof is multiplied by half the rate of Medicare levy. (The employee affected is liable for Medicare levy at halfrate). The formula as it was expressed, A/160, was equivalent to A x 0.00625 where A is the relevant weekly amount of earnings and 0.00625 was the Medicare levy half-rate (that is, one-half of 0.0125).

<u>Subregulation 5.5</u> amended paragraph 73(2) (b) to account for the increase in the Medicare levy from 1.25 per cent to 1.4 per cent by expressing the formula as follows:

A x 0.007

where A is the relevant amount of earnings of the employee in respect of that week or part thereof and 0.007 is the new Medicare levy half-rate.

The amount removed from the amount of tax instalment deductions by paragraph 73 (2) (c) in shading in the levy is also calculated by use of a formula which was also recast.

<u>Subregulation 5.6</u> accounted for the increase in the Medicare levy (at half-rate) and recast the formula in paragraph 73 (2) (c) as follows:

B x 0.007 - (A - B) x 0.093

where

A is the relevant amount of earnings of the employee in respect of that week or part thereof;

B is the weekly family income threshold in relation to the employee; 0.007 is the Medicare levy half-rate; and

0.093 is one-half the difference between the shading out rate, 0.20 (20 per cent), and the normal rate of Medicare levy, 0.014 (1.4 per cent).

Regulation 6 - Regulation 124 (Variation of amount of notional tax of companies)

Subregulation 6.1 omitted existing regulation 124 and replaced it with a new regulation 124 which provides for the notional tax of a company where the rate of company tax changes. New subregulation 124 (1) contained the formula for ascertaining the amount of notional tax of a company in respect of the 1993-94 year of income:

NT = AT x 33/39

where NT is the amount of notional tax of the company in respect of the 1993-94 year of income and AT is an amount equal to the income tax assessed in respect of taxable income of the company of the 1992-93 year of income.

Subsection 221AD(2) of the Act provides for a date prescribed in the regulations on and after which the amount of notional tax of a company as applies for a year of income when the company tax rate changes. New subregulation 124(2) provided that the prescribed date in regard to the 1993-94 year of income is 1 January 1993.

Regulation 7 - New Regulation 128 (Level of non-deduction percentage)

Regulation 7 inserted new regulation 128 which provided that the reference to 48.25% in the definition of "non-declaration percentage" in subsection 221YHA(1) of the Act would be replaced by the factor specified (in column 3) in the last item in Table 4 in Schedule 3 expressed as a percentage. It is proposed that, from 1 July 1993 the "non-declaration percentage" will be 48.4% until otherwise prescribed.

Regulation 8 - Regulation 148 (Interpretation)

Regulation 148 of the Principal Regulations contains a number of definitions which relate certain benefits, to which rebates apply, to references in *Social Security Act* 1991 (SSA91). The references in SSA91 contain the rates of benefit used to arrive at the annual benefit amounts used in the formula in subregulation 152 (3) to calculate the maximum rate of rebate for each category of beneficiary.

Regulation 8 amended a number of definitions in Regulation 148. Most of these amendments resulted from redrafting to improve style and simplify the definitions with no change of substance. Subregulations 8.1, 8.2, 8.3, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15 and 8.16 are of such a nature.

Subregulations 8.4 and 8.5 corrected spelling errors.

Subregulations 8.6 and 8.7 amended the definition of "dependent partner-rate benefit" consequential on amendment of SSA91 which resulted in reduction of the benefit where the partner was on ABSTUDY. This reduction corresponded with that which already occurred where the partner was on AUSTUDY.

Regulation 9 - Regulation 151 (Rebate in respect of certain pensions)

Subregulation 151(7) provides that the amount of certain exempt pensions may be treated as assessable income for the purpose of calculating unused rebate for transfer to a partner (married or de facto). The method of calculating unused rebate is provided by subregulation 151 (6).

Regulation 9 amended subregulation 151(7) to correct an error whereby age pensions paid under SSA91 and equivalent pensions paid under the Veterans' *Entitlements Act 1986* were wrongly cited in that subregulation as if they were exempt from tax.

Subregulation 9.1 removed the reference to age pensions paid under SSA91.

Subregulation 9.2 removed the reference to age pensions paid under the VEA.

Regulation 10 - Regulation 152 (Rebate in respect of certain benefits)

Subregulation 10.1 corrected a spelling error.

Subregulation 10.2 corrected an erroneous use of "and" for "or".

Subregulation 10.3 amended the definition of "dependent partner-rate benefit" consequential on an amendment of SSA91 which resulted in reduction of the benefit where the partner is on ABSTUDY. This reduction corresponds with that which occurs where the partner is on AUSTUDY.

Regulation 11 - Regulation 152 (Rebate in respect of certain benefits)

Subregulation 11.1 inserted paragraph 152 (5) (ja) so that an amount paid as a benefit under the Textile, Clothing and Footwear Special Allowance would be treated as "annual benefit amount" in the formula for beneficiary rebate. The reference in the inserted paragraph to the SSA91 ensured that the annual benefit amount would be at the same level as for single recipients of Job Search or Newstart Allowance aged 21 or more without dependents.

Regulation 12 - Schedule 3 (Instalments used in calculation of tax instalment amounts in relation to employees)

Regulation 12 omitted Tables 1, 3 and 4 of Schedule 3 to the Principal Regulations and substituted new Tables 1, 3 and 4. As discussed above, the components in Tables 1 and 3 in Schedule 3 were adjusted to account for the 1992-93 Medicare levy low income thresholds. The other changes proposed to Tables 1 and 4 are to account for the increase in the rate of Medicare levy from 1.25 per cent to 1.4 per cent.

Table 1 of Schedule 3 applies where the employee has not supplied a Medicare levy variation declaration and the employee's relevant amount of earnings is less than the low income threshold (Items 1 and 2 in the table) or greater than the "shading out point" (Items 4, 5, 6 and 7 in the table).

Subregulation 12.1 omitted Table 1 and replaced it with a new Table 1. Item 1 in the Table did not change as the general tax free threshold to which it relates did not change. Item 2 changed to reflect the increase in the low income threshold. Item 3 changed to reflect the increase in the "shading out point" which was a function of both the increase in the low income threshold and the increase in the rate of Medicare levy from 1.25 per cent to 1.4 per cent. The changes in Item 4 reflected both the increase in the "shading out point" and the increase in the rate of Medicare levy. The changes in Items 5, 6 and 7 reflected the change in the rate of Medicare levy alone.

Table 3 of Schedule 3 applies where the employee, a "prescribed person" (a person exempt from Medicare levy), has supplied a Medicare levy variation declaration to his or her employer claiming exemption from half Medicare levy. The prescribed person may be liable for half levy where he or she has a dependant who is not a prescribed person.

Subregulation 12.2 omitted Table 3 of the Principal Regulations and replaced it with a new Table 3. Item 1 in the Table did not change as the general tax free threshold to which it relates did not change. Item 2 changed to reflect the increase in the family low income threshold while the changes to items 3 and 4 reflected the changes in both the Medicare levy threshold and the Medicare levy rate. The changes to items 5, 6 and 7 reflected the change to the Medicare levy rate.

Table 4 of Schedule 3 applies where the employee, a resident but not a prescribed person, has failed to provide a declaration. In such circumstances the employee does not take the benefit of the general tax-free threshold and makes no claim in regard to dependants.

Subregulation 12.3 omitted Table 4 and replaced it with a new Table 4. The changes in Table 4 reflected the increase in the Medicare levy rate from 1.25 per cent to 1.4 per cent.