



Income Tax Assessment Amendment Regulations 2009 (No. 5)

Select Legislative Instrument 2009 No. 388

I, QUENTIN BRYCE, 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 14 December 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Financial Services, Superannuation and Corporate Law

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2009 (No. 5)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 1 July 2008 — regulations 1 to 3 and Schedule 1;
- (b) on 1 August 2009 — regulation 4 and Schedule 2;
- (c) on the day after they are registered — regulation 5 and Schedule 3.

3 Amendment of *Income Tax Assessment Regulations 1997* — Schedule 1

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

4 Amendment of *Income Tax Assessment Regulations 1997* — Schedule 2

Schedule 2 amends the *Income Tax Assessment Regulations 1997*.

5 Amendment of *Income Tax Assessment Regulations 1997* — Schedule 3

Schedule 3 amends the *Income Tax Assessment Regulations 1997*.

Schedule 1

**Amendment taken to have
commenced on 1 July 2008**

(regulation 3)

[1] Schedule 4, item 504

omit

(other than sections 47 and 47A)

Schedule 2

**Amendment taken to have
commenced on 1 August 2009**

(regulation 4)

[1] Schedule 4, item 505

substitute

505 *Southern State Superannuation Act 2009* (other than section 30 (2) (h))

Schedule 3**Amendments commencing on
the day after registration**

(regulation 5)

[1] Division 302, first occurring*omit***[2] Subdivision 302-D, before regulation 302-200.01***insert***302-195 Circumstances in which a person died in the line
of duty**

- (1) For subsection 302-195 (3) of the Act, the following subregulations 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);
 - (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 his or her capacity as a military or police person.

Uncertainty about circumstances of death

(10) A circumstance is that:

- the military or police person has died; and
- 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:

- travelling to or from his or her place of work; or
- on a rostered day off work; or
- 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 (a *military or police person*) mentioned in subsection 302-195 (2) of the Act 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 member of the Defence Force;
- a member of the Australian Federal Police;
- a protective service officer within the meaning of the *Australian Federal Police Act 1979*;
- a member of a State or Territory police force.

Off duty

(2) A circumstance is that:

- the military or police person was off duty at the time of his or her death; and
- 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.