

Income Tax Regulations (Amendment) 1998 No. 14

EXPLANATORY STATEMENT

STATUTORY RULE NO. 14

Issued by the authority of the Assistant Treasurer

Income Tax Assessment Act 1936

Income Tax Regulations (Amendment)

The *Income Tax Assessment Act 1936* (the Act) and the Income Tax Regulations (the Principal Regulations) provide for reporting of eligible termination payments (ETPs) by employers, superannuation funds and superannuation providers and provide for the roll-over of ETPs to facilitate preservation of retirement savings and choice of superannuation providers.

Section 266 of the Act provides that the Governor-General may make regulations for the purposes of the Act and for prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

These regulations make a number of amendments to the Principal Regulations for the purpose of streamlining ETP reporting and administrative requirements.

The regulations are described in detail in the attachment. The regulations amend the Principal Regulations as follows:

- * reduce a number of mandatory tax forms and tax reporting for roll-overs to reduce complexity for individuals and compliance costs for the industry;
- * implement minimum information and record keeping requirements for all rollover and cash payments to protect data integrity, provide audit trails, establish clear responsibilities, and meet the needs of payers, payees and funds receiving ETPs;
- * relocate certain information and calculation requirements from the individual to the payer of ETPs to reduce complexity for individuals and to improve the reliability of information;
- * rationalise income tax and group tax forms for ETPs paid in cash;
- * impose administrative penalties for contravention of reporting obligations as an alternative to prosecution to improve compliance;
- * ensure that ETP provisions are consistent with moves towards electronic commerce and increased diversity in the superannuation system; and
- * separate the pre-payment activities from tax reporting and 'de-regulate' the ETP provisions to introduce flexibility and efficiencies (where possible).

The regulations have been developed in consultation with representatives of the superannuation industry.

The regulations commence on 1 July 1998.

ATTACHMENT

Income Tax Regulations (Amendment)

Regulation 1 - Commencement

Regulation 1 provides that these Regulations commence on 1 July 1998.

Regulation 2 - Amendment

Regulation 2 provides that the Income Tax Regulations (the Principal Regulations) are amended as set out in these Regulations.

Regulation 3 - Regulation 42 (Eligible termination payments - roll over)

Regulation 3 repeals regulation 42 of the Principal Regulations. The ETP reporting requirements in regulation 42 have been rationalised in light of new electronic and administrative developments and are relocated to new Subdivision 3A of Part 7 of the Principal Regulations.

Regulation 4 - Regulation 70 (Interpretation)

Regulation 4 amends paragraph 70(3)(a) of the Principal Regulations to make a technical correction. Regulation 4 replaces the reference made to "subsection 221A(1)" with "subsection 27A(1)" of the Act.

Regulation 5 - Part 7, Subdivision 3 (Deductions from Eligible Termination Payments)

Regulation 5 replaces the existing heading of Subdivision 3 of Part 7 of the Principal Regulations ('Deductions from Eligible Termination Payments') with 'Eligible termination payments' to reflect the new regulations inserted by these regulations into the Principal Regulations.

Regulation 6 - Regulation 97 (Interpretation)

Regulation 6 amends regulation 97 of the Principal Regulations to insert a number of definitions for the purposes of Subdivisions 3 and 3A of Part 7 of the Regulations. These definitions provide cross references to definitions of terms in the Act and other relevant legislation.

Regulation 7 - Regulation 98 (Rates of deduction - ETP)

Regulation 7 amends regulation 98 of the Principal Regulations as consequence of the repeal of regulation 99 of the Principal Regulations by Regulation 8.

Regulation 8 - Regulation 99 (Statement of termination payment)

Regulation 8 repeals regulation 99 of the Principal Regulations. The ETP reporting requirements in regulation 99 have been rationalised in light of new electronic and administrative developments and are relocated to new Subdivision 3A of Part 7 of the Principal Regulations.

Regulation 9 - Regulation 99A (Circumstances in which regulation 99 does not apply)

Regulation 9 repeals regulation 99A of the Principal Regulations as a consequence of the repeal of regulation 99 of the Principal Regulations by Regulation 8. Regulation 9 also inserts new

Subdivision 3A ('Eligible termination payments (records to be kept)' into Part 7 of the Principal Regulations. New Subdivision 3A contains new regulations 99 and 99A to 99M.

New regulation 99 - ETP Pre-payment Statement

New regulation 99 requires payers of ETPs to provide an ETP Pre-payment Statement in certain circumstances. This is to ensure that the taxpayer has the opportunity to decide whether or not to roll-over a payment (where this choice exists) and is given adequate tax-related information to decide how roll-overs are to be made. With the removal of the 90 day rollover period from 1 July 1994 it is now necessary for these decisions to be made prior to payment.

New subregulation 99(1) imposes an obligation on the payer to give to the taxpayer or the taxpayer's agent an ETP Pre-payment Statement (unless exempted) before an ETP is made to the taxpayer. The information requirements for the ETP Pre-payment Statement are also prescribed in the subregulation.

The ETP Pre-payment Statement is not a prescribed Australian Taxation Office form as it is more flexible and simpler for the payers to design their own forms. The information may be issued in electronic form where appropriate facilities exist. This change will correct deficiencies in the existing Statement of Termination Payment forms.

New subregulation 99(2) outlines circumstances where a payer is exempt from providing an ETP Pre-payment Statement (these circumstances constitute revised exemptions which were formerly set out in regulation 99A of the Principal Regulations). The subregulation provides that a payer is exempt from providing an ETP Prepayment Statement if.

* the payer is:

* a regulated superannuation fund or an approved deposit fund; and

* allowed under the Superannuation Industry (Supervision) Act 1993, to transfer or roll-over the ETP benefit without the consent of the taxpayer (eg. a transfer a lost members benefit to an eligible roll-over fund); or

* the payer is:

* a retirement savings account provider; and

* allowed under the *Retirement Savings Accounts Act 1997* to transfer or roll-over the benefit without the consent of the taxpayer (eg. if a takeover or a merger of the transferor retirement savings account provider occurs); or

* the payment is a death benefit ETP as defined in section 27AAA of the Act which cannot be rolled-over; or

* the payer has received authority from the taxpayer or the taxpayer's agent to make the payment and sufficient payment instructions on how to make the ETP payment as set out in regulation 99E (this is to allow payers to act promptly and efficiently in response to instructions); or

* the payment is an ETP of a kind defined in paragraph (a) or (jaa) of the definition of ETP in subsection 27A(1) of the Act and is:

* less than or equal to \$5000 (this is to relieve employers, particularly small business, from inappropriate administrative burden).

* These payments may be rolled-over in accordance with section 27D of the Act by the taxpayer providing sufficient payment instructions to the payer. The Commissioner of Taxation proposes to issue a Taxation Determination clarifying that such instructions will constitute an election for the purposes of section 27D; or

* wholly a CGT exempt component (it is inappropriate to require the issue of an ETP Prepayment Statement to the payee because these payments are made in non-arms length circumstances where the payee has some controlling interest in the business).

New regulation 99A - Contents of ETP Prepayment Statement

New subregulation 99A(1) prescribes the minimum information required in the ETP Prepayment Statement.

New subregulation 99A(2) allows the payer not to provide any nil amount in the ETP Prepayment Statement. Consequently, the statement may be tailored to different retirement savings products and allow simpler statements be provided in appropriate circumstances.

New subregulation 99A(3) clarifies a notional amount of ETP payable or each tax component or preservation amount in subregulation 99A(1) as an amount calculated to a particular date that may include projected figures. For example, a statement may show an amount payable at the date of issue or may include earnings projected to a particular date.

New regulation 99B - Taxpayer to give payer instructions

New subregulation 99B(1) requires that the ETP Prepayment Statement by the payer include a request that the taxpayer give sufficient instructions about how and to whom to make an ETP within 30 days after the statement is issued or a shorter time reasonably required by the payer.

New subregulation 99B(2) provides that the ETP Pre-payment Statement may include a statement about how the payer will deal with the payment, if no instructions are received.

New subregulation 99B(3) provides the circumstances where a shorter time may be reasonably required by the payer in subregulation 99B(1). The circumstances are:

* if it is an ETP of a kind mentioned in paragraph (a) of subsection 27A(1) of the Act and is subject to an agreement, including an employment contract or award, which stipulates that the payment should be made in a shorter time; or

* where the payer considers it is in the taxpayer's interest to seek payment in a shorter time.

New regulation 99C - Instructions to make a payment

New regulation 99C provides that the payer does not have to comply with payment instructions if to do so would breach any relevant law (eg. the Act, Retirement Savings Accounts Regulations or Superannuation Industry (Supervision))

Regulations) or any agreement between the payer and taxpayer. For example, a payer is not required to comply with an instruction from a taxpayer to pay a benefit in cash if the benefit is required to be preserved for retirement under superannuation law.

New regulation 99D - ETP Roll-over Statement

New regulation 99D requires payers of roll-over ETPs to provide an ETP Roll-over Statement to the receiving fund. This is to ensure that rolled-over monies are treated correctly for tax purposes when eventually drawn-down from a roll-over fund, and

that superannuation savings preservation requirements are satisfied.

The ETP Roll-over Statement prepared by the payer will promote data integrity and reduce some burden and complexity for individuals who, under current regulations, have to prepare and send the ETP Roll-over Statement to the receiving fund.

New subregulation 99D(1) is the successor to former regulations 42 and 99A of the Principal Regulations. It imposes an obligation on the payer to issue an ETP Roll over Statement directly to the receiving fund or according to the instructions given by the taxpayer or the agent, within 7 days after the roll-over of the ETP. It also prescribes the minimum information required in the statement.

New subregulation 99D(2) allows the payer not to provide any nil amount on the ETP Rollover Statement.

New regulation 99E - Payment instructions

New regulation 99E provides when payment instructions will be adequate to enable the payer to make an ETP.

New regulation 99F - Aggregated amount of pre-July 83 component and taxed element of post-July 83 component

New regulation 99F allows the total roll-over amount of the pre-July 1983 and the taxed element of the post-July 1983 components of the ETP in new paragraph 99D(1)(j) to be shown in the ETP Roll-over Statement. This is consistent with the Principal Regulations.

New regulation 99G - Applied amount

New regulation 99G provides the circumstances where an applied amount under new paragraph 99D(I)(1) relates to a pre-July 1994 pension or annuity. This is to ensure that taxpayers receive a tax concession as provided for under section 27AAAA of the Act.

New regulation 99H - ETP Roll-over Statement to be given to taxpayer

New regulation 99H requires the payer to issue to the taxpayer or the taxpayer's agent a copy of the ETP Roll-over Statement within 30 days unless the payer is not required to do so under new paragraph 99(2)(a) or (b).

New regulation 99I - Record keeping

New subregulation 99I(1) requires the payer and the taxpayer to keep a copy of ETP payment instructions for five years from the date the instructions were issued.

New subregulation 99I(2) requires a payer and a receiving fund to keep a copy of the ETP Roll-over Statement for five years after the date of the roll-over.

New subregulation 99I(3) requires the payer to issue to the taxpayer and the Commissioner of Taxation, an ETP Group Certificate if any part of an ETP is paid in cash. This is consistent with Pay-As-You-Earn provisions in the Act.

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New subregulation 99I(4) allows the payer not to issue an ETP Group Certificate to the taxpayer or the Commissioner of Taxation if the payment is a kind of ETP defined under paragraph (a) or (jaa) of the definition of ETP in subsection 27A(1) of the Act and is a CGT exempt component. This is because this component is not subject to income tax or to tax instalment deductions and separate reporting mechanisms exist.

New regulation 99J - ETP Group Certificates

New regulation 99J provides that the Commissioner of Taxation may under new subregulation 99I(3):

- * authorise a form as an ETP Group Certificate.
- * approve different forms to be used for different cases (this allows for example, the Commissioner to authorise one form for superannuation payers and a simpler form for employers);
- * approve forms to provide different information in different cases; and
- * by Gazette notice publish how an ETP Group Certificate may be electronically transmitted to the Commissioner.

For each ETP paid in cash to the individual by the payer, the payer must issue an ETP Group Certificate within 14 days of the date that payment is made. This is consistent with Pay-As-You-Earn provisions in the Act. An ETP Group Certificate combines information previously carried by a group certificate issued for an ETP and a Statement of Termination Payment form.

New regulation 99K - Contents of ETP Group Certificates

New subregulation 99K(1) prescribes the information required for an ETP Group Certificate.

New subregulation 99K(2) clarifies the assessable amount of the ETP for the purposes of new paragraph 99K(1)(i).

The assessable amount is:

- * nil if the ETP is a death benefit paid to a dependant of the deceased;
- * in other situations, it is calculated as follows:
 1. Work out the sum of the pre-July 83 component and the concessional component.
 2. Work out 5% of the sum in 1.

3. Add the amount worked out in 2 to the post-June 83 component and the nonqualifying component.

The inclusion of an assessable amount in an ETP Group Certificate significantly reduces the burden to individuals in completing their tax returns where an ETP has been received.

New regulation 99L - Who has authority to sign forms

New regulation 99L is designed to make signature requirements consistent with the use of automated payment systems, electronic commerce and other technological advances.

New subregulation 99L(1) provides that where a payer issues a form (eg. a statement or a certificate) to a person under new Subdivision 3A of Part 7 of the Principal Regulations, the payer has to sign and date the form when it is issued to the taxpayer.

New subregulation 99L(2) allows the payer to give written authorisation to another person to sign and date forms.

New subregulation 99L(3) requires an authorisation given under new subregulation 99L(2) to state the date when the authorisation begins. The authorisation must be kept for five years from the date the authorisation ends.

New subregulation 99L(4) deems the name of the authorised person on the form as signed by the payer unless it is proven that the form was issued without authority.

New regulation 99M - Electronic transmission and storage of forms

New subregulation 99M(1) allows any information required under new Subdivision 3A of Part 7 of the Principal Regulations to be issued electronically to a person.

New subregulation 99M(2) allows any information required under new Subdivision 3A of Part 7 of the Principal Regulations to be kept electronically.

Regulation 10 - Regulation 100 (Employee may quote tax file number)

Regulation 10 makes a consequential amendment to regulation 100 of the Principal Regulations as a consequence of the repeal of regulation 99 of the Principal Regulations by Regulation 8.

Regulation 11 - New Subdivision 3B of Part 7 of the Principal Regulations (Eligible termination payments - contravention notices)

Regulation 11 inserts new Subdivision 3B into Part 7 of the Principal Regulations (Eligible termination payments - contravention notices). New Subdivision 3B contains new regulations 100A to 100J and allows the Commissioner of Taxation to issue contravention notices for breaches of the new requirements.

Under existing provisions, the Commissioner of Taxation may prosecute a taxpayer who contravenes the regulations for a penalty up to a maximum of \$500. As an alternative to prosecution, the Commissioner will now be able, under the new regulations, to serve a contravention notice on a taxpayer who commits an offence under the regulations. It is expected that the provisions will better promote compliance with the regulations.

The compliance goal is to ensure the correct tax treatment by ensuring:

- * data integrity as money moves around the superannuation system;
- * that payers deduct the correct amount of tax from cash payments;
- * that individuals and the Australian Taxation Office receive adequate accurate information for cash payments so that:
 - * the correct amount of tax is levied at assessment; and
 - * effective income matching. can be made for ETPs.

New regulation 100I - Interpretation

New regulation 100A defines 'officer' for the purposes of the subdivision as "an officer of the ATO".

New regulation 100B - Contravention notice

New regulation 100B allows the Commissioner of Taxation to serve a contravention notice on a person where he has reason to believe that the person has contravened new regulation 99C, 99D, 99H or 99I or new subregulation 99(1), 99A(1), 99B(1), 99K(1), 99L(1) or 99L(3).

New, regulation 100C - Contents of contravention notice

New regulation 100C prescribes the contents of a contravention notice.

New regulation 100D -Notification that person may pay penalty

New regulation 100D requires a contravention notice to state that if the person does not want the matter to proceed to court, the person may lodge with the Commissioner of Taxation a signed statement to that effect and pay the penalty imposed.

New regulation 100E - Contents of contravention notice - other matters

New regulation 100E provides that a contravention notice may contain any other matter the Commissioner of Taxation considers relevant.

New regulation 100F - Penalty

New regulation 100 provides for a penalty of 5 100 for each contravention.

New regulation 100G - No-requirement to serve contravention notice

New regulation 100G makes it clear that the contravention notice provisions do not require a contravention notice to be served or affect the liability of a person where he or she is to be prosecuted in a court for contravention of a provision mentioned in new regulation 160B for which a contravention notice has not been served.

New regulation 100H - Consequences of payment of penalty

New regulation 100H provides that the matter will be closed where a person has been served with a contravention notice and has paid the penalty within the time allowed and has signed a statement not to deal with the matter in court and the contravention has ceased.

New regulation 100I -Payment by cheque

New regulation 100I clarifies that if a penalty is paid by cheque, payment is made only if the cheque is honoured upon presentation.

New regulation 100J - Other proceedings not affected

New regulation 100J provides that, with the exception of new regulation 100H, the Subdivision does not prejudice or affect the institution or prosecution of proceedings for contravention of any provision stated in new regulation 100B or limit the fine that may be imposed by a court for such a contravention.