<u>EXPLANATORY STATEMENT</u>

<u>Select Legislative Instrument 2009 No. 156</u>

<u>Issued by authority of the Assistant Treasurer</u>

Income Tax Assessment Act 1936

Income Tax Amendment Regulations 2009 (No. 2)

Section 266 of the *Income Tax Assessment Act 1936* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters which by the Act are required to be prescribed, or necessary or convenient to be prescribed for giving effect to the Act.

The amending Regulations update the *Income Tax Regulations 1936* (the Principal Regulations) in respect of two matters: tax arrangements for overseas service; and definitions of income used for determining tax offsets.

Schedule 1 to the amending Regulations amend the Principal Regulations to remove 'classes of persons' specified under section 23AB where the service that class of person was assigned to has ceased. The amending Regulations also declare duty on Operations Kruger and Riverbank (both in Iraq) to be eligible duty to enable the pay and allowances received by ADF members to be exempt from income tax under section 23AD.

Schedule 2 to the amending Regulations also change the Principal Regulations to amend the definition of income used in determining eligibility for the Senior Australian Tax Offset (SATO), Pensioner Tax Offset (PTO) and offset for trustees under sections 160AAAA and 160AAAB.

Details of the amending Regulations are as follows:

<u>Regulation 1 – Name of Regulations</u>

Regulation 1 provides that these Regulations are the *Income Tax Amendment Regulations 2009 (No. 2)*.

<u>Regulation 2 – Commencement</u>

Regulation 2 provides that these Regulations commence as follows:
(a) on the day after they are registered – regulations 1, 2 and 3 and Schedule 1;
(b) on 1 July 2009 – regulation 4 and Schedule 2.

<u>Regulation 3 – Amendment of *Income Tax Regulations 1936*</u>

Regulation 3 provides that Schedule 1 amends the *Income Tax Regulations 1936*.

<u>Regulation 4 – Amendment of *Income Tax Regulations 1936*</u>

Regulation 4 provides that Schedule 2 amends the *Income Tax Regulations 1936*.

Schedule 1 – Amendments

<u>Item 1 – Regulation 6</u>

Item 1 substitutes regulation 6 of the *Income Tax Regulations 1936* with:

6 Prescribed classes of persons (Act, section 23AB)

(1) For subsection 23AB (2) of the Act, the following classes of persons are prescribed:

(a) members of the Australian Federal Police who are members of the force, created by the United Nations, for keeping peace in Cyprus;

(b) Australian residents serving with UNMIT in Timor-Leste on or after 25 August 2006.

(2) For paragraph (1) (b):

UNMIT means the United Nations Integrated Mission in Timor-Leste, established by the United Nations Security Council on 25 August 2006.

Section 23AB of the Act provides a tax rebate for certain persons serving with an armed force under the control of the United Nations. Subsection 23AB(2) of the Act provides that the regulations may prescribe a person or a class of persons for the purposes of this section. Regulation 6 of the Principal Regulations specifies the classes of eligible persons for the purposes of section 23AB of the Act.

The amending regulation removes 'classes of persons' where the service that class of person was assigned to has ceased, and updates the paragraph referring to the UN's mission in Timor Leste to reflect the current names and dates.

<u>Item 2 – Regulation 7A</u>

Item 2 substitutes regulation 7A of the *Income Tax Regulations 1936* with:

7A Declaration of eligible duty

For subsection 23AD (2) of the Act, each of the following is eligible duty:

(a) duty with Operation Slipper within at least 1 of the following specified areas, on or after 11 October 2001:

(i) the area bounded by the following geographical coordinates:

- 48° 00′ N 81° 00′ E;
- 48° 00′ N 35° 00′ E;
- 12° 00′ N 35° 00′ E;
- 12° 00′ N 81° 00′ E;

(ii) the Diego Garcia land mass and territorial waters;

(iii) the greater of:

(A) the airspace of Diego Garcia for a radius of 250 nautical miles from Reference Point 07° 18.6′ S 072° 24.6′ E; and

(B) the declared Air Defence Identification Zone for Diego Garcia;

(b) duty with the United Nations Assistance Mission in Afghanistan, including the land territory, internal waters, airspace and superjacent airspace of Afghanistan, on or after 27 June 2005 (Operation Palate II);

(c) duty with Operation Catalyst, on or after 16 July 2003, within:

(i) the total land areas, territorial waters, internal waterways and airspace boundaries of the following places:

(A) Iraq;

(B) Kuwait;

(C) Bahrain;

(D) Qatar;

(E) United Arab Emirates;

(F) Saudi Arabia (north of the geographic coordinate 23° 00′ N); and

(ii) the waters and airspace of the following places:

(A) the Persian Gulf;

(B) the Strait of Hormuz;

(d) duty with Operation Kruger in Iraq from 1 January 2009 to 31 December 2010 (inclusive);

(e) duty with Operation Riverbank in Iraq from 1 July 2008 to 31 December 2010 (inclusive).

Section 23AD provides an exemption from income tax of pay and allowances of Australian Defence Force (ADF) members performing certain overseas duty. Subsection 23AD(1) of the Act exempts the pay and allowances earned by ADF members from income tax where there is a certificate in force, issued in writing by the Chief of the Defence Force, to the effect that the members are on ‘eligible duty’. Subsection 23AD(2) of the Act provides that the regulations may declare that duty with a specified organisation, in a specified area outside Australia and after a specified day, is ‘eligible duty’ for the purposes of that section.

Regulation 7A of the regulations specifies duty with various organisations in various areas outside Australia and declares that duty to be ‘eligible duty’ for the purposes of section 23AD of the Act.

On 28 January 2009 the Defence Minister declared duty on Operation Kruger as warlike service. Operation Kruger is the code name for the ADF contribution to the provision of security to the Australian Embassy in Iraq. The operation commenced on 1 January 2009.

On 21 April 2009 the Defence Minister declared duty on Operation Riverbank as warlike service. Operation Riverbank is the code name for the ADF contribution to the United Nations Assistance Mission for Iraq (UNAMI). The operation commenced on 21 July 2008.

The amending regulation removes ceased operations from the list of ‘eligible duty’ for the purposes of regulation 7A and also includes duty with Operation Kruger for the period 1 January 2009 to 31 December 2010 (inclusive) and Operation Riverbank for the period 1 July 2008 to 31 December 2010 (inclusive) in the list of ‘eligible duty’ for the purposes of section 23AD.

Schedule 2 – Amendments

Item 1 – Regulation 150AB, heading

Item 1 substitutes the heading of regulation 150AB ‘Eligibility – amount of taxable income’ with ‘Eligibility – amount of rebate income’.

The concept of ‘rebate income’ was inserted into subsection 6(1) of the Act by the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*, which received Royal Assent on 26 March 2009. It comprises:

(a) the individual’s taxable income for the year of income; and
(b) the individual’s reportable superannuation contributions for the year of income; and
(c) the individual’s total net investment loss for the year of income; and
(d) the individual’s adjusted fringe benefits total for the year of income.

‘Rebate income’ was developed in response to changes announced in the 2008-09 Budget.

Item 2 – Paragraph 150AD(b)

Item 2 omits the term ‘for a later year of income’ and replace with ‘for a year of income ending after 30 June 1997 and before 1 July 2009’.

This ensures that ‘taxable income’ will be used in determining eligibility for the SATO, PTO and offset for trustees under sections 160AAAA and 160AAAB, for years of income later than 30 June 1997 up to the year ending 30 June 2009. The concept of ‘rebate income’ did not exist in this period.

Item 3 and 4 – Subparagraph 150AD(b)(ii) and after paragraph 150AD(b)

Items 3 and 4 add an additional paragraph (c) to subsection 150AD that applies the term ‘rebate income’ to years from 1 July 2009 beyond. This means that an individual’s rebate income, and the rebate income of their spouse where appropriate, will be assessed in determining eligibility for the SATO and the tax offset for trustees under section 160AAAB of the Act.

Item 5 and 6 – Paragraph 151(1)(a) and paragraph 151(1)(b)

Items 5 and 6 substitute the term ‘rebate income’ for the current ‘taxable income’.

This means a taxpayer’s ‘rebate income’ will be compared to his or her rebate threshold in determining eligibility for the PTO.

The effect of this is that a taxpayer’s rebate amount will be reduced by 12.5 cents for every $1 of ‘rebate income’ they have earned above the taxpayer’s rebate threshold.