

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Income Tax Assessment Act 1936*

#### *Income Tax Assessment (1936 Act) Regulations 2025*

Section 266 of the *Income Tax Assessment Act 1936* (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 *Income Tax Assessment (1936 Act) Regulations 2025* (the Regulations) is to remake and improve the operation of the *Income Tax Assessment (1936 Act) Regulation 2015* (the 2015 Regulations) before the 2015 Regulations ‘sunset’. All legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of the *Legislation Act 2003*. Legislative instruments generally cease to have effect after 10 years unless their operation is extended such as by remaking the instrument. The 2015 Regulations were scheduled to sunset on 1 October 2025.

The Regulations remake and improve the 2015 Regulations, repealing redundant provisions, simplifying language and updating existing rules and requirements to ensure they continue to operate in accordance with existing policy.

The Regulations prescribe matters for the purposes of certain provisions of the Act, which include provisions relating to the tax treatment of income of certain Defence Force members and other prescribed persons, eligibility for deductions, rebates for low income aged persons and pensioners, timeframes for amending assessments in prescribed circumstances, as well as the appointment of public officers and the treatment of income in respect of controlled foreign companies.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

An exposure draft of the Regulations and accompanying explanatory material were released for public consultation from 2 July to 15 July 2025. No public submissions were received in relation to the Regulations in this process. Targeted consultation was also undertaken with the regulator, the Australian Taxation Office (ATO).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on 1 October 2025.

The Regulations are subject to disallowance, and will sunset on 1 October 2035.

Details of the Regulations are set out in [Attachment A](#).

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis (OIA) has an alternative process for assessing the policy impact of sunseting legislative instruments that are being remade. Under that process, an agency may self-assess the performance of the instrument. If the assessment demonstrates the instrument is operating effectively and efficiently, no impact analysis is required.

Prior to the making of the Regulations and in accordance with the Office of Impact Analysis' Guidance Note on Sunseting Legislative Instruments, the Department of the Treasury self-assessed that the 2015 Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft Regulations and targeted consultation with the ATO.

**Details of the *Income Tax Assessment (1936 Act) Regulations 2025***

This attachment sets out further details of the *Income Tax Assessment (1936 Act) Regulations 2025* (the Regulations).

This attachment refers to provisions being ‘updated’ or ‘changed’ to help explain how the Regulations differ from the *Income Tax Assessment (1936 Act) Regulation 2015* (the 2015 Regulations). However, the Regulations are not technically amending the 2015 Regulations but are rather remaking them.

Note, the numbering of all sections in Parts 1 to 8 of the Regulations is consistent with the numbering of the equivalent sections of the 2015 Regulations. The application and transitional provisions in Part 9 of the 2015 Regulations have been replaced with new application provisions as detailed below.

**Part 1 – Preliminary**

**Section 1 – Name**

This section provides that the name of the Regulations is the *Income Tax Assessment (1936 Act) Regulations 2025*.

**Section 2 – Commencement**

The Regulations commenced on 1 October 2025.

**Section 3 – Authority**

The Regulations are made under the *Income Tax Assessment Act 1936* (the Act).

**Section 4 – Definitions**

Section 4 of the Regulations sets out the definitions of key terms used in the Regulations.

This section updates the key terms listed in section 4 of the 2015 Regulations to:

- remove references to section 159N of the Act, which was repealed on 1 July 2020 by the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*. The terms ***rebate maximum amount***, ***rebate reduction rate*** and ***rebate reduction threshold*** replace the terms ***159N rebate maximum amount***, ***159N rebate reduction rate*** and ***159N rebate reduction threshold*** respectively. The definitions of these terms are otherwise unchanged.
- remove the definitions of ***permanent establishment*** and ***ordinary capital gains***, which are defined in subsection 17(2), to ensure their application is limited to that subsection of the Regulations.

## **Part 2 – Liability to taxation – general**

### **Section 5 – Class of persons serving with an armed force under the control of the United Nations**

Section 23AB of the Act exempts the income of certain prescribed persons or classes of person serving with an armed force under the control of the United Nations from tax. Subsection 23AB(2) provides that the regulations may prescribe a person or class of person for the purposes of section 23AB of the Act.

Section 5 of the Regulations prescribes that for the purposes of subsection 23AB(2) of the Act, members of the Australian Federal Police who are members of the force created by the United Nations for keeping peace in Cyprus are a prescribed class of persons.

Australian Federal Police officers have been serving on the United Nations Peacekeeping Force in Cyprus since May 1964.

### **Section 6 – Defence Force members performing certain overseas duty – eligible duty**

Paragraph 23AD(1)(a) of the Act provides that the pay and allowances earned by a person serving as a member of the Defence Force are exempt from tax if they are earned while there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the person is on eligible duty with a specified organisation in a specified area outside Australia. Subsection 23AD(2) provides that the regulations may specify that duty with a specified organisation, in a specified area outside Australia and after a specified day, is eligible duty.

Section 6 of the Regulations declares the following duty to be eligible duty for the purposes of subsection 23AD(2) of the Act:

Item	Organisation	Area	After the day	Before the day
1	Australian Defence Force on Operation Accordion	The land area, territorial waters, airspace and superjacent airspace of the following countries: (a) Bahrain; (b) Qatar; (c) the United Arab Emirates	30 June 2014	
2	Australian Defence Force on Operation Augury	The following areas: (a) the land area and superjacent airspace of Afghanistan; (b) the land area, territorial waters, airspace and superjacent airspace of the following countries: (i) Iraq; (ii) Jordan; (iii) Syria; (iv) the United Arab Emirates	3 July 2014	
3	Australian Defence Force on Operation Manitou	The sea (including adjacent ports and the area within a 10 kilometres radius of such ports) and superjacent airspace of the following: (a) the Gulf of Aden; (b) the Gulf of Aqaba; (c) the Gulf of Oman; (d) the Gulf of Suez; (e) the Indian Ocean north of latitude 15°S and west of longitude 70°E; (f) the Persian Gulf; (g) the Red Sea; (h) the Strait of Hormuz	14 May 2015	

4	Australian Defence Force on Operation Paladin	The land area, territorial waters, airspace and superjacent airspace of the following countries: (a) Egypt; (b) Israel; (c) Jordan; (d) Lebanon; (e) Syria	1 July 2020	
5	Australian Defence Force on Operation Steadfast	The land area, territorial waters, airspace and superjacent airspace of Iraq	9 September 2018	

Eligible duty with the following organisations, which were specified in the 2015 Regulations, ceased prior to the commencement of the Regulations on the dates listed below:

- Australian Defence Force on Operation Highroad – 9 October 2021
- Australian Defence Force on Operation Okra – 1 January 2025
- Australian Defence Force on Operation Orenda – 1 January 2024
- United Nations—Assistance Mission in Afghanistan (Operation Palate II) – 1 January 2017

The Regulations only apply to income years at or after 1 October 2025 with the 2015 Regulations continuing to apply to income years before 1 October 2025 (refer to section 23 of the Regulations). Accordingly, the ceased eligible duty with the above organisations has not been listed in the Regulations as it does not apply to the 2025-26 income year or later income years.

### **Part 3 – Income**

#### **Section 7 – Annuities and superannuation pensions – Life Tables**

Section 27H of the Act provides that certain annuities and payments related to annuities are included in the assessable income of a taxpayer. In calculating the amount to be included in assessable income, the ‘life expectation factor’ is relevant.

Subsection 27H(4) of the Act provides that the *life expectation factor* in relation to a person in relation to an annuity is defined by reference to the prescribed Life Tables at the time at the beginning of the period to which the first payment of the annuity relates. Section 7 of the Regulations prescribes which Australian Life Tables apply for certain annuities. The Australian Life Tables are published by the Australian Government Actuary every five years. The most recent publication was the Australian Life Tables 2020-22, which reported on the mortality of Australians based on the 2021 Census.

## **Part 4 – Deductions**

### **Section 8 – Excluded car parking facilities**

Section 51AGA of the Act provides that no deduction is allowed for car parking expenses if the expenses are in respect of car parking facilities used by an employee at their primary place of employment, the car was used for travel between the employee's residence and primary place of employment, the car was parked for one or more daylight periods of over four hours in total on the relevant day, and the car parking facilities are not excluded by the regulations.

Section 8 of the Regulations excludes, for the purposes of paragraph 51AGA(1)(e) of the Act, the provision of car parking facilities to an employee if:

- the employee is entitled to use a disabled persons' car parking space under the law of a State or Territory;
- the employee is the driver of, or a passenger in the car; and
- a valid disabled persons' car parking permit is displayed on the car.

This means that a deduction may be allowed in circumstances where an employee meets the above criteria and would be allowed to receive a deduction but for the operation of section 51AGA of the Act.

## **Part 5 – Rebates**

### ***Division 1 – Tax rebate for low income aged persons and pensioners***

#### **Section 9 – Key concepts**

##### *Purpose of section 9*

Sections 160AAAA and 160AAAB of the Act provide a tax rebate for low income aged persons and pensioner taxpayers (both for individuals and where a trustee is assessed in respect of a beneficiary).

Section 9 of the Regulations defines the concepts of 'base rebate amount' and 'rebate threshold' that are relevant to working out whether an individual or trustee taxpayer is entitled to a low income aged persons and pensioners tax rebate, and the amount of the rebate.

##### *Base rebate amount*

Eligibility for and the amount of the rebate is calculated by reference to the ***base rebate amount***.

The ***base rebate amount*** is as follows:

<b>Base rebate amount</b>		
<b>Item</b>	<b>Column 1 Class of individual</b>	<b>Column 2 Base rebate amount</b>
1	An individual who, at any time during the year, is not a spouse of another individual	\$2,230
2	An individual who, at any time during the year, is a spouse of another individual	\$1,602
3	A member of an illness separated couple (within the meaning of the <i>Social Security Act 1991</i> )	\$2,040

Spouses that are living separately and apart on a permanent basis are treated, for the purposes of items 1 and 2 of the table, as not being spouses of each other (see subsection 9(3) of the Regulations). That is, where an individual is living separately and apart from their spouse on a permanent basis, the item 1 base rebate amount applies.

If more than one item in the table applies to the individual, the item that gives the greatest rebate entitlement applies (see paragraph 9(2)(b) of the Regulations). For example, a person who has a spouse for part of a year of income but not for the remainder of the year of income has a base rebate amount under item 1 of the table.

The **spouse** of an individual is defined in section 995-1 of the *Income Tax Assessment Act 1997* to include:

- another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a State law or Territory law prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- another individual who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

The base rebate amount may be affected by the provisions that allow for the transfer of an unused base rebate amount between spouses or a spouse's trustee.

### *Rebate threshold*

Eligibility for and the amount of the rebate is also calculated by reference to the rebate threshold.

The **rebate threshold** is worked out as follows (formula 1):

$$\text{Tax-free threshold} + \left( \frac{\text{Rebate maximum amount} + \text{Base rebate amount for the rebate}}{\text{Lowest marginal tax rate}} \right)$$

The terms **tax-free threshold**, **rebate maximum amount**, **base rebate amount** and **lowest marginal tax rate** are defined in section 4 of the Regulations as follows:



- **tax-free threshold:** has the same meaning as in the *Income Tax Rates Act 1986*. The tax-free threshold for the 2025-26 year of income is \$18,200.
- **rebate maximum amount:** means \$445.
- **base rebate amount for the rebate:** has the meaning given by subsection 9(2) (see above).
- **lowest marginal tax rate:** in relation to a year of income, means the rate that is:
  - (a) the lowest rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*, in the application of the table to that year; and
  - (b) expressed as a decimal fraction.

The lowest marginal tax rate for the 2025-26 year of income is 16 per cent.

However, if the amount worked out under the rebate threshold in formula 1 above is greater than the **rebate reduction threshold**, which is defined as \$37,000 in section 4 of the Regulations, the **rebate threshold** is worked out as follows (formula 2):

$$\frac{\left( \begin{array}{c} \text{Lowest} \\ \text{marginal} \\ \text{tax rate} \end{array} \times \begin{array}{c} \text{Tax-free} \\ \text{threshold} \end{array} \right) + \begin{array}{c} \text{Rebate} \\ \text{maximum} \\ \text{amount} \end{array} + \begin{array}{c} \text{Base rebate} \\ \text{amount for} \\ \text{the rebate} \end{array} + \begin{array}{c} \text{Amount worked out} \\ \text{using the formula} \\ \text{in subsection (7)} \end{array}}{\begin{array}{c} \text{Rebate reduction rate} + \text{Second lowest marginal tax rate} \end{array}}$$

The subsection (7) formula referred to in formula 2 is as follows:

$$\begin{array}{c} \text{Rebate} \\ \text{reduction threshold} \end{array} \times \left( \begin{array}{c} \text{Rebate} \\ \text{reduction rate} \end{array} + \begin{array}{c} \text{Second lowest} \\ \text{marginal tax rate} \end{array} - \begin{array}{c} \text{Lowest} \\ \text{marginal tax rate} \end{array} \right)$$

Section 4 of the Regulations provides that the **second lowest marginal tax rate** in relation to a year of income, is:

- (a) the second lowest rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*, in the application of the table to that year; and
- (b) expressed as a decimal fraction.

The second lowest marginal tax rate for the 2025-26 year of income is 30 per cent.

### Example 1

Jill is a 67 year old individual who did not have a spouse in the 2025-26 year of income.

For the 2025-26 year of income, the tax-free threshold is \$18,200, the lowest marginal tax rate is 16 per cent and Jill's taxable income is \$30,000.

Jill's rebate threshold is calculated as follows (formula 1, rounded up to the nearest whole dollar):

$$\$18,200 + ((\$445 + \$2,230)/0.16) = \$34,919$$

As the rebate threshold calculated in accordance with formula 1 is less than the rebate reduction threshold (\$37,000 for the 2025-26 year of income), formula 2 does not apply.

Note, the rebate threshold may be affected by section 12 of the Regulations, which allows for the transfer of an unused base rebate amount between spouses or a spouse's trustee.

### Section 10 – Entitlement to rebate

In determining an entitlement to the rebate:

- In a subsection 160AAAA(3) of the Act case: the taxpayer's **rebate income** (defined in subsection 6(1) of the Act) for the year of income must be less than the **amount** ascertained in accordance with the regulations;
- In a subsection 160AAAB(3) of the Act case: the beneficiary's **amount applicable** (defined in section 160AAAB of the Act) for the year of income must be less than the **amount** ascertained in accordance with the regulations.

Section 10 provides that the **amount** is ascertained as follows (formula 3):

$$\frac{\text{Base rebate amount for the rebate}}{0.125} + \text{Rebate threshold for the rebate}$$

### **Example 2**

Following on from example 1 above, Jill's threshold for her entitlement to the rebate is ascertained as follows:

$$(\$2,230/0.125) + \$34,919 = \$52,759$$

Assuming Jill's taxable income equals her rebate income (\$30,000), Jill is entitled to a rebate as her rebate income is less than the **amount** ascertained of \$52,759.

### Section 11 – Amount of rebate

Once an entitlement to the rebate is determined, the amount of the rebate is (unless affected by section 12 of the Regulations which allows for the transfer of an unused rebate amount to a spouse or spouse's trustee):

- the base rebate amount for the rebate; or
- where the rebate income of the taxpayer, or the rebate income of the beneficiary (as the case requires) exceeds the rebate threshold for the rebate – the base rebate amount is reduced by 12.5 cents for each \$1 of the amount of the excess.

### **Example 3**

Following on from examples 1 and 2 above, the amount of Jill's rebate is \$2,230 for the 2025-26 year of income, because her rebate income (\$30,000) does not exceed her rebate threshold (\$34,919).

## Section 12 – Transfer of unused base rebate amount from individual taxpayer to spouse or spouse’s trustee

Section 12 enables an amount of an individual’s unused rebate to be transferred to their spouse or spouse’s trustee, provided their spouse or spouse’s trustee satisfies certain conditions. Unlike other provisions in the Regulations, spouses living separately are not considered to be spouses for the purposes of this section (see subsection 12(2) of the Regulations).

Where the individual and their spouse or spouse’s trustee meet the conditions outlined in subsection 12(1) of the Regulations:

- the base rebate amount for the individual is reduced by the difference between their tax payable and the base rebate amount; and
- the base rebate amount of the individual’s spouse or the spouse’s trustee is increased by the same amount.

Alternatively, where the conditions of subsection 12(4) of the Regulations are met, the base rebate amount for the spouse’s or spouse’s trustee’s rebate is increased by the greater of nil and the amount worked out as follows (formula 4):

$$\text{Base rebate amount for the taxpayer's rebate} - \left( \left( \text{Taxpayer's taxable income mentioned in paragraph (4)(a)} - \$6,000 \right) \times 0.15 \right)$$

Subsection 12(5) of the Regulations also provides that certain pensions are to be treated as assessable income. Pensions are included in assessable income if the following conditions are met:

- the taxpayer receives the pension under Part 2.3 or 2.5 of the *Social Security Act 1991* or Division 4 or 5 of Part III of the *Veteran’s Entitlement Act 1986*; and
- the pensions are exempt under Subdivision 52-A or 52-B of the *Income Tax Assessment Act 1997*.

Minor amendments have been made to subsection 12(5) to remove references to ceased parts of the *Social Security Act 1991*.

### **Example 4**

Fred and Mary are spouses and are both entitled to a rebate under section 160AAAA of the Act for the 2025-26 year of income.

Fred’s taxable income is \$5,000 and Mary’s taxable income is \$45,000.

Fred’s tax payable on \$5,000 is \$0 and therefore has an excess rebate of \$1,602. This amount is available to be transferred to Mary and the amount of Mary’s rebate is recalculated to take account of Fred’s transferred amount.

## ***Division 2 – Rebate in respect of certain benefits etc.***

## Section 13 – Amount of rebate

Section 160AAA of the Act provides for a rebate of tax in respect of certain benefits known as ‘rebataable benefits’ (for example certain social security benefits). This ensures that taxpayers who receive such rebataable benefits pay a reduced amount of tax on these types of benefits. Subsection 160AAA(3) of the Act provides that the relevant amount of the rebate of tax, if any, is to be ascertained in accordance with the regulations.

Section 13 of the Regulations calculates the amount of the rebate based on a taxpayer’s **rebataable benefit amount**. The **rebataable benefit amount** is the amount of rebataable benefit included in the taxpayer’s assessable income of the year, rounded down to the nearest whole dollar.

Where a taxpayer’s **rebataable benefit amount** is less than or equal to the upper threshold of the lowest marginal tax rate, that is, the amount at which the second lowest marginal tax rate cuts in, the amount of the rebate is worked out as follows (formula 5):

$$0.15 \times \left( \text{Rebataable benefit amount} - \$6,000 \right)$$

However, if the taxpayer’s **rebataable benefit amount** is greater than the upper threshold of the lowest marginal tax rate, the amount of the rebate is worked out as follows (formula 6):

$$0.15 \times \left( \text{Rebataable benefit amount} - \$6,000 \right) + 0.15 \times \left( \text{Rebataable benefit amount} - \text{Threshold at the upper conclusion of the lowest marginal tax rate} \right)$$

If the amount worked out using either formula 5 or 6 is not an amount in whole dollars, the amount must be rounded up to the nearest whole dollar.

### Example 5

In the 2025-26 year of income, Zoe receives a parenting payment that is PP (partnered) of \$11,700 under the *Social Security Act 1991*, which is not exempt under Division 52 of the *Income Tax Assessment Act 1997*. The payment is a rebataable benefit under paragraph 160AAA(1)(aa) of the Act.

The upper threshold of the lowest marginal tax rate for the 2025-26 year of income is \$45,000, therefore formula 5 applies to determine the amount of the rebate, as follows:

$$0.15 \times (\$11,700 - \$6,000) = \$855$$

### Example 6

In the 2025-26 year of income, Ashley receives three different types of rebataable benefits that total \$47,000.

The upper threshold of the lowest marginal tax rate for the 2025-26 year of income is \$45,000, therefore formula 6 applies to determine the amount of the rebate, as follows:

$$0.15 \times (\$47,000 - \$6,000) + 0.15 \times (\$47,000 - \$45,000) = \$6,450$$

## **Part 6 – Returns and assessments**

### **Section 14 – Amendment of assessments**

Section 170 of the Act provides circumstances in which the Commissioner may amend the assessment of particular entities, specifying the timeframes of amendment for relevant entity types as well as other qualifications.

For an individual, a company that is a small business entity or medium business entity, or a person acting in the capacity of a trustee of a trust that is a small business entity or medium business entity, the Commissioner has a limited amendment period of two years after the day on which the Commissioner gives notice of the assessment to the taxpayer. That is unless the circumstances mentioned in column 3 of table item 1, 2 or 3 of subsection 170(1) of the Act exist in relation to the relevant entity, which means the Commissioner may amend the assessment within four years. Items 1, 2 and 3 provide that regulations may prescribe additional circumstances in which the limited amendment period of two years does not apply to an assessment of a relevant entity.

Section 14 of the Regulations prescribes these additional circumstances for an entity that is an individual, a company that is a small business entity or medium business entity or a person acting in the capacity of a trustee of a trust that is a small business entity or medium business entity (the assessed entity).

Minor updates have been made to item 4 of the table in section 14 of the Regulations to reflect other legislative changes and ensure these provisions operate as intended, including:

- updating a reference to the provision of the *Income Tax Assessment Act 1997* containing the integrity rule about share trading and investment companies in relation to employee share schemes to ensure the appropriate provision is referenced following amendments made by the *Tax and Superannuation Laws Amendment (Employee Share Schemes) Act 2015*; and
- updating references to ‘small business entity’ to also include ‘medium business entity’ to align with table items 2 and 3 of subsection 170(1) of the Act, which were amended on 1 January 2021 by the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*.

Section 14 also notes that if a circumstance in an item of the table in section 14 of the Regulations exists, the Commissioner may amend the assessment of the relevant entity within four years after the day on which the Commissioner gives notice of the assessment to the entity, unless a longer amendment period applies. This note reflects the operation of item 4 of the table in subsection 170(1) of the Act, which applies to an assessment if item 1, 2 or 3 of the same table does not apply.

The details of each amendment circumstance are listed in the table in section 14 of the Regulations.

## **Part 7 – Public officers**

### **Section 15 – Appointment of public officer**

Section 252 of the Act provides that every company carrying on business in Australia must be represented by a public officer, unless exempted by the Commissioner, and covers other matters relating to the public officer of a company. Paragraph 252(1)(c) of the Act requires that no appointment of a public officer shall be deemed to be duly made until after notice has been provided in writing to the Commissioner, specifying the name of the officer and an address for service. Section 15 of the Regulations provides that the notice given to the Commissioner must include a declaration that any information in the notice is true and correct.

Section 266 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act or the *Income Tax Assessment Act 1997*, prescribing all matters that are necessary or convenient to be prescribed for giving effect to the Act. The inclusion of section 15 in the Regulations relies on this power.

## **Part 8 – Attribution of income in respect of controlled foreign companies**

Part 8 of the Regulations provides for certain amounts to be included in a taxpayer's assessable income in respect of the attributable income of a controlled foreign company (CFC). Note, CFC is defined by section 340 of the Act. This Part also applies to foreign controlled entities (CFEs) as defined by section 339 of the Act.

### **Section 16 – Interpretation**

Section 16 of the Regulations ensures that terminology used in Part 8 of the Regulations is consistent with Part X of the Act as that Part of the Act relies on the Regulations to prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

### **Section 17 – Items of designated concession income**

Under subsection 317(1) of the Act, certain income and/or profits derived by a CFE in relation to a listed country mentioned in column 1 of the table in section 17 of the Regulations becomes ***designated concession income*** when it is sourced from the designated origin (see column 3 of the table in subsection 17(1) of the Regulations) and exhibits certain features (see column 4 of the table in subsection 17(1) of the Regulations).

The table in subsection 17(1) of the Regulations specifies the details of the origin and features of particular income/profits, in relation to a listed company, that render it designated concession income.

Subsection 17(2) also provides the definitions of ***ordinary capital gains*** and ***permanent establishment***, which apply to section 17 only.

### **Section 18 – Accruals tax laws**

In defining ***accruals tax law***, subsection 317(1) of the Act provides that the regulations may declare which listed countries' law falls within the definition of accruals tax law. The

table in section 18 of the Regulations prescribes the pinpoints in the law of the specified listed country that fall within the definition of accruals tax law.

The *accruals tax law* is as follows:

<b>Accruals tax law</b>		
<b>Item</b>	<b>Column 1 Listed Country</b>	<b>Column 2 Law</b>
1	Canada	Sections 90 to 95 (inclusive) of the Income Tax Act of Canada
2	France	Article 209B of the General Tax Code of France
3	Germany	Sections 7 to 14 (inclusive) of the Foreign Tax Act of Germany
4	Japan	Articles 40-4 to 40-6 (inclusive) and 66-6 to 66-9 (inclusive) of the Special Taxation Measures Law of Japan
5	New Zealand	Sections CQ 1 to CQ 3 (inclusive) and sections EX 1 to EX 27 (inclusive) of the Income Tax Act 2007 of New Zealand
6	United Kingdom	Part 9A of the Taxation (International and Other Provisions) Act 2010 of the United Kingdom
7	United Kingdom	Chapter 3A of Part 2 of the Corporation Tax Act 2009 of the United Kingdom
8	United States of America	Subpart F of Part III of subchapter N of Chapter 1 of the Internal Revenue Code of the United States of America

## Section 19 – Listed countries

Subsection 320(1) of the Act provides, that for the purposes of Part X of the Act, ***listed country*** means a foreign country, or a part of a foreign country, that is declared by the regulations to be a listed country for the purposes of that Part. Part X of the Act contains provisions relating to the attribution of income in respect of CFCs.

Section 19 of the Regulations declares the following countries to be a listed country for the purposes of the definition of ***listed country*** in subsection 320(1) of the Act: Canada, France, Germany, Japan, New Zealand, United Kingdom and United States of America.

## Section 20 – Capital gains regarded as subject to tax

Under subsection 324(2) of the Act, the regulations may provide that certain items of income or profits derived from an entity that are not subject to tax in a listed country in a particular tax accounting period are to be treated as if they were subject to this tax. Note, tax accounting period is defined by subsection 317(1) of the Act.

Subsection 20(1) of the Regulations provides that, for subsection 324(2) of the Act, capital gains that are not subject to tax in a listed country in a particular tax accounting period due to the availability of roll-over relief are to be treated as if they were subject to tax in the listed country in the relevant tax accounting period for the purposes of Part X of the Act. Subsection 20(2) of the Regulations ensures that the availability of roll-over relief is a specified kind of feature for paragraph 324(2)(b) of the Act.

Subsection 20(3) of the Regulations defines **roll-over relief** as the deferral of tax liability in the tax accounting period under a tax law of the listed country because of a specified circumstance. Subsections 20(4), (6), (7) or (8) of the Regulations specify these circumstances.

Subsection 20(5) defines a **compulsory acquisition**, of a capital gains tax (CGT) asset, as a compulsory acquisition of that asset by the government of a country, whether a federal, State or municipal government (however described) or an authority of such a government. Note, CGT asset is defined by the Act as having the same meaning as that used in the *Income Tax Assessment Act 1997*.

#### Section 21 – State foreign taxes that are treated as federal foreign taxes

Section 21 of the Regulations provides that, for section 323 of the Act, a foreign tax imposed in Switzerland that is a cantonal tax on income referred to in paragraph 3(b) of Article 2 of the Swiss convention will be treated as if it were an additional federal foreign tax of Switzerland. Note, **Swiss convention** is defined in section 3AAA of the *International Tax Agreements Act 1953*.

Section 323 of the Act provides that where listed and unlisted countries have both a federal foreign tax and State foreign tax, the latter is to be treated as an additional federal foreign tax of the country. Section 21 of the Regulations ensures that a cantonal tax on income referred to in paragraph 3(b) of Article 2 of the Swiss convention will be treated as federal foreign tax for the purposes of section 323 of the Act.

### **Part 9 – Application and transitional provisions**

#### ***Division 1 – Transitional matters relating to the repeal of the Income Tax Assessment (1936 Act) Regulation 2015***

Sections 22 and 23 in Division 1 of Part 9 replace the application and transitional provisions in the 2015 Regulations (sections 22 to 27) to ensure the appropriate application of the Regulations from 1 October 2025.

#### Section 22 – Definitions

Section 22 of the Regulations defines the terms **commencement time**, **old regulations** and **repealing regulations**, which are relevant to the application and transitional provisions related to the repeal of the 2015 Regulations, as follows:

- **commencement time** means the time the Regulations commenced (1 October 2025).
- **old regulations** means the *Income Tax Assessment (1936 Act) Regulation 2015* (the 2015 Regulations).



- ***repealing regulations*** means the *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2015*, which commenced at the same time as the Regulations to make consequential amendments to support the remake of the 2015 Regulations.

Section 23 – This instrument generally applies to a year of income starting at or after the commencement time

Subsection 23(1) of the Regulations provides that the Regulations apply in relation to a year of income starting at or after the commencement time.

Subsection 23(2) provides that despite the repeal of the 2015 Regulations, the 2015 Regulations continue to apply in relation to a year of income starting before the commencement time. This ensures the appropriate application of the 2015 Regulations prior to the commencement of the Regulations.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Income Tax Assessment (1936 Act) Regulations 2025***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Income Tax Assessment (1936 Act) Regulations 2025* (the Legislative instrument) is to remake and improve the operation of the *Income Tax Assessment (1936 Act) Regulation 2015* (the 2015 Regulations) before the 2015 Regulations ‘sunset’. All legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of the *Legislation Act 2003*. Legislative instruments generally cease to have effect after 10 years unless their operation is extended such as by remaking the instrument. The 2015 Regulations were scheduled to sunset on 1 October 2025.

The Legislative Instrument remakes and improves the 2015 Regulations, repealing redundant provisions, simplifying language and updating existing rules and requirements to ensure they continue to operate in accordance with existing policy. Accordingly, the Legislative Instrument does not change existing arrangements for affected taxpayers.

The Legislative Instrument prescribes matters for the purposes of certain provisions of the Act, which include provisions relating to the tax treatment of income of certain Defence Force members and other prescribed persons, eligibility for deductions, rebates for low income aged persons and pensioners, timeframes for amending assessments in prescribed circumstances, as well as the appointment of public officers and the treatment of income in respect of controlled foreign companies.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.