



Income Tax Assessment Amendment Regulations 2007 (No. 7)¹

Select Legislative Instrument 2007 No. 328

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1997*.

Dated 26 September 2007

P. M. JEFFERY
Governor-General
By His Excellency's Command

PETER CRAIG DUTTON
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2007 (No. 7)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 1 amends the *Income Tax Assessment Regulations 1997*.

4 Application

The amendment made by Schedule 1 applies in relation to an income year that begins on or after 1 July 2007.

Schedule 1 Amendment

(regulation 3)

[1] After Division 292

insert

Division 302 Superannuation death benefits paid from complying plans etc

302-195 Circumstances in which a person died in the line of duty

- (1) For subsection 302-195 (3) of the Act, this regulation sets out circumstances in which a deceased person mentioned in subsection 302-195 (2) of the Act (a *military or police person*) died in the line of duty:
 - (a) in Australia or on overseas service — subregulations (2), (3), (4), (5), (9) or (10); and
 - (b) on overseas service — subregulations (6), (7) and (8).

Note When this regulation was made, subsection 302-195 (2) of the Act mentioned the following persons:

- (a) a member of the Defence Force;
- (b) a member of the Australian Federal Police;
- (c) a protective service officer within the meaning of the *Australian Federal Police Act 1979*;
- (d) a member of a State or Territory police force.

Performance of duties

- (2) A circumstance is that the military or police person died while performing the duties of a military or police person.

(3) A circumstance is that:

- (a) the military or police person was off-duty at the time of his or her death; and
- (b) his or her death occurred:
 - (i) in the course of an attempt to arrest a suspected offender; or
 - (ii) in the course of an attempt to prevent an offence; or
 - (iii) in the course of an attempt to rescue a person; or
 - (iv) while he or she was travelling to a place of work as a result of being recalled to duty.

Injury

(4) A circumstance is that the military or police person:

- (a) died within 12 months after sustaining an injury; and
- (b) died as a result of sustaining the injury; and
- (c) sustained the injury while performing the duties of a military or police person.

(5) A circumstance is that the military or police person:

- (a) was off-duty at the time of sustaining an injury; and
- (b) sustained the injury:
 - (i) in the course of an attempt to arrest a suspected offender; or
 - (ii) in the course of an attempt to prevent an offence; or
 - (iii) in the course of an attempt to rescue a person; or
 - (iv) while he or she was travelling to a place of work as a result of being recalled to duty; and
- (c) died within 12 months after sustaining the injury; and
- (d) died as a result of sustaining the injury.

Overseas service

- (6) A circumstance is that the military or police person:
 - (a) was a member of the Defence Force; and
 - (b) died while serving overseas, if the service was:
 - (i) warlike service mentioned in paragraph 6 (1) (a) of the *Military Rehabilitation and Compensation Act 2004*; or
 - (ii) non-warlike service mentioned in paragraph 6 (1) (b) of the *Military Rehabilitation and Compensation Act 2004*.
- (7) A circumstance is that the military or police person:
 - (a) was a member of the Australian Federal Police or a protective service officer within the meaning of the *Australian Federal Police Act 1979*; and
 - (b) died while serving overseas, if the service was:
 - (i) at a place specified in a determination under subsection 40H (1) of the *Australian Federal Police Act 1979*; and
 - (ii) on a peace-keeping or capacity-building mission.
- (8) A circumstance is that the military or police person:
 - (a) was a member of a State or Territory police force; and
 - (b) died while serving overseas, if the service was:
 - (i) undertaken as a special member of the Australian Federal Police under section 40E of the *Australian Federal Police Act 1979*; and
 - (ii) on a peace-keeping or capacity-building mission.

Consequences of duties

- (9) A circumstance is that, as a result of action taken because the person was a military or police person, the military or police person sustained an injury from which he or she died:
 - (a) immediately; or

(b) within 12 months after sustaining the injury.

Example

The person was killed in retaliation for an action taken in the capacity of a military or police person.

Uncertainty about circumstances of death

(10) A circumstance is that:

- (a) the military or police person has died; and
- (b) it is not certain, after reasonable inquiry, whether the person died in a circumstance described in regulation 302-195A.

Note If it is uncertain whether the death falls within regulation 302-195A, the person will be taken to have died in the line of duty.

Interpretation

(11) For this regulation, the time when a military or police person is off-duty includes a time when he or she is:

- (a) travelling to or from his or her place of work; or
- (b) on a rostered day off work; or
- (c) on leave from work.

302-195A Circumstances in which a person is taken not to have died in the line of duty

(1) This regulation sets out circumstances in which a person mentioned in subsection 302-195 (2) of the Act (a *military or police person*) is taken not to have died in the line of duty.

Note When this regulation was made, subsection 302-195 (2) of the Act mentioned the following persons:

- (a) a member of the Defence Force;
- (b) a member of the Australian Federal Police;
- (c) a protective service officer within the meaning of the *Australian Federal Police Act 1979*;
- (d) a member of a State or Territory police force.

Off-duty

- (2) A circumstance is that:
 - (a) the military or police person was off-duty at the time of his or her death; and
 - (b) none of subregulations 302-195 (3), (6), (7), (8) and (9) applies.
- (3) A circumstance is that:
 - (a) the military or police person died as a result of sustaining an injury; and
 - (b) the military or police person was off-duty at the time of sustaining the injury; and
 - (c) none of subregulations 302-195 (5), (6), (7), (8) and (9) applies.

Incidental activity

- (4) A circumstance is that:
 - (a) the military or police person's death related to an activity that was not directly related to the performance of his or her duties; and
 - (b) none of subregulations 302-195 (6), (7) and (8) applies.

Example

Undertaking a sporting activity.

Death after retirement

- (5) A circumstance is that:
 - (a) the military or police person died after he or she retired as a military or police person; and
 - (b) none of subregulations 302-195 (4), (5) and (9) applies.

Suicide

- (6) A circumstance is that the military or police person died as a result of committing suicide.

Natural causes or disease

(7) A circumstance is that:

- (a) the military or police person died as a result of:
 - (i) natural causes; or
 - (ii) an illness or disease; and
- (b) none of subregulations 302-195 (6), (7) and (8) applies.

Interpretation

(8) For this regulation, the time when a military or police person is off-duty includes a time when he or she is:

- (a) travelling to or from his or her place of work; or
- (b) on a rostered day off work; or
- (c) on leave from work.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frl.gov.au.