

Income Tax Assessment Amendment Regulations 2003 (No. 3) 2003 No. 108

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 108

Issued by authority of the Minister for Revenue and Assistant Treasurer

Income Tax Assessment Act 1997

Income Tax Assessment Amendment Regulations 2003 (No. 3)

Section 909-1 of the *Income Tax Assessment Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the regulations is to:

- prescribe 8 new religious institutions as being exempt from income tax;
- renumber the existing regulation which prescribed charitable, religious, scientific and educational entities as being exempt from income tax, add an item number and date of effect for each entity in that list and add a new institution to that list; and
- list 69 funds as prescribed private funds to whom gifts or contributions will be tax deductible.

The specific provisions relevant to the regulations and their purposes are outlined in Attachment A.

The regulations prescribe 8 institutions described in Attachment B for the purposes of paragraph 50-50(c) of the Act, to ensure that they are exempt from income tax, with effect from 1 July 1997.

Previous regulation 50-50.01 listed prescribed institutions exempt from taxation for the purposes of paragraph 50-50(d) of the Act. It is renumbered to regulation 50-50.02. This allows the institutions prescribed under paragraph 50-50(c) to be listed first under the new regulation 50-50.01.

A new regulation 50-50.02 is substituted for the previous regulation 50-50.01. Twelve of the institutions listed in the new regulation 50-50.02 were already listed in that earlier regulation. One change in the new regulation is to include an item number and date of effect of prescription for each institution, as described in Attachment B. The other change is to prescribe an additional institution, listing it in the order of its date of effect. The institution prescribed is The Australian Centre Berlin Limited, with effect from 19 June 2001, being its date of incorporation.

The regulations list funds for the purpose of the definition of 'prescribed private fund' in subsection 995-1(1) of the Act. The funds are listed in Attachment B. Each of the funds listed is a prescribed private fund on and from the date of effect specified in the regulations, as approved by the Minister for Revenue and Assistant Treasurer.

The regulations also correct the name of the prescribed private fund listed at item 26 of regulation 995-1.02. The listed name of The Brian and Maxine Newell Prostrate Cancer Research Foundation was changed to The Brian and Maxine Newell Prostate Cancer Research Foundation.

The regulations commence on gazettal. However:

- the institutions prescribed for the purposes of paragraph 50-50(c) are prescribed with effect from 1 July 1997;
- the institution prescribed for the purposes of paragraph 50-50(d) is prescribed from 19 June 2001, its date of incorporation; and
- the private funds prescribed for the purposes of the definition of 'prescribed private fund' in subsection 995-1(1) are prescribed from the date of their approval by the Government.

While these dates are earlier than the date of gazettal of the regulations, subsection 48(2) of the Acts Interpretation Act 1901 is not contravened. Subsection 48(2) prohibits the retrospective operation of regulations that adversely affect the rights of, or impose liabilities upon, a person. The regulations are beneficial to the institutions and funds concerned and to taxpayers making donations to them.

Details of the regulations are set out in Attachment B.

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ATTACHMENT A

This outlines the specific provisions relevant to the regulations and their proposes.

Section 50-5 of the Act lists various types of charitable, religious, scientific and educational entities that are exempt from income tax subject to the special conditions listed in section 50-50 of the Act.

- Paragraph 50-50(c) provides that an institution that is located outside Australia and is exempt from income tax in the country in which it is resident, is exempt from income tax only if it is prescribed in the principal regulations.
- Paragraph 50-50(d) provides that an institution that has a physical presence in Australia, but which incurs its expenditure and pursues its objectives principally outside Australia, is exempt from income tax only if it is prescribed in the principal regulations.

Subsection 995-1(1) defines a 'prescribed private fund' as a fund that is prescribed by the regulations for the purposes of the definition, but does not include any fund that has been declared by the Treasurer, in writing, not to be a prescribed private fund.

Each fund is established and maintained for the purpose of providing money, property or benefits to a fund, authority or institution that is listed either by name or by type in a table of recipients for deductible gifts in Subdivision 30-B.

Item 2 in the table to section 30-15 provides that a gift made to a prescribed private fund is deductible where the fund is established and maintained under a will or instrument of trust solely for:

- (a) the purpose of providing money, property or benefits to a fund, authority or institution gifts to which are deductible under item 1 of the table and for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
- (b) the establishment of such a fund, authority or institution.

ATTACHMENT B

Details of the regulations are as follows:

Regulation 1: Named the regulations.

Regulation 2: Provided that the regulations commence on gazettal.

Regulation 3: Provided that Schedule 1 amended the regulations.

Schedule 1:

Item 1 listed 8 institutions as prescribed institutions in new regulation 50-50.01 for the purposes of paragraph 50-50(c). The institutions and their dates of effect were:

Item	Name of institution	Date of effect
1	Catholic Bishops' Conference of the Pacific (Fiji)	1 July 1997
2	Catholic Diocese of Rarotonga (Cook Islands)	1 July 1997
3	Catholic Diocese of Bougainville (PNG)	1 July 1997
4	Catholic Diocese of Port-Vila (Vanuatu)	1 July 1997
5	Catholic Diocese of Suva (Fiji)	1 July 1997
6	Catholic Diocese of Noumea (New Caledonia)	1 July 1997
7	Catholic Diocese of Tonga	1 July 1997
8	Catholic Diocese of Auki (Solomon Islands)	1 July 1997

Item 1 also relisted 12 institutions, previously listed for the purposes of paragraph 50-50(d) in then Regulation 50-50.01, as prescribed institutions in new regulation 50-50.02. It also added one new institution, The Australian Centre Berlin Limited, with effect from 19 June 2001, being its date of incorporation.

Item 2 replaced the word 'date' in regulation 995-1.02 with 'date, or for the period', to provide for private funds prescribed only for a period.

Item 3 changed the heading of the table in regulation 995-1.02 to make it clear that the column lists either a date or a period of effect for the prescription of the private funds.

Item 4 corrected the name of a prescribed private fund listed at item 26 of regulation 995-1.02. The listed name of The Brian and Maxine Newell Prostrate Cancer Research Foundation was changed to The Brian and Maxine Newell Prostate Cancer Research Foundation.

Item 6 inserted the names and date, or period, of effect of funds prescribed for the definition of prescribed private fund in subsection 995-1(1) (items 30 to 98 inclusive) into regulation 995-1.02. The funds and the date, or period, of effect of their listing were:

Item	Name of fund	Date, or period, of effect
30	Yeast Foundation	20 December 2001
31	The A & E Finkel Foundation	14 February 2002
32	The Caledonia Foundation	14 February 2002
33	The Clipsal Fund	25 March 2002

34	AB's Trek for Kids Foundation	26 March 2002 to 30 June 2004
35	Dubler Family Foundation	26 March 2002
36	Booze Brothers Staff Charitable Fund	26 March 2002
37	The Dianne Kemp Foundation	22 Aril 2002
38	The Mount Scopus College Foundation Trust	22 April 2002
39	John Collier Foundation	22 Aril 2002
40	Collection House foundation	22 Aril 2002
41	The Coca-Cola Australia Foundation	22 Aril 2002
42	The Margaret Lawrence Bequest	22 Aril 2002
43	The Dawson Family Foundation	22 Aril 2002
44	AACFE Charitable foundation	22 Aril 2002
45	Paul Ainsworth Charitable Foundation	5 June 2002
46	Philandron Foundation	5 June 2002
47	Philip and Vivien Brass Charitable Foundation	5 June 2002
48	The Albrecht Foundation Trust	5 June 2002
49	The Berg Family Foundation	5 June 2002
50	The Michael & Andrew Buxton Foundation	5 June 2002
51	The Samuel Nissen Charitable Foundation	5 June 2002
52	R & M Champion de Crespigny Foundation	11 June 2002
53	The Flew foundation	11 June 2002
54	Accenture Australia Foundation	14 June 2002
55	Andyinc Foundation	14 June 2002
56	Bennelong Foundation	14 June 2002
57	Glencoe Foundation	14 June 2002
58	Guthrie Family Memorial Fund	14 June 2002
59	Hill Charitable Foundation	14 June 2002
60	JBWere foundation	14 June 2002
61	Jewish Holocaust Centre Foundation	14 June 2002
62	John Lamble Foundation	14 June 2002
63	Key Foundation	14 June 2002
64	Leeuwin Estate Foundation	14 June 2002
65	Lifework Foundation	14 June 2002
66	Mannkal Economic Education foundation	14 June 2002
67	MCS Charitable Foundation	14 June 2002
68	New Start Foundation	14 June 2002
69	Schaffer Foundation	14 June 2002
70	The Angel Fund	14 June 2002
71	The Bamford Family Foundation	14 June 2002
72	The Isabel and John Gilbertson Charitable Trust	14 June 2002
73	The Jackson Family Foundation	14 June 2002
74	The Teen Spirit Charitable Foundation	14 June 2002
75	The Thomas Foundation	14 June 2002
76	The William & Rita Rogers Charitable Foundation	14 June 2002
77	Trust for Nature Foundation	14 June 2002
78	Wilson Foundation	14 June 2002
79	The Manildra Foundation	26 June 2002
80	The McVay Foundation	26 June 2002
81	The Rainbow Charitable Foundation	26 June 2002
82	Onbass Foundation	5 August 2002
83	Schools' Canteen Education Foundation of Australia	5 August 2002
84	The Perini Family Foundation	5 August 2002

85	The Global Community Foundation	3 September 2002
86	The Jessie Salmond Foundation Fund	10 September 2002
87	The Vodafone Australia Foundation	10 September 2002
88	Jackson McDonald Community Foundation	11 September 2002
89	Pickard Foundation	9 October 2002
90	Cassandra Ganter Foundation	14 October 2002
91	Four Winds Foundation	14 October 2002
92	The Keith Murton Foundation	21 October 2002
93	The Jreissati Foundation Trust	29 October 2002
94	R.M. Drown Environmental Foundation	11 November 2002
95	The Mount Scopus Memorial College B'Nei Mitzvah Foundation	20 December 2002
96	The Greatorex Foundation	20 December 2002
97	The Robert and Jennifer Ferguson Charitable Trust	20 December 2002
98	The Vittorio Romano 1 Foundation	20 December 2002