



# **Tax Laws Amendment (Simplified Superannuation) Act 2007**

**No. 9, 2007**

**An Act to amend the law relating to taxation, superannuation, social security and veterans' entitlements, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Tax Laws Amendment (Simplified Superannuation) Act 2007**

**No. 9, 2007**

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**An Act to amend the law relating to taxation, superannuation, social security and veterans' entitlements, and for related purposes**

*[Assented to 15 March 2007]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Simplified Superannuation) Act 2007*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 March 2007
2. Schedules 1 to 3	The day on which this Act receives the Royal Assent.	15 March 2007
3. Schedule 4, items 1 to 13	The day on which this Act receives the Royal Assent.	15 March 2007
4. Schedule 4, item 14	The later of: (a) at the same time as the provision(s) covered by table item 3; and (b) immediately after the commencement of items 20 and 21 in Schedule 2 to the <i>Tax Laws Amendment (2006 Measures No. 6) Act 2007</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 March 2007 (paragraph (a) applies)
5. Schedule 4, items 15 and 16	The day on which this Act receives the Royal Assent.	15 March 2007
6. Schedule 5, items 1 to 34	The day on which this Act receives the Royal Assent.	15 March 2007
7. Schedule 5, item 35	Immediately after the provisions covered by table item 2.	15 March 2007
8. Schedule 5, item 36	The day on which this Act receives the Royal Assent.	15 March 2007
9. Schedules 6 and 7	The day on which this Act receives the Royal Assent.	15 March 2007

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 8, Part 1	20 September 2007.	20 September 2007
11. Schedule 8, Part 2	1 July 2007.	1 July 2007
12. Schedule 9, Part 1	20 September 2007.	20 September 2007
13. Schedule 9, Part 2	1 July 2007.	1 July 2007
14. Schedule 10	The day on which this Act receives the Royal Assent.	15 March 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Main superannuation amendments

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

#### 1 After Part 3-10

Insert:

### Part 3-30—Superannuation

#### Division 280—Guide to the superannuation provisions

##### Table of sections

280-1	Effect of this Division
280-5	Overview

##### **Contributions phase**

280-10	Contributions phase—deductibility
280-15	Contributions phase—limits on superannuation tax concessions

##### **Investment phase**

280-20	Investment phase
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##### **Benefits phase**

280-25	Benefits phase—different types of superannuation benefit
280-30	Benefits phase—taxation varies with age of recipient and type of benefit
280-35	Benefits phase—roll-overs

##### **The regulatory scheme outside this Act**

280-40	Other relevant legislative schemes
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#### **280-1 Effect of this Division**

(1) This Division is a \*Guide.



- (2) Tax concessions in this Part are intended to encourage Australians to save in order to make provision for their retirement, recognising that superannuation investments, and the income from them, are quarantined for retirement.

## **280-5 Overview**

- (1) There are 3 phases in the tax treatment of superannuation, as follows:
  - (a) the contributions phase;
  - (b) the investment phase;
  - (c) the benefits phase.
- (2) In the contributions phase, contributions are made to a superannuation plan in respect of a member of the plan.
- (3) In the investment phase, these contributions are invested by the superannuation provider.
- (4) In the benefits phase, these contributions, plus earnings from investing them, are usually paid as benefits to the member when he or she retires after reaching preservation age. In the event of death, the benefits are usually paid to the member's dependants.
- (5) There is also a regulatory scheme outside this Act that is relevant to the taxation treatment of superannuation. For example, other Acts set out prudential and operating standards for superannuation providers.

## **Contributions phase**

### **280-10 Contributions phase—deductibility**

#### *Contributions that can be deducted*

- (1) Employers can usually deduct contributions they make in respect of their employees. Individuals can usually deduct contributions they make in respect of themselves if less than 10% of their total assessable income (plus reportable fringe benefits) for the income year is attributable to employment or similar activities.

*Other contributions cannot be deducted*

- (2) Other contributions cannot be deducted. These include personal contributions made by individuals whose employment income is 10% or more of their total income, and contributions made by others in respect of them (such as contributions by a spouse or family member, or Government co-contributions).

**280-15 Contributions phase—limits on superannuation tax concessions**

- (1) There is a limit to contributions that can be made in respect of an individual in a year that receive favourable tax treatment. This limit takes the form of a tax on excessive contributions, and neutralises the favourable tax treatment arising from the excessive contributions.
- (2) If concessional contributions exceed an indexed cap, the individual concerned is taxed on the excess. This tax liability can be met by releasing money from his or her superannuation interests.
- (3) If non-concessional contributions (including any excess for the purposes of the first cap) exceed a second indexed cap, the individual is taxed on the excess. The second cap is equivalent to three times the first cap. The payment of this tax liability must be accompanied by releasing money equivalent to the liability from his or her superannuation interests.

**Investment phase**

**280-20 Investment phase**

- (1) Contributions that can be deducted are assessable income of the superannuation provider. Contributions that cannot be deducted are not assessable income of the superannuation provider. (There are some exceptions.)
- (2) Earnings on the investment of amounts in a superannuation plan are assessable income of the superannuation provider.
- (3) The superannuation provider's taxable income is generally taxed at the concessional rate of 15%.

- (4) However, superannuation providers pay no tax on earnings from the assets that support the payment of benefits in the form of income streams, once the income streams have commenced.

## **Benefits phase**

### **280-25 Benefits phase—different types of superannuation benefit**

Superannuation benefits can be drawn down as lump sums, income streams (such as pensions or annuities), or combinations of both. Different tax treatment may apply depending on whether a lump sum or income stream is paid.

### **280-30 Benefits phase—taxation varies with age of recipient and type of benefit**

- (1) The taxation of superannuation benefits depends primarily on the age of the member.
- (2) If the member is aged 60 or over, superannuation benefits (both lump sums and income streams) are tax free if the benefits have already been subject to tax in the fund (that is, where the benefits comprise a taxed element). This covers the great majority of superannuation members.
- (3) Where a superannuation benefit contains an amount that has not been subject to tax in the fund (an untaxed element), this element is subject to tax for those aged 60 or over, though at concessional rates. This is relevant generally to those people (for example, public servants), who are members of a superannuation fund established by the Australian Government or a state government.
- (4) If the member is less than 60, superannuation benefits may receive concessional taxation treatment, though the treatment is less concessional than for those aged 60 and over.
- (5) Superannuation benefits may also include a “tax free component”; this component of the benefit is always paid tax free.
- (6) Additional tax concessions may apply when superannuation benefits are paid after a member’s death.

## 280-35 Benefits phase—roll-overs

A member can “roll over” their superannuation benefits from one complying superannuation plan to another, or between different interests in the same plan. This is usually done to keep the benefits invested in the superannuation system, or to convert a lump sum to a superannuation income stream. No tax is generally payable until the benefits are finally drawn down.

## The regulatory scheme outside this Act

### 280-40 Other relevant legislative schemes

- (1) The *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* regulate the prudential and operating standards for superannuation providers. Concessional tax treatment is generally available only if providers comply with these standards.
- (2) Other legislative schemes relevant to superannuation include the following:
  - (a) the *Superannuation Guarantee (Administration) Act 1992*, which requires that employers provide a minimum level of superannuation contributions for each of their eligible employees;
  - (b) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, which provides for Government co-contributions to low income earners’ superannuation;
  - (c) the *Small Superannuation Accounts Act 1995*, which provides a facility to accept payments of superannuation guarantee shortfalls;
  - (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which provides for the payment of unclaimed superannuation money, and the maintenance of a register of lost members.

## Division 290—Contributions to superannuation funds

### Table of Subdivisions

Guide to Division 290

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- 290-A General rules
- 290-B Deduction of employer contributions and other employment-connected contributions
- 290-C Deducting personal contributions
- 290-D Tax offsets for spouse contributions

## **Guide to Division 290**

### **290-1 What this Division is about**

This Division sets out the rules for deductions and tax offsets for superannuation contributions.

### **Subdivision 290-A—General rules**

#### **Table of sections**

- 290-5 Non-application to roll-over superannuation benefits etc.
- 290-10 No deductions other than under this Division

### **290-5 Non-application to roll-over superannuation benefits etc.**

This Division does not apply to a contribution that is any of the following:

- (a) a \*roll-over superannuation benefit;
- (b) a \*superannuation lump sum that is paid from a \*foreign superannuation fund.

### **290-10 No deductions other than under this Division**

- (1) You cannot deduct under this Act an amount you pay as a contribution to a \*complying superannuation fund or \*RSA, except as provided by this Division.
- (2) You cannot deduct under this Act an amount you pay as a contribution to a \*non-complying superannuation fund, except as provided by this Division.

Note: Under Subdivision 290-B (Deduction of employer contributions and other employment-connected contributions), you may be able to deduct contributions you make to a non-complying fund that you believe to be a complying fund.

## Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions

### Table of sections

#### Deducting employer contributions

- 290-60 Employer contributions deductible
- 290-65 Application to employees etc.

#### Conditions for deducting an employer contribution

- 290-70 Assessable income or business conditions
- 290-75 Complying fund conditions
- 290-80 Age related conditions

#### Other employment-connected deductions

- 290-85 Contributions for former employees etc.
- 290-90 Controlling interest deductions
- 290-95 Amounts offset against superannuation guarantee charge

#### Returned contributions

- 290-100 Returned contributions assessable

### Deducting employer contributions

#### 290-60 Employer contributions deductible

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for another person who is your employee when the contribution is made (regardless whether the benefits are payable to a \*SIS dependant of the employee if the employee dies before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see sections 85-25 and 86-75 of this Act and subsection 73B(14) of the *Income Tax Assessment Act 1936*.

- (2) However, the conditions in sections 290-70, 290-75 and 290-80 must also be satisfied for you to deduct the contribution.

- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) You cannot deduct the contribution if it is an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.

### **290-65 Application to employees etc.**

- (1) At a time when an individual is an employee of an entity within the expanded meaning of *employee* given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*, this Subdivision applies as if the individual were an employee of the entity.
- (2) For the purposes of this Subdivision:
  - (a) in relation to a contribution by a partnership in respect of an employee of the partnership—treat the employee as an employee of the partnership; and
  - (b) in relation to a contribution by a partner in a partnership in respect of an employee of the partnership—treat the employee as an employee of the partner.

### **Conditions for deducting an employer contribution**

#### **290-70 Assessable income or business conditions**

To deduct the contribution, the employee must be:

- (a) engaged in producing your assessable income; or
- (b) an Australian resident who is engaged in your business.

#### **290-75 Complying fund conditions**

- (1) If the contribution was made to a \*superannuation fund, at least one of these conditions must be satisfied:
  - (a) the fund was a \*complying superannuation fund for the income year of the fund in which you made the contribution;

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- (b) at the time you made the contribution, you had reasonable grounds to believe that the fund was a complying superannuation fund for that income year;
  - (c) at or before the time you made the contribution, you obtained a written statement (given by or on behalf of the trustee of the fund) that the fund:
    - (i) was a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
    - (ii) was not subject to a direction under section 63 of that Act (which prevents a fund from accepting employer contributions).
- (2) However, the condition in paragraph (1)(b) or (c) cannot be satisfied if, when the contribution was made:
- (a) you were:
    - (i) the trustee or the manager of the fund; or
    - (ii) an \*associate of the trustee or the manager of the fund; and
  - (b) you had reasonable grounds to believe that:
    - (i) the fund was not a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
    - (ii) the fund was operating in contravention of a regulatory provision (within the meaning of section 38A of that Act).
- (3) For the purposes of subparagraph (2)(b)(ii), a contravention of the *Superannuation Industry (Supervision) Act 1993* or regulations made under it is to be ignored unless the contravention is:
- (a) an offence; or
  - (b) a contravention of a civil penalty provision of that Act or those regulations.
- (4) For the purposes of subparagraph (2)(b)(ii), it is sufficient if a contravention is established on the balance of probabilities.

**290-80 Age related conditions**

- (1) To deduct the contribution, either:
-



- (a) you must have made the contribution on or before the day that is 28 days after the end of the month in which the employee turns 75; or
  - (b) you must have been required to make the contribution by an industrial award, determination or notional agreement preserving State awards (within the meaning given by Schedule 8 to the *Workplace Relations Act 1996*) that is in force under an \*Australian law.
- (2) If only paragraph (1)(b) applies, you can deduct only the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards.

Note: An industrial agreement, such as an Australian Workplace Agreement, Collective Agreement or preserved State agreement under the *Workplace Relations Act 1996*, or a similar agreement made under a State law, is not an award or determination.

## **Other employment-connected deductions**

### **290-85 Contributions for former employees etc.**

- (1) Section 290-60 applies as modified by this section if a contribution you make in respect of another person:
  - (a) reduces your charge percentage under sections 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
  - (b) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was your employee.
- (2) Treat the other person as your employee for the purposes of subsection 290-60(1).
- (3) Despite subsection 290-60(2), the condition in section 290-70 must be satisfied only at the most recent time when the other person was your employee (apart from subsection (2) of this section).

### **290-90 Controlling interest deductions**

- (1) Section 290-60 applies as modified by this section if you make a contribution in respect of another person at a time, and at that time:

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- (a) the other person is an employee of a company in which you have a controlling interest; or
  - (b) you are connected to the other person in the circumstances set out in subsection (5); or
  - (c) you are a company connected to the other person in the circumstances described in subsection (6).
- (2) Treat the other person as your employee at that time for the purposes of subsection 290-60(1).
- Note 1: A deduction may be denied by section 85-25 if the employee is your associate.
- Note 2: Section 86-60 (read together with section 86-75) limits the extent to which superannuation contributions by personal service entities are allowable deductions.
- (3) Despite subsection 290-60(2), for you to deduct the contribution the condition in subsection (4) needs to be satisfied instead of the condition in section 290-70.
- (4) The other person must be either:
- (a) engaged in producing the assessable income of the other person's employer; or
  - (b) an Australian resident engaged in the business of the other person's employer.
- (5) For the purposes of paragraph (1)(b), the circumstances are:
- (a) you are the beneficial owner of shares in a company of which the other person is an employee, but you do not have a controlling interest in the company; and
  - (b) you are at \*arm's length with the other person in relation to the contribution; and
  - (c) neither the other person, nor a \*relative of the other person:
    - (i) has set apart an amount as a fund, or has made a contribution to a fund, for the purpose of providing \*superannuation benefits for you or a relative of yours; or
    - (ii) has made an \*arrangement under which the other person or relative will or may do so.

*Company controlling interest deductions*

- (6) For the purposes of paragraph (1)(c), the circumstances are:
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- (a) the other person is an employee of an entity that has a controlling interest in the company; or
- (b) an entity that has a controlling interest in the company also has a controlling interest in a company of which the other person is an employee.

### **290-95 Amounts offset against superannuation guarantee charge**

You cannot deduct a contribution under this Act if you elect under subsection 23A(1) of the *Superannuation Guarantee (Administration) Act 1992* that the contribution be offset against your liability to pay superannuation guarantee charge.

Note: You cannot deduct a charge imposed by the *Superannuation Guarantee Charge Act 1992*: see section 26-95.

## **Returned contributions**

### **290-100 Returned contributions assessable**

- (1) Your assessable income includes a payment, or the value of a benefit, you receive in the income year so far as it reasonably represents the direct or indirect return of:
  - (a) a contribution for which you or another entity have deducted or can deduct an amount for any income year; or
  - (b) earnings on a contribution of that kind.

Note: An example of an indirect return of a contribution is if the fund to which it was made transfers to another fund assets that include the contribution, and the other fund returns the contribution to the person who made it.

- (2) Subsection (1) does not apply if you receive the payment, or the value of the benefit, as a \*superannuation benefit.

## **Subdivision 290-C—Deducting personal contributions**

### **Table of sections**

290-150 Personal contributions deductible

#### **Conditions for deducting a personal contribution**

290-155 Complying superannuation fund condition

290-160 Maximum earnings as employee condition

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- 290-165 Age-related conditions
- 290-170 Notice of intent to deduct conditions
- 290-175 Deduction limited by amount specified in notice
- 290-180 Notice may be varied but not revoked or withdrawn

**290-150 Personal contributions deductible**

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for yourself (regardless whether the benefits are payable to your \*SIS dependants if you die before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see section 26-55 of this Act.

- (2) However, the conditions in sections 290-155, 290-160, 290-165 and 290-170 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.

**Conditions for deducting a personal contribution**

**290-155 Complying superannuation fund condition**

If the contribution is made to a \*superannuation fund, it must be a \*complying superannuation fund for the income year of the fund in which you made the contribution.

**290-160 Maximum earnings as employee condition**

- (1) This section applies if:
- (a) in the income year in which you make the contribution, you engage in any of these activities:
    - (i) holding an office or appointment;
    - (ii) performing functions or duties;
    - (iii) engaging in work;
    - (iv) doing acts or things; and
  - (b) the activities result in you being treated as an employee for the purposes of the *Superannuation Guarantee*

*(Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).

- (2) To deduct the contribution, less than 10% of the total of the following must be attributable to the activities:
  - (a) your assessable income for the income year;
  - (b) your \*reportable fringe benefits total for the income year.

### **290-165 Age-related conditions**

- (1) If you were under the age of 18 at the end of the income year in which you made the contribution, you must have \*derived income in the income year:
  - (a) from the carrying on of a \*business; or
  - (b) attributable to activities covered by subsection 290-160(1).
- (2) In any other case, you must have made the contribution on or before the day that is 28 days after the end of the month in which you turn 75.

### **290-170 Notice of intent to deduct conditions**

#### *Deductibility of contributions*

- (1) To deduct the contribution, or a part of the contribution:
  - (a) you must give to the trustee of the fund or the \*RSA provider a valid notice, in the \*approved form, of your intention to claim the deduction; and
  - (b) the notice must be given before:
    - (i) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
    - (ii) otherwise—the end of the next income year; and
  - (c) the trustee or provider must have given you an acknowledgment of receipt of the notice.

#### *Validity of notices*

- (2) The notice is not valid if at least one of these conditions is satisfied:

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- (a) the notice is not in respect of the contribution;
- (b) the notice includes all or a part of an amount covered by a previous notice;
- (c) when you gave the notice:
  - (i) you were not a member of the fund or the holder of the \*RSA; or
  - (ii) the trustee or \*RSA provider no longer holds the contribution; or
  - (iii) the trustee or RSA provider has begun to pay a \*superannuation income stream based in whole or part on the contributions;
- (d) before you gave the notice:
  - (i) you had made a contributions-splitting application (within the meaning given by the regulations) in relation to the contribution; and
  - (ii) the trustee or RSA provider had not rejected the application.

*Acknowledgment of notice*

- (3) The trustee or provider must, without delay, give you an acknowledgment of a valid notice, subject to subsection (4).
- (4) The trustee or provider may refuse to give you an acknowledgment of receipt of a valid notice if the \*value of the \*superannuation interest into which the contribution is made, at the end of the day on which the trustee or \*RSA provider received the notice, is less than the tax that would be payable in respect of your contribution (or part of the contribution) if the trustee or provider were to acknowledge receipt of the notice.

**290-175 Deduction limited by amount specified in notice**

You cannot deduct more for the contribution (or a part of the contribution) than the amount stated in the notice.

**290-180 Notice may be varied but not revoked or withdrawn**

- (1) You cannot revoke or withdraw a valid notice in relation to the contribution (or a part of the contribution).

- (2) You can vary a valid notice, but only so as to reduce the amount stated in relation to the contribution (including to nil). You do so by giving notice to the trustee or the \*RSA provider in the \*approved form.
- (3) However, you cannot vary a valid notice after:
  - (a) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
  - (b) otherwise—the end of the next income year.
- (4) Subsection (3) does not apply to a variation if:
  - (a) you claimed a deduction for the contribution (or a part of the contribution); and
  - (b) the deduction is not allowable (in whole or in part); and
  - (c) the variation reduces the amount stated in relation to the contribution by the amount not allowable as a deduction.

### **Subdivision 290-D—Tax offsets for spouse contributions**

#### **Table of sections**

290-230	Offset for spouse contribution
290-235	Limit on amount of tax offsets
290-240	Tax file number

#### **290-230 Offset for spouse contribution**

- (1) You are entitled to a \*tax offset for an income year for a contribution you make in the income year to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for your \*spouse (regardless whether the benefits are payable to your spouse's \*SIS dependants if your spouse dies before or after becoming entitled to receive the benefits).
- (2) You are entitled to the \*tax offset only if:
  - (a) he or she was your \*spouse when you made the contribution; and
  - (b) both you and your spouse were Australian residents when you made the contribution; and

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- (c) the total of your spouse's assessable income and \*reportable fringe benefits total for the income year is less than \$13,800; and
  - (d) you have not deducted and cannot deduct an amount for the contribution under section 290-60 (employer contributions); and
  - (e) if the contribution is made to a \*superannuation fund—it is a \*complying superannuation fund for the income year of the fund in which you make the contribution.
- (3) You are *not* entitled to the \*tax offset if, when you make the contribution, you are living separately and apart from your \*spouse on a permanent basis.
- (4) You are *not* entitled to the \*tax offset for an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.

**290-235 Limit on amount of tax offsets**

- (1) The total of the amounts of \*tax offset to which you are entitled for contributions you make for an income year cannot exceed 18% of the lesser of the following:
- (a) \$3,000 reduced by the amount (if any) by which the total mentioned in paragraph 290-230(2)(c) for the income year exceeds \$10,800;
  - (b) the sum of the \*spouse contributions you make in the income year.
- (2) The maximum \*tax offset to which you are entitled for an income year is \$540, even if you are entitled to a tax offset for more than 1 \*spouse.

**290-240 Tax file number**

If you are entitled to the \*tax offset for the contribution, you may, with your \*spouse's consent, quote your spouse's \*tax file number to the trustee (or \*RSA provider) of the \*superannuation fund (or \*RSA) to which the contribution is made.



## **Division 292—Excess contributions tax**

### **Table of Subdivisions**

	Guide to Division 292
292-A	Object of this Division
292-B	Excess concessional contributions tax
292-C	Excess non-concessional contributions tax
292-D	Modifications for defined benefit interests
292-E	Excess contributions tax assessments
292-F	Amending excess contributions tax assessments
292-G	Collection and recovery
292-H	Other provisions

### **Guide to Division 292**

#### **292-1 What this Division is about**

This Division limits the superannuation contributions made in a financial year for a person that receive concessional taxed treatment.

### **Subdivision 292-A—Object of this Division**

#### **Table of sections**

292-5	Object of this Division
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#### **292-5 Object of this Division**

The object of this Division is to ensure that the amount of concessional taxed \*superannuation benefits that a person receives results from superannuation contributions that have been made gradually over the course of the person's life.

## Subdivision 292-B—Excess concessional contributions tax

### 292-10 What this Subdivision is about

This Subdivision defines *concessional contributions* and *excess concessional contributions*, and sets liability to pay excess concessional contributions tax.

### Table of sections

#### Operative provisions

292-15	Liability for excess concessional contributions tax
292-20	Your <i>excess concessional contributions</i> for a financial year
292-25	Your <i>concessional contributions</i> for a financial year

### Operative provisions

#### 292-15 Liability for excess concessional contributions tax

You are liable to pay \*excess concessional contributions tax imposed by the *Superannuation (Excess Concessional Contributions Tax) Act 2007* if you have \*excess concessional contributions for a \*financial year.

Note: The amount of the tax is set out in that Act.

#### 292-20 Your *excess concessional contributions* for a financial year

- (1) You have *excess concessional contributions* for a \*financial year if the amount of your \*concessional contributions for the year exceeds your \*concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.
- (2) Your *concessional contributions cap* for the 2007-2008 \*financial year is \$50,000. This amount is indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

Note 2: For transitional rules about the period from 1 July 2007 to 30 June 2012, see section 292-20 of the *Income Tax (Transitional Provisions) Act 1997*.

### **292-25 Your concessional contributions for a financial year**

- (1) The amount of your *concessional contributions* for a \*financial year is the sum of:
- (a) each contribution covered under subsection (2); and
  - (b) each amount covered under subsection (3).

Note: For rules about defined benefit interests, see Subdivision 292-D.

- (2) A contribution is covered under this subsection if:
- (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is included in the assessable income of the \*superannuation provider in relation to the plan; and
  - (c) it is *not* any of the following:
    - (i) an amount mentioned in subsection 295-200(2);
    - (ii) an amount mentioned in item 2 of the table in subsection 295-190(1);
    - (iii) a contribution made to a \*constitutionally protected fund.
- (3) An amount in a \*complying superannuation plan is covered under this subsection if it is allocated by the \*superannuation provider in relation to the plan for you for the year (other than an amount paid for or by you to the plan) to the extent to which the allocated amount exceeds an amount that, according to rules specified in the regulations, is reasonable having regard to:
- (a) the amounts paid for or by you to the superannuation plan; and
  - (b) the plan's investment earnings relating to your \*superannuation interest or interests in the plan; and
  - (c) any other relevant matters.
- (4) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

## Subdivision 292-C—Excess non-concessional contributions tax

### 292-75 What this Subdivision is about

This Subdivision defines *non-concessional contributions* and *excess non-concessional contributions*, and sets liability to pay excess non-concessional contributions tax.

### Table of sections

#### Operative provisions

292-80	Liability for excess non-concessional contributions tax
292-85	Your <i>excess non-concessional contributions</i> for a financial year
292-90	Your <i>non-concessional contributions</i> for a financial year
292-95	Contributions arising from structured settlements or orders for personal injuries
292-100	Contribution relating to some CGT small business concessions
292-105	CGT cap amount

### Operative provisions

#### 292-80 Liability for excess non-concessional contributions tax

You are liable to pay \*excess non-concessional contributions tax imposed by the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* if you have \*excess non-concessional contributions for a \*financial year.

Note: The amount of the tax is set out in that Act.

#### 292-85 Your *excess non-concessional contributions* for a financial year

- (1) You have *excess non-concessional contributions* for a \*financial year if the amount of your \*non-concessional contributions for the year exceeds your \*non-concessional contributions cap for the year. The amount of the excess non-concessional contributions is the amount of the excess.

- (2) Your *non-concessional contributions cap* for the year is the amount that is 3 times your \*concessional contributions cap for the year.
- (3) However, subsection (4) applies instead of subsection (2) in determining your *non-concessional contributions cap* for a \*financial year (the *first year*) if:
  - (a) your \*non-concessional contributions for the first year exceed the amount mentioned in subsection (2) for that year; and
  - (b) you are under 65 years at any time in the first year; and
  - (c) a previous operation of subsection (4) does not determine your non-concessional contributions cap for the first year.
- (4) Work out your *non-concessional contributions cap* for the first year and for the following 2 \*financial years (the *second year* and *third year*) as follows:
  - (a) your cap for the first year is 3 times the amount mentioned in subsection (2) for the first year;
  - (b) your cap for the second year is:
    - (i) if your \*non-concessional contributions for the first year fall short of your cap for the first year (worked out under paragraph (a))—the shortfall; or
    - (ii) otherwise—nil;
  - (c) your cap for the third year is:
    - (i) if your \*non-concessional contributions for the second year fall short of your cap for the second year (worked out under paragraph (b))—the shortfall; or
    - (ii) otherwise—nil.

**292-90 Your *non-concessional contributions* for a financial year**

- (1) The amount of your *non-concessional contributions* for a \*financial year is the sum of:
  - (a) each contribution covered under subsection (2); and
  - (b) the amount of your \*excess concessional contributions (if any) for the financial year.
- (2) A contribution is covered under this subsection if:
  - (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and

- (b) it is *not* included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan; and
- (c) it is *not* any of the following:
  - (i) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
  - (ii) a contribution covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries);
  - (iii) a contribution covered under section 292-100 (certain CGT-related payments), to the extent that it does not exceed your \*CGT cap amount when it is made;
  - (iv) a contribution made to a \*constitutionally protected fund (other than a contribution included in the \*contributions segment of your \*superannuation interest in the fund);
  - (v) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180;
  - (vi) a contribution that is a \*roll-over superannuation benefit.

(3) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

**292-95 Contributions arising from structured settlements or orders for personal injuries**

- (1) A contribution is covered under this section if:
  - (a) the contribution arises from:
    - (i) the settlement of a claim that satisfies the conditions in subsection (3); or
    - (ii) the settlement of a claim in relation to a personal injury suffered by you under a law of the Commonwealth or of a State or Territory relating to workers compensation; or
    - (iii) the order of a court that satisfies the conditions in subsection (4); and
  - (b) the contribution is made within 90 days after the later of the following:

- (i) the day of receipt of the payment from which the contribution is made; or
  - (ii) in relation to subparagraph (a)(i) or (iii)—the day mentioned in subsection (2); and
- (c) 2 legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that you can ever be \*gainfully employed in a capacity for which you are reasonably qualified because of education, experience or training; and
- (d) no later than the time the contribution is made to a \*superannuation plan, you or your \*legal personal representative notify the \*superannuation provider in relation to the plan, in the \*approved form, that this section is to apply to the contribution.
- (2) For the purposes of subparagraph (1)(b)(ii), the day is:
- (a) for a settlement mentioned in subparagraph (a)(i):
    - (i) the day on which the agreement mentioned in paragraph (3)(c) was entered into; or
    - (ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court—the day on which that order was made; or
  - (b) for an order mentioned in subparagraph (1)(a)(iii)—the day on which the order was made.
- (3) For the purposes of subparagraph (1)(a)(i), the conditions are as follows:
- (a) the claim:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
    - (ii) is made by you or your \*legal personal representative;
  - (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court).
- (4) For the purposes of subparagraph (1)(a)(iii), the conditions are as follows:

- (a) the order is made in respect of a claim that:
    - (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
    - (ii) is made by you or your \*legal personal representative;
  - (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the order is not an order approving or endorsing an agreement as mentioned in paragraph (3)(c).
- (5) If a claim is both:
- (a) for compensation or damages for personal injury suffered by you; and
  - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);
- subsections (3) and (4) apply to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to amounts that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

**292-100 Contribution relating to some CGT small business concessions**

- (1) A contribution is covered under this section if:
- (a) the contribution is made by you to a \*complying superannuation plan in respect of you in a \*financial year; and
  - (b) the requirement in subsection (2), (4), (7) or (8) is met; and
  - (c) you choose, in accordance with subsection (9), to apply this section to an amount that is all or part of the contribution.
- (2) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the \*capital proceeds from a \*CGT event for which you can disregard any \*capital gain under section 152-105 (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the contribution is made no later than either of the following:
    - (i) the day you are required to lodge your tax return for the income year in which the CGT event happened;
    - (ii) 30 days after the day you receive the capital proceeds.



- (3) For the purposes of paragraph (2)(a), ignore the requirement in paragraph 152-105(b) if you are permanently incapacitated at the time of the \*CGT event but were not permanently incapacitated at the time the relevant \*CGT asset was acquired.
- (4) The requirement in this subsection is met if:
- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under section 152-110, disregard any \*capital gain arising from the CGT event (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the entity makes a payment to you within 2 years after the CGT event; and
  - (c) the contribution is equal to all or part of your stakeholder's control percentage (within the meaning of subsection 152-125(3)) of the \*capital proceeds from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (5) In determining whether the conditions in subsection (2) or (4) are satisfied for a \*CGT event in relation to a \*pre-CGT asset, treat the asset as a \*post-CGT asset.
- (6) For the purposes of paragraph (4)(a), ignore the requirement in paragraph 152-110(1)(b) if a \*controlling individual was permanently incapacitated at the time of the \*CGT event but was not permanently incapacitated when the relevant \*CGT asset was acquired.
- (7) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the \*capital gain from a \*CGT event that you disregarded under subsection 152-305(1); and
  - (b) the contribution is made no later than either of the following:
    - (i) the day you are required to lodge your tax return for the income year in which the CGT event happened;
    - (ii) 30 days after the day you receive the \*capital proceeds from the CGT event.
- (8) The requirement in this subsection is met if:
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- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under subsection 152-305(2), disregard all or part of a \*capital gain arising from the CGT event; and
  - (b) the entity makes a payment to you that satisfies the conditions in section 152-325; and
  - (c) the contribution is equal to all or part of the capital gain arising from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (9) To make a choice for the purposes of paragraph (1)(c), you must:
- (a) make the choice in the \*approved form; and
  - (b) give it to the \*superannuation provider in relation to the \*complying superannuation plan on or before the time when the contribution is made.

### **292-105 CGT cap amount**

- (1) Your **CGT cap amount** at the start of the 2007-2008 \*financial year is \$1,000,000.

Note: For transitional rules about contributions made in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

#### *Reductions and increases*

- (2) If a contribution covered by section 292-100 is made in respect of you at a time, reduce your **CGT cap amount** just after that time:
- (a) if the contribution falls short of your \*CGT cap amount at that time—by the amount of the contribution; or
  - (b) otherwise—to nil.
- (3) At the start of each \*financial year after the 2007-2008 financial year, increase your **CGT cap amount** by the amount (if any) by which the index amount for that financial year exceeds the index amount for the previous financial year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 \*financial year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

## **Subdivision 292-D—Modifications for defined benefit interests**

### **292-155 What this Subdivision is about**

This Subdivision modifies the meaning of <i>concessional contributions</i> relating to defined benefits interests.
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### **Table of sections**

#### **Operative provisions**

292-160	Application
292-165	Concessional contributions—special rules for defined benefit interests
292-170	<i>Notional taxed contributions</i>
292-175	<i>Defined benefit interest</i>

### **Operative provisions**

#### **292-160 Application**

- (1) This Subdivision applies if, in a \*financial year, you have:
  - (a) a \*superannuation interest that is or includes a \*defined benefit interest; or
  - (b) more than one superannuation interest that is or includes a defined benefit interest.
- (2) However, this Subdivision does not apply in relation to a \*superannuation interest in a \*constitutionally protected fund.

#### **292-165 Concessional contributions—special rules for defined benefit interests**

Despite section 292-25, the amount of your *concessional contributions* for the \*financial year is the sum of:

- (a) the contributions covered by subsection 292-25(2), and the amounts covered by subsection 292-25(3), to the extent to

which they do *not* relate to the \*defined benefit interest or interests; and

- (b) your \*notional taxed contributions for the financial year in respect of the defined benefit interest or interests.

### **292-170** *Notional taxed contributions*

- (1) Your *notional taxed contributions* for a \*financial year in respect of a \*defined benefit interest has the meaning given by the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the *notional taxed contributions*.
- (3) Regulations made for the purposes of subsection (1) may define the \*notional taxed contributions, and the amount of notional taxed contributions, in different ways depending on any of the following matters:
  - (a) the person who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.
- (4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of \*notional taxed contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.
- (6) Despite subsection (1), your *notional taxed contributions* for the \*financial year in respect of the \*defined benefit interest are equal to your \*concessional contributions cap for the financial year if:
  - (a) this Subdivision applies in relation to you because you have a defined benefit interest in a financial year; and
  - (b) apart from this subsection, the notional taxed contributions for the financial year in respect of the defined benefit interest

- exceed your concessional contributions cap for the financial year; and
- (c) either:
    - (i) you held the defined benefit interest in a \*superannuation fund on 5 September 2006; or
    - (ii) all the requirements in subsection (7) are satisfied; and
  - (d) if subparagraph (c)(i) applies and the rules of the superannuation fund have changed since 5 September 2006:
    - (i) the notional taxed contributions mentioned in paragraph (b) do not exceed what they would have been if the rules of the fund had not changed since 5 September 2006; or
    - (ii) all changes to those rules since 5 September 2006 are of a kind specified in the regulations.
- (7) For the purposes of subparagraph (6)(c)(ii), the requirements are as follows:
- (a) you held a \*defined benefit interest (the *original interest*) in a \*superannuation fund (the *original fund*) on 5 September 2006;
  - (b) the defined benefit interest mentioned in paragraph (6)(a) (the *current interest*) is in a different superannuation fund (the *current fund*);
  - (c) the entire \*value of the original interest was transferred to the current interest after 5 September 2006;
  - (d) your rights under the current interest are equivalent to your rights under the original interest;
  - (e) the notional taxed contributions mentioned in paragraph (6)(b) do not exceed what they would have been if:
    - (i) the transfer mentioned in paragraph (c) had not taken place; and
    - (ii) the rules of the original fund had not changed since 5 September 2006, or all changes to those rules since 5 September 2006 are of a kind specified in the regulations;
  - (f) the requirements (if any) specified in the regulations are satisfied.

### **292-175 *Defined benefit interest***

- (1) An individual's \*superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to \*superannuation benefits payable from the interest by reference to one or more of the following matters:
  - (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (c) a specified amount;
  - (d) specified conversion factors.
- (2) However, an individual's \*superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:
  - (a) \*disability superannuation benefits;
  - (b) \*superannuation death benefits;
  - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

### **Subdivision 292-E—Excess contributions tax assessments**

#### **Guide to Subdivision 292-E**

#### **292-225 What this Subdivision is about**

The Commissioner may make an assessment of a person's liability to pay excess contributions tax, and the excess contributions on which that liability is based.

#### **Table of sections**

##### **Operative provisions**

292-230	Commissioner must make an <b><i>excess contributions tax assessment</i></b>
292-235	Part-year assessment
292-240	Validity of assessment
292-245	Objections
292-250	Evidence

## Operative provisions

### **292-230 Commissioner must make an *excess contributions tax assessment***

- (1) The Commissioner must make an assessment (an *excess contributions tax assessment*) of:
  - (a) if a person has \*excess concessional contributions for a \*financial year—the amount of the excess concessional contributions; and
  - (b) the amount (if any) of \*excess concessional contributions tax which the person is liable to pay in relation to the financial year.
- (2) The Commissioner must make an assessment (also an *excess contributions tax assessment*) of:
  - (a) if a person has \*excess non-concessional contributions for a financial year—the amount of the excess non-concessional contributions; and
  - (b) the amount (if any) of \*excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.
- (3) The Commissioner must give the person notice in writing of an \*excess contributions tax assessment as soon as practicable after making the assessment.
- (4) The notice may be included in a notice of any other assessment under this Act (including an assessment under this section).

### **292-235 Part-year assessment**

- (1) The Commissioner may, at any time during a \*financial year (the *actual financial year*), make an assessment of the matters mentioned in subsection 292-230(1) for a person for a particular period within that year as if the beginning and end of that period were the beginning and end of a financial year.
- (2) This Division applies, for the purposes of that assessment, as if:
  - (a) the start and end of the period were the start and end of a \*financial year; and

- (b) the assessment were an *excess contributions tax assessment* for that financial year.
- (3) If the Commissioner makes an assessment under subsection (1), he or she must make an assessment under section 292-230 in relation to the actual financial year as soon as possible after the end of that year.
- (4) However, the Commissioner does not need to make an assessment mentioned in subsection (3) if he or she is satisfied that the assessment would not differ in a material way from the assessment under subsection (1).

### **292-240 Validity of assessment**

The validity of an \*excess contributions tax assessment is not affected because any of the provisions of this Act have not been complied with.

### **292-245 Objections**

If a person is dissatisfied with an \*excess contributions tax assessment made in relation to the person, the person may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

### **292-250 Evidence**

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to an assessment or a notice of assessment included a reference to an \*excess contributions tax assessment or a notice of an excess contributions tax assessment, as required.



## **Subdivision 292-F—Amending excess contributions tax assessments**

### **Guide to Subdivision 292-F**

#### **292-300 What this Subdivision is about**

The Commissioner may amend excess contributions tax assessments within certain time limits.

#### **Table of sections**

##### **Operative provisions**

- 292-305 Amendments within 4 years of the original assessment
- 292-310 Amended assessments are treated as excess contributions tax assessments
- 292-315 Later amendments—on request
- 292-320 Later amendments—fraud or evasion
- 292-325 Further amendment of an amended particular
- 292-330 Amendment on review etc.

#### **Operative provisions**

##### **292-305 Amendments within 4 years of the original assessment**

- (1) The Commissioner may amend an \*excess contributions tax assessment for a person for a \*financial year at any time during the period of 4 years after the \*original excess contributions tax assessment day for the person for that year.
- (2) The *original excess contributions tax assessment day* for a person for a \*financial year is the day on which the Commissioner gives the first \*excess contributions tax assessment to the person for the financial year.

##### **292-310 Amended assessments are treated as excess contributions tax assessments**

- (1) Once an amended \*excess contributions tax assessment for a person for a \*financial year is made, it is taken to be an *excess contributions tax assessment* for the person for the year.

- (2) If the Commissioner amends a person's \*excess contributions tax assessment, the Commissioner must give the person notice in writing of the amendment as soon as practicable after making the amendment.
- (3) The notice may be included in a notice of any other assessment under this Act.

**292-315 Later amendments—on request**

The Commissioner may amend an \*excess contributions tax assessment for a person for a \*financial year after the end of the period of 4 years after the \*original excess contributions tax assessment day for the person for the year if, within that 4 year period:

- (a) the person applies for the amendment in the \*approved form; and
- (b) the person gives the Commissioner all the information necessary for making the amendment.

**292-320 Later amendments—fraud or evasion**

- (1) If:
  - (a) a person (or a \*superannuation provider covered under subsection (2)) does not make a full and true disclosure to the Commissioner of the information necessary for an \*excess contributions tax assessment for the person for a \*financial year; and
  - (b) in making the assessment, the Commissioner makes an under-assessment; and
  - (c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;the Commissioner may amend the assessment at any time.
- (2) A \*superannuation provider is covered under this subsection if any of the following conditions are satisfied:
  - (a) contributions have been made to a \*superannuation plan of the provider on behalf of the person in the \*financial year;
  - (b) an amount is included in the person's \*concessional contributions for the financial year under subsection

292-25(3) because the superannuation provider allocated it to the person;

- (c) \*notional taxed contributions are included in the person's concessional contributions for the financial year under section 292-165 because of the person's \*defined benefit interest in a superannuation plan of the provider.

### **292-325 Further amendment of an amended particular**

If:

- (a) an \*excess contributions tax assessment has been amended (the *earlier amendment*) in any particular; and
- (b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular;

the Commissioner may do so within a period of 4 years after the earlier amendment.

### **292-330 Amendment on review etc.**

Nothing in this Subdivision prevents the amendment of an \*excess contributions tax assessment:

- (a) to give effect to a decision on a review or appeal; or
- (b) to reduce the assessment as a result of an objection or pending an appeal or review.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*.

## **Subdivision 292-G—Collection and recovery**

### **Guide to Subdivision 292-G**

#### **292-380 What this Subdivision is about**

Excess contributions tax is due and payable at the end of 21 days after notice of assessment and the general interest charge applies to unpaid amounts. Money may be released from a superannuation plan to pay the tax.

## **Table of sections**

### **Operative provisions**

292-385	Due date for payment of excess contributions tax
292-390	General interest charge
292-395	Refunds of amounts overpaid
292-400	Security for payment of tax
292-405	Release authority
292-410	Giving a release authority to a superannuation provider
292-415	Superannuation provider given release authority must pay amount

## **Operative provisions**

### **292-385 Due date for payment of excess contributions tax**

\*Excess contributions tax assessed for a person for a \*financial year is due and payable at the end of 21 days after the Commissioner gives the person notice of the \*excess contributions tax assessment.

### **292-390 General interest charge**

If \*excess contributions tax payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the excess contributions tax was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the excess contributions tax;
  - (ii) general interest charge on any of the excess contributions tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

### **292-395 Refunds of amounts overpaid**

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to \*excess contributions tax.

### **292-400 Security for payment of tax**

In section 213 of the *Income Tax Assessment Act 1936* (under which the Commissioner may require security for the payment of income tax), a reference to income tax includes a reference to \*excess contributions tax.

### **292-405 Release authority**

- (1) As soon as practicable after making an \*excess contributions tax assessment for a person, the Commissioner must give the person the following, in accordance with this section:
  - (a) if the person is liable to pay an amount of \*excess concessional contributions tax in accordance with the assessment—a release authority in respect of the amount;
  - (b) if the person is liable to pay an amount of \*excess non-concessional contributions tax in accordance with the assessment—a release authority in respect of the amount.
- (2) A release authority must:
  - (a) state the amount of \*excess concessional contributions tax or \*excess non-concessional contributions tax (whichever is applicable) that the person is liable to pay as a result of the assessment; and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.

### **292-410 Giving a release authority to a superannuation provider**

- (1) The person may give the release authority to a \*superannuation provider that holds a \*superannuation interest (other than a \*defined benefit interest) for the person within 90 days after the date of the release authority.

Note: Excess contributions tax is due and payable at the end of 21 days after notice of assessment: see section 292-385.

- (2) However, if:
  - (a) the release authority is for \*excess non-concessional contributions tax; and

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(b) a \*superannuation provider holds a \*superannuation interest for the person (other than a \*defined benefit interest);  
the person must give the release authority to a superannuation provider holding a superannuation interest for the person (other than a defined benefit interest) within 21 days after the date of the release authority.

Note: Section 288-90 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

(3) Subsection (4) applies if:

- (a) the release authority is for \*excess non-concessional contributions tax; and
- (b) a \*superannuation provider holds a \*superannuation interest for the person (other than a \*defined benefit interest); and
- (c) any of the following conditions are satisfied:
  - (i) the person does not give the release authority to a superannuation provider holding a superannuation interest for the person within 90 days after the date of the release authority in accordance with subsection (1);
  - (ii) if the person has made one or more requests as mentioned in paragraph 292-415(1)(a) in relation to the release authority within 90 days after the date of the release authority—the total of the amounts (if any) paid by superannuation providers in relation to the release authority falls short of the amount of the excess non-concessional contributions tax stated in the release authority;
  - (iii) the total of the \*values of every superannuation interest (other than a defined benefit interest) held for the person by a superannuation provider to which the release authority is given falls short of the amount of the excess non-concessional contributions tax stated in the release authority.

(4) If the conditions in subsection (3) are satisfied, the Commissioner may give the release authority to one or more \*superannuation providers that hold a \*superannuation interest (other than a \*defined benefit interest) for the person.

**292-415 Superannuation provider given release authority must pay amount**

- (1) A \*superannuation provider that has been given a release authority in accordance with section 292-410 must pay to the person or the Commissioner within 30 days after receiving the release authority the least of the following amounts:
- (a) if the person or Commissioner requests the superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
  - (b) the amount of \*excess concessional contributions tax or \*excess non-concessional contributions tax (whichever is applicable) stated in the release authority;
  - (c) the sum of the \*values of every \*superannuation interest (other than a \*defined benefit interest) held by the superannuation provider for the person.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Note 2: Section 288-100 in Schedule 1 to the *Taxation Administration Act 1953* provides that the person giving the release authority to the superannuation provider can be liable to an administrative penalty if excess amounts are paid in relation to the release authority.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: For the taxation treatment of the payment, see section 304-15.

- (2) The payment must be made out of one or more \*superannuation interests (other than a \*defined benefit interest) held by the \*superannuation provider for the person.
- (3) If the payment is made to the Commissioner, it is taken to be made in satisfaction (in whole or part) of the person's liability for \*excess concessional contributions tax or \*excess non-concessional contributions tax stated in the release authority.
- (4) If:
- (a) the release authority was given by the Commissioner in accordance with subsection 292-410(4); and
  - (b) the payment is made to the Commissioner;

the Commissioner must, as soon as possible, give the person written notice that the payment has been made.

- (5) Section 307-125 (the proportioning rule) does not apply to a payment made as required under this section.

## **Subdivision 292-H—Other provisions**

### **Table of sections**

292-465	Commissioner's discretion to disregard contributions etc. in relation to a financial year
292-470	Power of Commissioner to obtain information

### **292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year**

- (1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division:
- (a) all or part of your \*concessional contributions for a \*financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination; and
  - (b) all or part of your \*non-concessional contributions for a financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination.
- (2) You may apply to the Commissioner in the \*approved form for a determination under subsection (1). The application can only be made within:
- (a) the period:
    - (i) starting on the day you receive an \*excess contributions tax assessment for the \*financial year; and
    - (ii) ending 60 days after that day; or
  - (b) a longer period allowed by the Commissioner.
- (3) The Commissioner may make the determination only if he or she considers that:
- (a) there are special circumstances; and
  - (b) making the determination is consistent with the object of this Division.



- (4) In making the determination the Commissioner may have regard to the matters in subsections (5) and (6) and any other relevant matters.
- (5) The Commissioner may have regard to whether a contribution made in the relevant \*financial year would more appropriately be allocated towards another financial year instead.
- (6) The Commissioner may have regard to whether it was reasonably foreseeable, when a relevant contribution was made, that you would have \*excess concessional contributions or \*excess non-concessional contributions for the relevant \*financial year, and in particular:
  - (a) if the relevant contribution is made in respect of you by another person—the terms of any agreement or arrangement between you and that person as to the amount and timing of the contribution; and
  - (b) the extent to which you had control over the making of the contribution.
- (7) The Commissioner must give you a copy of the determination.

#### **292-470 Power of Commissioner to obtain information**

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Note: For superannuation providers' reporting obligations see Division 390 in Schedule 1 to the *Taxation Administration Act 1953*.

### **Division 295—Taxation of superannuation entities**

#### **Table of Subdivisions**

	Guide to Division 295
295-A	Provisions of general operation
295-B	Modifications of provisions of this Act
295-C	Contributions included
295-D	Contributions excluded

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- 295-E Other income amounts
- 295-F Exempt income
- 295-G Deductions
- 295-H Components of taxable income
- 295-I No-TFN contributions
- 295-J Tax offset for no-TFN contributions income (TFN quoted within 4 years)

## **Guide to Division 295**

### **295-1 What this Division is about**

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

### **Subdivision 295-A—Provisions of general operation**

#### **Table of sections**

- 295-5 Entities to which Division applies
- 295-10 How to work out the tax payable by superannuation entities
- 295-15 Division does not impose a tax on property of a State
- 295-20 Exempting laws ineffective
- 295-25 Assessments on basis of anticipated SIS Act notice
- 295-30 Effect of revocation etc. of SIS Act notices
- 295-35 Acronyms used in tables

### **295-5 Entities to which Division applies**

- (1) This Division applies to these entities:
  - (a) a \*complying superannuation fund;
  - (b) a \*non-complying superannuation fund;

- (c) a \*complying approved deposit fund;
  - (d) a \*non-complying approved deposit fund;
  - (e) a \*pooled superannuation trust;
- whether they are established by an \*Australian law, by a public authority constituted by or under such a law or in some other way.
- (2) The \*superannuation provider in relation to an entity referred to in paragraph (1)(a) to (d) is liable to pay tax on the taxable income of the entity.
- Note: A superannuation provider in relation to an entity referred to in paragraphs (1)(a) and (b) or in relation to an RSA is liable to pay tax on the no-TFN contributions income of the entity: see section 295-605.
- (3) The trustee of a \*pooled superannuation trust is liable to pay tax on the taxable income of the trust.
- (4) This Division also applies to an \*RSA provider that is not a \*life insurance company.
- Note: Division 320 deals with RSA providers that are life insurance companies.

### **295-10 How to work out the tax payable by superannuation entities**

- (1) Use this method for \*superannuation funds, \*approved deposit funds and \*pooled superannuation trusts:

*Method statement*

- Step 1.* For a \*superannuation fund, work out the \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2.* Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.
- Step 3.* Work out the entity's taxable income as if its trustee:

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- (a) were an Australian resident (except where paragraph (b) applies); or
  - (b) for a \*non-complying superannuation fund that is a \*foreign superannuation fund for the income year—were not an Australian resident.
- Step 4.* Work out the \*low tax component and \*non-arm's length component of the taxable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust.
- Step 5.* Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components, or to the taxable income of a \*non-complying superannuation fund or \*non-complying approved deposit fund.
- Step 6.* Subtract the entity's \*tax offsets from the step 5 amount or, for a \*superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

(2) Use this method for \*RSA providers:

- Method statement*
- Step 1.* Work out the entity's \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2.* Work out the entity's assessable income and deductions taking account of the special rules in this Division.
- Step 3.* Work out the \*RSA component and \*standard component of the entity's taxable income.
- Step 4.* Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The \*RSA component is taxed at a concessional rate.
- Step 5.* Subtract the entity's \*tax offsets from the sum of the entity's step 1 and step 4 amounts.

**295-15 Division does not impose a tax on property of a State**

This Division does not impose a tax on property of any kind belonging to a State (within the meaning of section 114 of the Constitution).

**295-20 Exempting laws ineffective**

A \*Commonwealth law (other than this Act) does not have the effect of exempting the trustee of an entity to which this Division applies from the liability to pay tax unless it does so expressly.

**295-25 Assessments on basis of anticipated SIS Act notice**

- (1) The Commissioner may make an assessment for a fund or trust that is not a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust for the income year as if it were such an entity if the Commissioner considers it likely that a notice will be given under section 40 of the *Superannuation Industry (Supervision) Act 1993* having the effect that it will become such an entity.
- (2) However, the grounds for making an assessment under subsection (1) are taken never to have existed if:
  - (a) the Commissioner becomes satisfied that the notice will not be given; or
  - (b) \*APRA does not receive the documents referred to in subsection 36(1) of the *Superannuation Industry (Supervision) Act 1993* about the fund or trust before the end of 12 months after the assessment is made.

**295-30 Effect of revocation etc. of SIS Act notices**

This Division has effect as if a notice given under section 342 of the *Superannuation Industry (Supervision) Act 1993* (about pre-1 July 88 funding credits) or under regulations made for the purposes of that section had never been given if:

- (a) the notice is revoked; or
- (b) the decision to give the notice is set aside.

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**295-35 Acronyms used in tables**

In tables in this Division, these acronyms are used for these entities:

<b>Acronyms used in tables</b>		
<b>Item</b>	<b>Entity</b>	<b>Acronym</b>
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

**Subdivision 295-B—Modifications of provisions of this Act**

**Table of sections**

295-85	CGT to be primary code for calculating gains or losses
295-90	CGT rules for pre-30 June 1988 assets
295-95	Deductions related to contributions
295-100	Deductions for investing in PSTs and life policies
295-105	Distributions to PST unitholders

**295-85 CGT to be primary code for calculating gains or losses**

- (1) The modifications in subsection (2) apply if a \*CGT event happens involving a \*CGT asset that was owned by one of these entities just before the time of the event:
  - (a) a \*complying superannuation fund;
  - (b) a \*complying approved deposit fund;
  - (c) a \*pooled superannuation trust.
- (2) These provisions do not apply to the \*CGT event:
  - (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

*Exceptions*

- (3) The provisions referred to in subsection (2) can apply to the \*CGT event if:
- (a) any \*capital gain or \*capital loss from the event is attributable to currency exchange rate fluctuations; or
  - (b) the \*CGT asset is one of these:
    - (i) debenture stock, a bond, \*debenture, certificate of entitlement, bill of exchange, promissory note or other security;
    - (ii) a deposit with a bank, building society or other financial institution;
    - (iii) a loan (secured or not);
    - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of one of the provisions in this table:

<b>Where gain or loss disregarded because of CGT provision</b>		
<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	Research and development
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation
12	Section 118-310	CGT event happens to right to, or part of, RSA

**295-90 CGT rules for pre-30 June 1988 assets**

- (1) This section applies to the trustee of:
  - (a) a \*complying superannuation fund; or
  - (b) a \*complying approved deposit fund; or
  - (c) a \*pooled superannuation trust.
- (2) Parts 3-1 and 3-3 (about capital gains and losses) apply to a \*CGT asset that:
  - (a) the trustee or a former trustee owned at the end of 30 June 1988; and
  - (b) the trustee owned at the commencement of this section; as if the trustee had \*acquired the asset on 30 June 1988.
- (3) Subsection (2) does not affect how to work out the asset's \*cost base or \*reduced cost base.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base.
- (4) Subsection 104-30(5) applies to an option granted by the trustee as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

**295-95 Deductions related to contributions**

- (1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:
  - (a) \*complying superannuation funds;
  - (b) \*non-complying superannuation funds that are \*Australian superannuation funds;
  - (c) \*complying approved deposit funds;
  - (d) \*non-complying approved deposit funds;
  - (e) \*RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

Note 2: Examples of contributions that are not assessable are:

- contributions which the contributor cannot deduct;
- contributions excluded from assessable income under Subdivision 295-D.



- (2) A \*superannuation fund is an *Australian superannuation fund* at a time, and for the income year in which that time occurs, if:
- (a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and
  - (b) at that time, the central management and control of the fund is ordinarily in Australia; and
  - (c) at that time either the fund had no member covered by subsection (3) (an *active member*) or at least 50% of:
    - (i) the total \*market value of the fund's assets attributable to \*superannuation interests held by active members; or
    - (ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;is attributable to superannuation interests held by active members who are Australian residents.
- (3) A member is covered by this subsection at a time if the member is:
- (a) a contributor to the fund at that time; or
  - (b) an individual on whose behalf contributions have been made, other than an individual:
    - (i) who is a foreign resident; and
    - (ii) who is not a contributor at that time; and
    - (iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.

### **295-100 Deductions for investing in PSTs and life policies**

- (1) Provisions of this Act about deducting amounts apply to \*complying superannuation funds and \*complying approved deposit funds as if \*ordinary income and \*statutory income received from these investments were included in their assessable income:
- (a) units in a \*pooled superannuation trust;
  - (b) \*life insurance policies issued by a \*life insurance company;
  - (c) an interest in a trust whose assets consist only of life insurance policies issued by a life insurance company.

Note: Income from these investments is not assessable: see for example sections 295-105 and 118-350.

- (2) A \*complying superannuation fund cannot deduct an amount (otherwise than under section 295-465) for fees or charges incurred for:
- (a) \*virtual PST life insurance policies; or
  - (b) \*exempt life insurance policies; or
  - (c) units in a \*pooled superannuation trust that are \*segregated current pension assets of the fund.

### **295-105 Distributions to PST unitholders**

The assessable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust does not include amounts \*derived by the entity because it holds units in a \*pooled superannuation trust.

Note: These entities will not be subject to any tax liability when they dispose of the units: see subsection 295-85(2) and section 118-350.

## **Subdivision 295-C—Contributions included**

### **Guide to Subdivision 295-C**

#### **295-155 What this Subdivision is about**

There are basically 3 types of assessable contributions:

- (a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and
- (b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and
- (c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

### **Table of sections**

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**Contributions and payments**

- 295-160 Contributions and payments
- 295-165 Exception—spouse contributions
- 295-170 Exception—Government co-contributions and contributions for a child
- 295-175 Exception—payments by a member spouse
- 295-180 Exception—choice to exclude certain contributions
- 295-185 Exception—temporary residents

**Personal contributions and roll-over amounts**

- 295-190 Personal contributions and roll-over amounts
- 295-195 Exclusion of personal contributions

**Transfers from foreign funds**

- 295-200 Transfers from foreign superannuation funds

**Application of tables to RSA providers**

- 295-205 Application of tables to RSA providers

**Former constitutionally protected funds**

- 295-210 Former constitutionally protected funds

**Contributions and payments**

**295-160 Contributions and payments**

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

Note: For an explanation of the acronyms used, see section 295-35.

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**Contributions and payments included in assessable income**

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Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)
2	N-CSF that is a *foreign superannuation fund for the	Contribution to provide *superannuation benefits for someone

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<b>Contributions and payments included in assessable income</b>		
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>
	income year	else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)
3	CSF CADF *RSA provider	Payment under section 65 of the <i>Superannuation Guarantee (Administration) Act 1992</i>
4	CSF *RSA provider	Payment under section 61 or 61A of the <i>Small Superannuation Accounts Act 1995</i>

**295-165 Exception—spouse contributions**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a \*complying superannuation fund or an \*RSA:
  - (a) to provide \*superannuation benefits for the individual's \*spouse (regardless whether the benefits are payable to the individual's spouse's \*SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and
  - (b) that the individual cannot deduct under Subdivision 290-B.
- (2) Paragraph (1)(a) does not apply to \*superannuation benefits for a \*spouse living permanently separately and apart from the individual.

**295-170 Exception—Government co-contributions and contributions for a child**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution:

- (a) that is a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or
  - (b) for the benefit of a person under 18 that is not made by or on behalf of the person's employer.
- (2) Item 4 of the table in section 295-160 does not include in assessable income a payment to the extent to which it represents a Government co-contribution or co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

**295-175 Exception—payments by a member spouse**

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA provider, to be held for the benefit of the \*non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the \*superannuation interest concerned.

**295-180 Exception—choice to exclude certain contributions**

- (1) Item 1 of the table in section 295-160 does not include an amount in the assessable income of a \*complying superannuation fund for an income year to the extent that the trustee chooses that it not be included.
- (2) The entity that made the contributions must consent to the choice.
- Note: Making this choice effectively shifts the liability for tax on the contributions to the recipient of the benefit. The benefit is treated as an element untaxed in the fund: see Subdivision 301-C.
- (3) However, the choice cannot be made for an income year for an amount that exceeds the sum of amounts covered by notices given by the trustee under section 307-285 for \*superannuation benefits paid in the income year.
- (4) A choice under this section cannot be revoked or withdrawn.

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- (5) A choice under this section cannot be made in relation to a \*superannuation plan that comes into operation after 5 September 2006.

**295-185 Exception—temporary residents**

Item 2 of the table in section 295-160 does not include a contribution in the assessable income of an entity if the individual (for whom it was made) is a \*temporary resident at the end of the income year to which the contribution relates.

**Personal contributions and roll-over amounts**

**295-190 Personal contributions and roll-over amounts**

- (1) The assessable income of an entity includes amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Personal contributions and roll-over amounts included in assessable income</b>		
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>
1	CSF *RSA provider	A contribution covered by a valid and acknowledged notice under section 290-170
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund; and (b) is not an *excess untaxed roll-over amount for that individual
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the <i>Income Tax (Transitional Provisions) Act 1997</i> )

- (2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the

\*superannuation provider by the day the provider lodges its  
\*income tax return for that income year.

- (3) Otherwise it is included in the income year in which the notice is received.
- (4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the \*superannuation provider.

## **295-195 Exclusion of personal contributions**

### *Variation notice received before return lodged*

- (1) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider to the extent that it has been reduced by a notice under section 290-180 if the notice is received by the \*superannuation provider before it has lodged its \*income tax return for the income year in which the contribution was made.

### *Variation notice received after return lodged*

- (2) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider for the income year in which the contribution was made to the extent that it has been reduced by a notice under section 290-180 if:
  - (a) the notice is received by the \*superannuation provider after it has lodged its \*income tax return for the income year; and
  - (b) the provider exercises the option mentioned in subsection (3).
- (3) An amount referred to in subsection (2) may, at the option of the provider, be excluded from the assessable income of the fund or \*RSA provider for the income year referred to in subsection (2) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2 of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2 of the table in subsection 295-490(1).

## Transfers from foreign funds

### 295-200 Transfers from foreign superannuation funds

- (1) The assessable income of a fund that is an \*Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.
- (2) The assessable income of a fund that is a \*complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year as is specified in a choice made by a former member of the foreign fund under section 305-80.
- (3) The amount is included in the income year in which the transfer happens.

## Application of tables to RSA providers

### 295-205 Application of tables to RSA providers

The tables in this Subdivision apply to \*RSA providers only to the extent that amounts are paid to \*RSAs they provide.

## Former constitutionally protected funds

### 295-210 Former constitutionally protected funds

- (1) This section applies to a \*complying superannuation fund for an income year if the fund ceased to be a \*constitutionally protected fund during the year or at the end of the previous year.
- (2) The assessable income of the fund for the income year includes the sum of the \*roll-over superannuation benefits to the extent that they consist of the \*element untaxed in the fund of the \*taxable component that would be included in that assessable income if all contributions and earnings accumulated in the fund when the fund ceased to be a \*constitutionally protected fund:



- (a) had been paid out of the fund immediately before it ceased to be a constitutionally protected fund; and
- (b) were paid to the fund as roll-over superannuation benefits immediately after that time.

## **Subdivision 295-D—Contributions excluded**

### **Table of sections**

295-260	Transfer of liability to investment vehicle
295-265	Application of pre-1 July 88 funding credits
295-270	Anticipated funding credits

### **295-260 Transfer of liability to investment vehicle**

- (1) The \*superannuation provider in relation to a \*complying superannuation fund or a \*complying approved deposit fund (the *transferor*) may reduce the amount that would otherwise be included in the fund's assessable income for an income year under Subdivision 295-C by agreement with another entity (the *transferee*) in which it holds investments.

#### *What the transferee must be*

- (2) The transferee must be a \*life insurance company or a \*pooled superannuation trust.

Note: Amounts transferred are included in the transferee's assessable income: see section 295-320 (for PSTs) and paragraph 320-15(1)(i) (for life insurance companies).

#### *Agreement requirements*

- (3) The transferor may make one agreement only for an income year with a particular transferee.
- (4) An agreement:
  - (a) must be in writing, and must be signed by or for the transferor and transferee; and
  - (b) must be made by the day the transferor lodges its \*income tax return for its income year to which the agreement relates; and
  - (c) cannot be revoked.

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*Limits on transfer*

- (5) The total amount covered by the agreements cannot exceed the amount that would otherwise be included in the transferor's assessable income under Subdivision 295-C for that income year.
- (6) The amount covered by an agreement with a particular transferee cannot exceed this amount:

$$\frac{\text{Greatest equity value}}{\text{Transferor's low tax component tax rate}}$$

where:

**greatest equity value** is the greatest of these amounts during the transferor's income year:

- (a) if the transferee is a \*pooled superannuation trust—the \*market value of the transferor's investment in units in the trust;
- (b) if not—the market value of the transferor's investment in:
  - (i) \*life insurance policies issued by the transferee; or
  - (ii) a trust whose assets consist only of life insurance policies issued by the transferee.

**transferor's low tax component tax rate** is the rate of tax imposed on the \*low tax component of the fund's taxable income for the income year.

**295-265 Application of pre-1 July 88 funding credits**

*Choice to reduce contributions included in assessable income*

- (1) The \*superannuation provider in relation to a \*complying superannuation fund can choose to reduce the amount of contributions that would otherwise be included in the fund's assessable income for an income year under item 1 of the table in section 295-160 if it has pre-1 July 88 funding credits available for the income year.

*When funding credits are available*

- (2) Use this method to work out whether a fund has pre-1 July 88 funding credits available for an income year:

*Method statement*

*Step 1.* Identify the amount of pre-1 July 88 funding credits unused at the end of the previous income year.

*Step 2.* Index that amount.

Note: Subdivision 960-M shows you how to index amounts.

*Step 3.* Add any pre-1 July 88 funding credits transferred to the fund in the income year under regulations made for the purposes of subsection 342(7) of the *Superannuation Industry (Supervision) Act 1993*.

*Step 4.* Deduct from the step 3 amount:

- (a) pre-1 July 88 funding credits transferred from the fund in the income year under regulations made for the purposes of subsection 342(7) of that Act; and
- (b) amounts specified in a notice given to the \*superannuation provider in relation to the fund under subsection 342(6) of that Act for the income year.

*Step 5.* The result is the pre-1 July 88 funding credits available to the fund for the income year.

That amount, reduced by any amount specified in a choice made under subsection (1) for the income year, is the amount of pre-1 July 88 funding credits unused at the end of the income year.

Note 1: Regulations under subsection 342(7) of the SIS Act allow APRA to approve transfers of pre-1 July 88 funding credits between funds.

Note 2: Subsection 342(6) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the trustee notifies APRA of the change.

- (3) If a notice is given to the \*superannuation provider in relation to the fund under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* granting the trustee a pre-1 July 88 funding credit, this section applies as if the pre-1 July 88 funding credit had

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arisen at the beginning of the income year in which 1 July 1988 occurred.

- (4) However, if a notice is given to the \*superannuation provider in relation to the fund under subsection 342(4) of the *Superannuation Industry (Supervision) Act 1993* for the income year, the fund has no pre-1 July 88 funding credits.

Note: Subsection 342(4) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the provider fails to notify APRA of the change.

*Limit on choice*

- (5) The total amount covered by the choice cannot exceed the pre-1 July 88 funding credits available to the fund for the income year.
- (6) The total amount covered by the choice also cannot exceed the amount of contributions that would otherwise be included in the fund's assessable income for the income year under item 1 of the table in section 295-160 that are used to fund liabilities that accrued before 1 July 1988.
- (7) The regulations may prescribe either or both of the following:
- (a) the manner in which the \*superannuation provider in relation to a \*superannuation fund is to work out the amount applicable to the fund under subsection (6) for an income year;
  - (b) methods (other than the method specified in subsection (6)) of working out how the provider of a superannuation fund can apply pre-1 July 88 funding credits.
- (8) Methods prescribed under paragraph (7)(b) may be applicable to particular \*superannuation funds or to a class or classes of superannuation funds.

**295-270 Anticipated funding credits**

- (1) Subsection (2) has effect if the \*superannuation provider in relation to a \*complying superannuation fund expects a notice to be given under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of subsection 342(7) of that Act to the effect that pre-1 July 88

funding credits of a particular amount will be available to the fund for the income year.

- (2) Section 295-265 applies to the fund as if pre-1 July 88 funding credits of the anticipated amount were available to the fund for the income year (in addition to any other pre-1 July 88 funding credits available to the fund for the year).
- (3) However, section 295-265 applies to the fund for the income year as if pre-1 July 88 funding credits of the anticipated amount were not available to the fund for the income year if:
  - (a) it becomes clear that the expected notice will not be given or that the specified amount of pre-1 July 88 funding credits will not be available; or
  - (b) \*APRA does not receive the things referred to in subsection 342(3) of the *Superannuation Industry (Supervision) Act 1993* (for a notice expected under subsection 342(2) of that Act) or the things required to be given under regulations made for the purposes of subsection 342(7) of that Act (for a notice under those regulations) before the earlier of:
    - (i) the end of 12 months after the fund's assessment is made for the income year; and
    - (ii) the time the things are required to be given by the regulations.

## **Subdivision 295-E—Other income amounts**

### **Table of sections**

#### **Amounts included**

- 295-320 Other amounts included in assessable income
- 295-325 Previously complying funds
- 295-330 Previously foreign funds

#### **Amounts excluded**

- 295-335 Amounts excluded from assessable income

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**Amounts included**

**295-320 Other amounts included in assessable income**

The assessable income of an entity includes the amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts included in assessable income</b>			
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
1	PST	Amount transferred to it by a CSF or CADF under section 295-260	Of the PST that includes the last day of the transferor's income year to which the agreement relates
2	N-CSF that was a CSF for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-325	Following the income year in which it was a CSF
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year and that was a *foreign superannuation fund for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund
4	CSF	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under an item of the table in subsection 295-465(1)	In which the rebate or refund is received
5	*RSA provider	The part of a rebate or	In which the rebate

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**Amounts included in assessable income**

<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
		refund of an insurance premium that is attributable to an amount deducted under section 295-475	or refund is received

**295-325 Previously complying funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 2 of the table in section 295-320 is:

Sum of the *market values of the fund's assets just before the start of the income year	–	Sum of the part of the *crystallised undeducted contributions that relates to the period after 30 June 1983 and the *contributions segment for current members at that time so far as they have not been, and cannot be, deducted
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**295-330 Previously foreign funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the *market values of the fund's assets just before the start of the income year	–	Amount in the fund at that time representing contributions made by current members
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**Amounts excluded**

**295-335 Amounts excluded from assessable income**

The assessable income of an entity does not include the amounts set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

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<b>Amounts excluded from assessable income</b>		
<b>Item</b>	<b>This entity:</b>	<b>Does not include this in assessable income:</b>
1	CSF CADF PST	A bonus on a *life insurance policy (except a reversionary bonus)
2	PST	Amount attributable to amounts received from a *constitutionally protected fund
3	*RSA provider	A bonus on a *life insurance policy that is an *RSA (except a reversionary bonus)

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### **Subdivision 295-F—Exempt income**

#### **Table of sections**

295-385	Income from assets set aside to meet current pension liabilities
295-390	Income from other assets used to meet current pension liabilities
295-395	Meaning of <i>segregated non-current assets</i>
295-400	Income of a PST attributable to current pension liabilities
295-405	Other exempt income
295-410	Amount credited to RSA

#### **295-385 Income from assets set aside to meet current pension liabilities**

- (1) The \*ordinary income and \*statutory income of a \*complying superannuation fund for an income year is exempt from income tax to the extent that:
- (a) it would otherwise be assessable income; and
  - (b) it is from \*segregated current pension assets.

##### *Exception*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C.

##### *Meaning of segregated current pension assets*

- (3) Assets of a \*complying superannuation fund are *segregated current pension assets* at a time if:



- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of \*superannuation income stream benefits that are payable by the fund at that time; and
  - (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (4) Assets of a \*complying superannuation fund are also *segregated current pension assets* of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of \*superannuation income stream benefits:
- (a) that are payable by the fund at that time; and
  - (b) prescribed by the regulations for the purposes of this section.
- (5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay \*superannuation income stream benefits payable by the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.

**295-390 Income from other assets used to meet current pension liabilities**

- (1) A proportion of the \*ordinary income and \*statutory income of a \*complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

*Exception*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C; or
  - (c) income \*derived from \*segregated non-current assets; or

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- (d) income that is exempt from income tax under section 295-385.

*Formula*

- (3) The proportion is:

$$\frac{\text{Average value of current pension liabilities}}{\text{Average value of superannuation liabilities}}$$

where:

***average value of current pension liabilities*** is the average value for the income year of the fund's current liabilities (contingent or not) in respect of \*superannuation income stream benefits that are payable by the fund in that year. This does not include liabilities for which \*segregated current pension assets are held.

***average value of superannuation liabilities*** is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of \*superannuation income stream benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which \*segregated current pension assets or \*segregated non-current assets are held.

*Actuary's certificate*

- (4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.
- (5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except \*segregated current pension assets or \*segregated non-current assets).

*Superannuation liabilities where no current certificate*

- (6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no \*segregated current pension assets or \*segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

**current value of assets** is the value of all of the fund's assets at a time in the income year, as specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.

**last value of assets** is the most recent value of all of the fund's assets specified in an \*actuary's certificate.

**last value of superannuation liabilities** is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an \*actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

- (7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of \*superannuation income stream benefits payable at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

### **295-395 Meaning of *segregated non-current assets***

- (1) Assets of a \*complying superannuation fund are ***segregated non-current assets*** at a time in an income year if:
- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its current and future liabilities (contingent or not) to pay

benefits in respect of which contributions have, or were liable to have, been made; and

- (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (2) The liabilities referred to in paragraph (1)(a) do not include liabilities (contingent or not) in respect of \*superannuation income stream benefits payable by the fund at that time.

### **295-400 Income of a PST attributable to current pension liabilities**

- (1) This proportion of the \*ordinary income and \*statutory income that would otherwise be assessable income of a \*pooled superannuation trust is \*exempt income:

$$\frac{\text{Average number of units in the trust during the income year that are *segregated current pension assets of unitholders that are *complying superannuation funds}}{\text{Average number of units in the trust during the income year}}$$

#### *Exceptions*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under item 1 of the table in section 295-320.

#### *Alternative exemption*

- (3) However, the trustee of the \*pooled superannuation trust can choose that a different amount be \*exempt income of the trust under this section if a percentage of the assessable income of the trust would have been exempt income under section 295-385 or 295-390 if it had been \*derived instead by the unitholders in the trust in proportion to their holdings.

- (4) That percentage of the trust's \*ordinary income and \*statutory income is then \*exempt income.

### 295-405 Other exempt income

The \*ordinary income or \*statutory income of an entity is exempt from income tax as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>*Exempt income</b>		
<b>Item</b>	<b>For this entity:</b>	<b>This is exempt:</b>
1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
2	*RSA provider	Amount credited to the *RSA where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i> ) was paid from the RSA for all of the period in the income year that the RSA existed
3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i> ) was paid from the RSA for part of the period in the income year that the RSA existed

### 295-410 Amount credited to RSA

For item 3 of the table in section 295-405, the part of the amount credited to the \*RSA that is \*exempt income is worked out by:

- (a) multiplying the amount by the number of days in the income year for which the pension (within the meaning of the *Retirement Savings Accounts Act 1997*) was paid; and
- (b) dividing the result by the number of days in the income year that the RSA existed.

### Subdivision 295-G—Deductions

#### Table of sections

**Death or disability benefits**

- 295-460 Benefits for which deductions are available
- 295-465 Complying funds—deductions for insurance premiums
- 295-470 Complying funds—deductions for future liability to pay benefits
- 295-475 RSA providers—deductions for insurance premiums
- 295-480 Meaning of *whole of life policy* and *endowment policy*

**Increased amount of superannuation lump sum death benefits**

- 295-485 Deductions for increased amount of superannuation lump sum death benefit

**Other deductions**

- 295-490 Other deductions

**Certain amounts cannot be deducted**

- 295-495 Amounts that cannot be deducted

**Death or disability benefits**

**295-460 Benefits for which deductions are available**

Sections 295-465 (about deductions for complying funds for insurance premiums), 295-470 (about deductions for complying funds for future liability to pay benefits) and 295-475 (about deductions for \*RSA providers for insurance premiums) apply to these benefits:

- (a) a \*superannuation death benefit;
- (b) a \*disability superannuation benefit;
- (c) a benefit consisting of an amount payable to a person under an income stream because of the person's temporary inability to perform normal employment duties, that is payable for no longer than:
  - (i) 2 years; or
  - (ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period—that longer period; or
  - (iii) if there is no such approval in force—a longer period allowed by the Commissioner.

Note 1: The fund can deduct amounts in relation to these benefits under either section 295-465 or 295-470, but not both.

Note 2: The taxable component of the superannuation lump sums will contain an element untaxed in the fund: see section 307-290.

**295-465 Complying funds—deductions for insurance premiums**

- (1) A \*complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

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**Deductions of \*complying superannuation funds**

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**Item    The fund can deduct this amount:**

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1	30% of the premium for a *whole of life policy if all individuals whose lives are insured are members of the fund
2	10% of the premium for an *endowment policy if all individuals whose lives are insured are members of the fund
3	30% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been a whole of life policy had it been a separate policy
4	10% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been an endowment policy had it been a separate policy
5	The part of a premium that is specified in the policy as being wholly for the liability to provide benefits referred to in section 295-460
6	So much of other insurance policy premiums as are attributable to the liability to provide benefits referred to in section 295-460

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Note: If the fund receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 4 in section 295-320.

- (2) A \*complying superannuation fund can also deduct the amount it could reasonably be expected to pay in an \*arm's length transaction to obtain an insurance policy to cover it for that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which it does not have insurance coverage. It can deduct the amount for the income year when it has the liability.

*Actuary's certificate*

- (3) The trustee must obtain an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year in order to deduct an amount referred to in item 6 of the table or in subsection (2).

*Choice not to deduct amounts under this section*

- (4) The trustee may choose not to deduct amounts under this section for an income year and to deduct instead (under section 295-470) amounts based on the fund's future liability to pay the benefits.
- (5) The choice applies also to future income years unless the Commissioner decides that it should not.

**295-470 Complying funds—deductions for future liability to pay benefits**

- (1) A \*complying superannuation fund can deduct an amount under this section for an income year if:
- (a) the trustee of the fund makes a choice under subsection 295-465(4) and the choice applies to the income year; and
  - (b) the trustee pays:
    - (i) a benefit referred to in paragraph 295-460(a) or (b) for the income year in consequence of the termination of a member's employment; or
    - (ii) a benefit referred to in paragraph 295-460(c).

- (2) The amount the fund can deduct is:

$$\text{Benefit amount} \times \frac{\text{Future service days}}{\text{Total service days}}$$

where:

***benefit amount*** is:

- (a) for a benefit that is a \*superannuation lump sum—the amount of the lump sum; or
- (b) for a benefit that is a \*superannuation income stream—the \*value of the \*superannuation interest supporting the income stream; or



- (c) for a benefit referred to in paragraph 295-460(c)—the total of the amounts paid during the income year.

**future service days** is the number of days in the period starting when:

- (a) the termination happened; or
- (b) for a benefit referred to in paragraph 295-460(c)—the member became unable to perform normal work duties; and ending on the member's \*last retirement day.

**total service days** is the sum of future service days and the number of days in:

- (a) for a benefit that is a \*superannuation lump sum—the \*service period for the superannuation lump sum; or
  - (b) for another benefit—the period ending on the first day of the period to which the first payment of the benefit relates and starting on the earliest of:
    - (i) the day on which the member joined the relevant \*superannuation fund; and
    - (ii) the first day of the period of employment to which the benefit relates (including a qualifying period before the member could join the fund and any period when the member was not a member of the fund); and
    - (iii) the day applicable under subsection (3).
- (3) The applicable day is the first day of the \*service period for a \*superannuation lump sum that is a \*roll-over superannuation benefit if all or part of the \*value of the other benefit is attributable to the roll-over superannuation benefit.

### **295-475 RSA providers—deductions for insurance premiums**

An \*RSA provider can deduct premiums it pays for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460 for its \*RSA holders. It can deduct the amounts for the income year in which the premiums are paid.

Note: If the RSA provider receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 5 in section 295-320.

**295-480 Meaning of *whole of life policy* and *endowment policy***

- (1) A ***whole of life policy*** is an insurance policy:
  - (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) the death of the individual insured; or
    - (ii) the earlier of the death of the individual insured and the individual attaining the age specified in the policy (being at least the age of 85).
  
- (2) An ***endowment policy*** is an insurance policy:
  - (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) a day specified in, or worked out under, the policy; or
    - (ii) the death of the individual insured if that happens before that day;but does not include a \*whole of life policy.

**Increased amount of superannuation lump sum death benefits**

**295-485 Deductions for increased amount of superannuation lump sum death benefit**

- (1) An entity that is a \*complying superannuation fund, or a \*complying approved deposit fund, and has been since 1 July 1988 (or since it came into existence if that was later) can deduct an amount under this section if:
  - (a) it pays a \*superannuation lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a \*spouse, former spouse or child of the deceased at the time of death or payment; and
  - (b) it increases the lump sum by an amount, or does not reduce the lump sum by an amount (the ***tax saving amount***) so that the amount of the lump sum is the amount that the fund could have paid if no tax were payable on amounts included in assessable income under Subdivision 295-C.

(2) The fund can deduct the amount in the income year in which the lump sum is paid.

(3) The amount the fund can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Low tax component rate}}$$

where:

**low tax component tax rate** is the rate of tax imposed on the \*low tax component of the fund's taxable income for the income year.

Note: The deduction is designed to compensate the fund for the tax payable on the contributions that are used to fund the lump sum.

(4) The amount the fund can deduct for a \*superannuation lump sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

## Other deductions

### 295-490 Other deductions

(1) An entity can deduct amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
1	CSF N-CSF CADF N-CADF PST	An amount included in the entity's assessable income under Subdivision 295-C that is a *fringe benefit	The contribution is included in assessable income
2	CSF *RSA provider	Contributions to the extent they have been reduced by a notice under section 290-180 received by the	The notice is received

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<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
		*superannuation provider after it lodged its *income tax return for the income year in which the contributions were made, but only if the provider has <i>not</i> exercised the option mentioned in subsection 295-195(3)	
3	CSF N-CSF CADF N-CADF	A levy imposed by regulations under section 6 of the <i>Superannuation (Financial Assistance Funding) Levy Act 1993</i>	The levy is incurred
4	Entity that is a N-CSF and has been since 1 July 1988, or since it came into existence if that was later	An amount paid to an entity who includes it in assessable income under section 290-100	It is included in the entity's assessable income

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- (2) A fund cannot deduct an amount under item 3 of the table for a levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993* to the extent that:
- (a) the levy is remitted; or
  - (b) there is a refund or other application of an overpayment of the levy.
- (3) No other provision of this Act affects a fund's income tax liability in relation to the levy.

### **Certain amounts cannot be deducted**

#### **295-495 Amounts that cannot be deducted**

These entities cannot deduct anything for these amounts:

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts that cannot be deducted</b>		
<b>Item</b>	<b>This entity</b>	<b>Cannot deduct anything for:</b>
1	CSF	*Superannuation benefits
2	N-CSF	*Superannuation benefits (except amounts paid as mentioned in item 4 of the table in section 295-490)
3	*RSA provider	*Superannuation benefits paid from, or amounts withdrawn from, *RSAs
4	*RSA provider	Amounts credited to *RSAs
5	CSF N-CSF CADF N-CADF	A repayment of a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>

## Subdivision 295-H—Components of taxable income

### Table of sections

295-545	Components of taxable income—complying superannuation funds, complying ADFs and PSTs
295-550	Meaning of <i>non-arm's length income</i>
295-555	Components of taxable income—RSA providers

### 295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs

- (1) The taxable income of these entities is split into a \*non-arm's length component and a \*low tax component:
- (a) \*complying superannuation funds;
  - (b) \*complying approved deposit funds;
  - (c) \*pooled superannuation trusts.

Note: A concessional rate applies to the low tax component, while the non-arm's length component is taxed at the highest marginal rate. The rates are set out in the *Income Tax Rates Act 1986*.

- (2) The *non-arm's length component* for an income year is the entity's \*non-arm's length income for that year less any deductions to the extent that they are attributable to that income.

- (3) The *low tax component* is any remaining part of the entity's taxable income for the income year.

**295-550 Meaning of *non-arm's length income***

- (1) An amount of \*ordinary income or \*statutory income is *non-arm's length income* of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust (other than an amount to which subsection (2) applies or an amount \*derived by the entity in the capacity of beneficiary of a trust) if:
- (a) it is derived from a \*scheme the parties to which were not dealing with each other at \*arm's length in relation to the scheme; and
  - (b) that amount is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme.
- (2) An amount of \*ordinary income or \*statutory income is also *non-arm's length income* of the entity if it is:
- (a) a \*dividend paid to the entity by a \*private company; or
  - (b) ordinary income or statutory income that is reasonably attributable to such a dividend;
- unless the amount is consistent with an \*arm's length dealing.
- (3) In deciding whether an amount is consistent with an \*arm's length dealing under subsection (2), have regard to:
- (a) the value of \*shares in the company that are assets of the entity; and
  - (b) the cost to the entity of the shares on which the \*dividend was paid; and
  - (c) the rate of that dividend; and
  - (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend; and
  - (e) whether the company has issued any shares to the entity in satisfaction of a dividend paid by the company (or part of it) and, if so, the circumstances of the issue; and
  - (f) any other relevant matters.

- (4) Income \*derived by the entity as a beneficiary of a trust, other than because of holding a fixed entitlement to the income, is **non-arm's length income** of the entity.
- (5) Other income \*derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is **non-arm's length income** of the entity if:
  - (a) the entity acquired the entitlement under a \*scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at \*arm's length; and
  - (b) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length.
- (6) This section:
  - (a) applies to a \*non-share equity interest in the same way as it applies to a \*share; and
  - (b) applies to an \*equity holder in a company in the same way as it applies to a shareholder in the company; and
  - (c) applies to a \*non-share dividend in the same way as it applies to a \*dividend.

### **295-555 Components of taxable income—RSA providers**

- (1) The taxable income of an \*RSA provider is split into an \*RSA component and a \*standard component.

Note: The RSA component is taxed at the same concessional rate that applies to the low tax component of complying superannuation funds, complying approved deposit funds and pooled superannuation trusts. The standard component is taxed at the standard company rate.

- (2) The **RSA component** for an income year is worked out in this way:

*Method statement*

*Step 1.* Add these amounts included in the provider's assessable income for the income year:

- (a) amounts included under Subdivision 295-C; and
- (b) other amounts credited during the year to \*RSAs that it provides.

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*Step 2.* Subtract from the step 1 amount amounts paid from those \*RSAs (except benefits for the RSA holders or tax).

*Step 3.* The result is the ***RSA component***.

- (3) However, if the amount worked out under subsection (2) is more than the \*RSA provider's taxable income:
- (a) the provider's taxable income is equal to the \*RSA component; and
  - (b) this Act applies to the provider as if it had a \*tax loss for the income year of an amount that would have been that loss if the RSA component were not \*ordinary income or \*statutory income.
- (4) The ***standard component*** is any remaining part of the \*RSA's taxable income for the income year.

### **Subdivision 295-I—No-TFN contributions**

#### **Table of sections**

295-605	Liability for tax on no-TFN contributions income
295-610	No-TFN contributions income
295-615	Meaning of <i>quoted (for superannuation purposes)</i>
295-620	No reduction under Subdivision 295-D
295-625	Assessments

#### **295-605 Liability for tax on no-TFN contributions income**

- (1) A \*superannuation provider in relation to a \*complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (2) A \*superannuation provider in relation to a \*non-complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (3) An \*RSA provider is liable to pay tax on its \*no-TFN contributions income for an income year.

Note 1: The tax is imposed by the *Income Tax Act 1986*.

Note 2: The no-TFN contributions income is subject to a special rate of tax under the *Income Tax Rates Act 1986*.



Note 3: The Commissioner may make an assessment of the amount of income tax on the no-TFN contributions income: see section 169 of the *Income Tax Assessment Act 1936*.

### **295-610 No-TFN contributions income**

- (1) An amount included by Subdivision 295-C in the assessable income of a \*complying superannuation fund, a \*non-complying superannuation fund or an \*RSA provider for an income year is ***no-TFN contributions income*** for the year if:
- (a) it is included by that Subdivision in the assessable income of the income year of the fund or RSA provider in which 1 July 2007 occurs, or a later income year; and
  - (b) it is a contribution made to the fund or \*RSA on or after 1 July 2007 to provide \*superannuation benefits for an individual; and
  - (c) by the end of the income year, the individual has not \*quoted (for superannuation purposes) his or her \*tax file number to the \*superannuation provider.

#### *Exception*

- (2) However, an amount is not ***no-TFN contributions income*** if:
- (a) the contribution was made in relation to a \*superannuation interest or an \*RSA of the individual that existed prior to 1 July 2007; and
  - (b) the total contributions made in relation to the superannuation interest or RSA for the income year that are included in assessable income under Subdivision 295-C did not exceed \$1,000.

### **295-615 Meaning of *quoted (for superannuation purposes)***

An individual has ***quoted (for superannuation purposes)*** a \*tax file number to an entity at a time if the individual:

- (a) quotes his or her tax file number to the entity at that time; or
  - (b) is taken by the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997* or this Act to quote his or her tax file number to the entity at that time;
- in connection with the operation or the possible future operation of one or more of the following Acts:

- (c) the Superannuation Acts (within the meaning of Part 25A of the *Superannuation Industry (Supervision) Act 1993*);
- (d) the *Retirement Savings Accounts Act 1997*.

### **295-620 No reduction under Subdivision 295-D**

There is no reduction of the amount of \*no-TFN contributions income by Subdivision 295-D.

Note: Subdivision 295-D can reduce an amount that would otherwise be included in assessable income. It does not reduce the amount of *no-TFN contributions income*. An amount is still *no-TFN contributions income* even if, because of Subdivision 295-D, the amount (or part of it) is not included in assessable income.

### **295-625 Assessments**

- (1) If the Commissioner makes an assessment of the amount of income tax on the \*no-TFN contributions income, notice of the assessment may be included in a notice of any other assessment under this Act.

#### *Self-assessment*

- (2) If the conditions in subsection (3) are met, the Commissioner is taken to have made an assessment of a kind set out in subsection (4).
- (3) The conditions are:
  - (a) one of the following gives the Commissioner an \*income tax return for an income year on a particular day (the **return day**):
    - (i) a \*superannuation provider in relation to a \*complying superannuation fund;
    - (ii) a superannuation provider in relation to a \*non-complying superannuation fund;
    - (iii) an \*RSA provider; and
  - (b) the return is the first income tax return given by the provider for the year; and
  - (c) the Commissioner has not already made an assessment of a kind set out in subsection (4) for the provider for the year.
- (4) The assessment is taken to have been made for the provider for the income year on the return day, and to be an assessment, in

accordance with the information stated in the return, of the amount of income tax payable on the \*no-TFN contributions income (if any) of the provider (or to be an assessment that no tax is payable).

- (5) The return is taken to be notice of the assessment signed by the Commissioner and given to the provider on the return day.

Note: The return may also be taken to be a notice of another assessment: see section 166A of the *Income Tax Assessment Act 1936*.

### **Subdivision 295-J—Tax offset for no-TFN contributions income (TFN quoted within 4 years)**

#### **Table of sections**

295-675	Entitlement to a tax offset
295-680	Amount of the tax offset

#### **295-675 Entitlement to a tax offset**

- (1) A \*superannuation provider in relation to a \*superannuation fund or an \*RSA provider is entitled to a \*tax offset for an income year (the *current year*) commencing on or after 1 July 2007 for amounts of tax that count towards the offset for the provider for the current year.
- (2) An amount of tax counts towards the offset for the provider for the current year if:
- (a) the tax was payable by the provider in one of the most recent 3 income years ending before the current year; and
  - (b) the tax was payable on an amount of \*no-TFN contributions income of the fund or \*RSA provider; and
  - (c) the amount of no-TFN contributions income was a contribution made to the fund or provider to provide \*superannuation benefits for an individual who, in the current year, has \*quoted (for superannuation purposes) his or her \*tax file number to the provider for the first time.

Note: In certain circumstances the superannuation provider or RSA provider can get a refund of the tax offset under Division 67.

## **295-680 Amount of the tax offset**

The amount of the \*tax offset is the sum of each amount of tax that counts towards the offset for the provider for the current year.

## **Division 301—Superannuation member benefits paid from complying plans etc.**

### **Table of Subdivisions**

	Guide to Division 301
301-A	Application
301-B	Member benefits: general rules
301-C	Member benefits: elements untaxed in fund
301-D	Departing Australia superannuation payments
301-E	Superannuation lump sum member benefits less than \$200

### **Guide to Division 301**

#### **301-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of complying plans etc. This treatment varies depending on the age of the member when they receive the benefit. This Division also sets out the tax treatment of departing Australia superannuation payments and certain payments less than \$200.

### **Subdivision 301-A—Application**

#### **Table of sections**

301-5	Division applies to superannuation member benefits paid from complying plans etc.
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#### **301-5 Division applies to superannuation member benefits paid from complying plans etc.**

This Division applies to:

- (a) \*superannuation member benefits that are paid from a \*complying superannuation plan; and
- (b) \*superannuation guarantee payments; and
- (c) \*small superannuation account payments; and
- (d) \*unclaimed money payments; and
- (e) \*superannuation co-contribution benefit payments; and
- (f) \*superannuation annuity payments.

Note: For the tax treatment of superannuation death benefits paid from complying plans, see Division 302. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

## **Subdivision 301-B—Member benefits: general rules**

### **Table of sections**

#### **Member benefits—recipient aged 60 or above**

301-10 All superannuation benefits are tax free

#### **Member benefits—recipient aged over preservation age and under 60**

301-15 Tax free status of tax free component

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

301-25 Superannuation income stream—taxable component attracts 15% offset

#### **Member benefits—recipient aged under preservation age**

301-30 Tax free status of tax free component

301-35 Superannuation lump sum—taxable component taxed at 20%

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

## **Member benefits—recipient aged 60 or above**

### **301-10 All superannuation benefits are tax free**

If you are 60 years or over when you receive a \*superannuation benefit, the benefit is not assessable income and is not \*exempt income.

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Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: If your superannuation benefit includes an element untaxed in the fund, see Subdivision 301-C.

### **Member benefits—recipient aged over preservation age and under 60**

#### **301-15 Tax free status of tax free component**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70).

Note 2: For *tax free component*, see Subdivision 307-C.

#### **301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder**

(1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

(2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 0%.

(3) The amount is so much of the total of the \*taxable components included in your assessable income for the income year under subsection (1) as does not exceed your \*low rate cap amount (see section 307-345) for the income year.

(4) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 15%.

- (5) The amount is so much of the total of the \*taxable components included in your assessable income for an income year under subsection (1) as exceeds your \*low rate cap amount for the income year.

Note: This amount will be nil if the total of the taxable components falls short of your low rate cap amount for the income year.

### **301-25 Superannuation income stream—taxable component attracts 15% offset**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your superannuation income stream benefit includes an element untaxed in the fund, see Subdivision 301-C.

## **Member benefits—recipient aged under preservation age**

### **301-30 Tax free status of tax free component**

If you are under your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: For *tax free component*, see Subdivision 307-C.

### **301-35 Superannuation lump sum—taxable component taxed at 20%**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

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- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*taxable component of the lump sum does not exceed 20%.

Note: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

#### **301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit**

- (1) If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

##### *Offset for disability benefit*

- (2) If the benefit is a \*superannuation income stream benefit and a \*disability superannuation benefit, you are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

#### **Subdivision 301-C—Member benefits: elements untaxed in fund**

##### **Table of sections**

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

##### **Member benefits (element untaxed in fund)—recipient aged 60 or above**

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

##### **Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

301-110 Superannuation income stream—element untaxed in fund is assessable income



**Member benefits (element untaxed in fund)—recipient aged under preservation age**

- 301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder
- 301-120 Superannuation income stream—element untaxed in fund is assessable income

**301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision**

If you receive a \*superannuation benefit that includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation benefit under Subdivision 301-B; and
- (b) the \*element taxed in the fund (if any) included in the benefit is treated in the same way as the taxable component of a superannuation benefit under Subdivision 301-B; and
- (c) the element untaxed in the fund is treated in accordance with this Subdivision.

**Member benefits (element untaxed in fund)—recipient aged 60 or above**

**301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are 60 years or over when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 15%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

**301-100 Superannuation income stream—element untaxed in fund attracts 10% offset**

- (1) If you are 60 years or over when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

**Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

**301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount worked out under subsection (3) does not exceed 30%.
- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

Note: To the extent that the element untaxed in the fund exceeds the amount worked out under this subsection, it is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) If you are entitled to one or more \*tax offsets under subsection (2) for \*superannuation benefits that you receive in an income year, you are entitled to a tax offset that ensures that the rate of income tax on the amount worked out under subsection (5) does not exceed 15%.

- (5) The amount is so much of the total of the one or more amounts worked out under subsection (3) as does not exceed your \*low rate cap amount for the income year.
- (6) If you are also entitled to a \*tax offset under subsection 301-20(2) for the income year, reduce your \*low rate cap amount for the purposes of subsection (5) of this section for the income year by the amount mentioned in subsection 301-20(3).

**301-110 Superannuation income stream—element untaxed in fund is assessable income**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

**Member benefits (element untaxed in fund)—recipient aged under preservation age**

**301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 30%.  

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.
- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

**301-120 Superannuation income stream—element untaxed in fund is assessable income**

If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

**Subdivision 301-D—Departing Australia superannuation payments**

**Table of sections**

301-170	<i>Departing Australia superannuation payments</i>
301-175	Treatment of departing Australia superannuation benefits

**301-170 *Departing Australia superannuation payments***

A *departing Australia superannuation payment* is a \*superannuation lump sum that:

- (a) is paid to a person who has departed Australia; and
- (b) is paid:
  - (i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are specified in regulations made for the purposes of this definition; or
  - (ii) in accordance with section 67A of the *Small Superannuation Accounts Act 1995*; or
  - (iii) by an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*) and is made in accordance with rules of the fund that are substantially similar to the regulations specified as mentioned in subparagraph (i).

**301-175 Treatment of departing Australia superannuation benefits**

- (1) Despite anything else in this Division, if you receive a \*superannuation benefit that is a \*departing Australia superannuation payment, the benefit is not assessable income and is not \*exempt income.

- (2) However, you are liable to pay income tax on that payment at the rate declared by the Parliament in respect of \*departing Australia superannuation payments.

Note 1: The tax is imposed in the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* and the amount of the tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

### **Subdivision 301-E—Superannuation lump sum member benefits less than \$200**

#### **Table of sections**

301-225 Superannuation lump sum member benefits less than \$200 are tax free

#### **301-225 Superannuation lump sum member benefits less than \$200 are tax free**

Despite anything else in this Division (apart from Subdivision 301-D), a \*superannuation member benefit that you receive is not assessable income and is not \*exempt income if:

- (a) the benefit is a \*superannuation lump sum; and
- (b) the amount of the benefit is less than \$200; and
- (c) the \*value of the \*superannuation interest from which the benefit is paid is nil just after the benefit is paid; and
- (d) the requirements (if any) specified in the regulations in relation to the benefit are satisfied.

### **Division 302—Superannuation death benefits paid from complying plans etc.**

#### **Table of Subdivisions**

Guide to Division 302

- 302-A Application
- 302-B Death benefits to dependant
- 302-C Death benefits to non-dependant
- 302-D Definitions relating to dependants

## Guide to Division 302

### 302-1 What this Division is about

This Division sets out the tax treatment of superannuation death benefits received by members of complying plans etc. This treatment varies depending on the age of the deceased when they died (and in some cases on the age of the recipient of the benefit).

### Subdivision 302-A—Application

#### Table of sections

- |        |                                                                                  |
|--------|----------------------------------------------------------------------------------|
| 302-5  | Division applies to superannuation death benefits paid from complying plans etc. |
| 302-10 | Superannuation death benefits paid to trustee of deceased estate                 |

### 302-5 Division applies to superannuation death benefits paid from complying plans etc.

This Division applies to \*superannuation death benefits that are:

- (a) paid from a \*complying superannuation plan; or
- (b) \*superannuation guarantee payments, \*small superannuation account payments, \*unclaimed money payments, \*superannuation co-contribution benefit payments or \*superannuation annuity payments.

Note: For the tax treatment of superannuation member benefits paid from complying plans, see Division 301. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

### 302-10 Superannuation death benefits paid to trustee of deceased estate

- (1) This section applies to you if:
  - (a) you are the trustee of a deceased estate; and
  - (b) you receive a \*superannuation death benefit in your capacity as trustee.

- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.
- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.

### **Subdivision 302-B—Death benefits to dependant**

#### **Table of sections**

##### **Lump sum death benefits to dependants are tax free**

302-60 All of superannuation lump sum is tax free

##### **Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

302-65 Superannuation income stream benefits are tax free

##### **Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

302-70 Superannuation income stream—tax free status of tax free component

302-75 Superannuation income stream—taxable component attracts 15% offset

##### **Death benefits to dependant—elements untaxed in fund**

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream—element untaxed in fund attracts 10% offset

302-90 Deceased died aged under 60 and dependant aged under 60—  
superannuation income stream—element untaxed in fund is assessable  
income

## **Lump sum death benefits to dependants are tax free**

### **302-60 All of superannuation lump sum is tax free**

A \*superannuation lump sum that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

## **Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

### **302-65 Superannuation income stream benefits are tax free**

A \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income in either or both of the following cases:

- (a) you are 60 years or over when you receive the benefit;
- (b) the deceased died aged 60 or over.

Note: If your superannuation income stream benefit includes an element untaxed in the fund, see section 302-85.

## **Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

### **302-70 Superannuation income stream—tax free status of tax free component**

The \*tax free component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income if:

- (a) you are under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Note: For *tax free component*, see Subdivision 307-C.



**302-75 Superannuation income stream—taxable component attracts 15% offset**

- (1) The \*taxable component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:
- (a) you are under 60 when you receive the benefit; and
  - (b) the deceased died aged under 60.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

**Death benefits to dependant—elements untaxed in fund**

**302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant**

If a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation income stream benefit under section 302-65 or 302-70; and
- (b) the \*element taxed in the fund (if any) of the benefit is treated in the same way as the \*taxable component of a superannuation income stream benefit under section 302-65 or 302-75; and
- (c) the element untaxed in the fund is treated in accordance with section 302-85 or 302-90.

**302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset**

- (1) The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income in either or both of the following cases:
- (a) you are 60 years or over when you receive the benefit;
  - (b) the deceased died aged 60 or above.

- (2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

**302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income**

The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:

- (a) you are aged under 60 when you receive the benefit; and  
(b) the deceased died aged under 60.

**Subdivision 302-C—Death benefits to non-dependant**

**Table of sections**

**Superannuation lump sum**

- 302-140 Superannuation lump sum—tax free status of tax free component  
302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

**Superannuation lump sum**

**302-140 Superannuation lump sum—tax free status of tax free component**

The \*tax free component of a \*superannuation lump sum that you receive because of the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

Note: For *tax free component*, see Subdivision 307-C.

**302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%**

- (1) If you receive a \*superannuation lump sum because of the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

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- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element taxed in the fund of the lump sum does not exceed 15%.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element untaxed in the fund of the lump sum does not exceed 30%.

## **Subdivision 302-D—Definitions relating to dependants**

### **Table of sections**

302-195	Meaning of <i>death benefits dependant</i>
302-200	What is an <i>interdependency relationship</i> ?

### **302-195 Meaning of *death benefits dependant***

A *death benefits dependant*, of a person who has died, is:

- (a) the deceased person's \*spouse or former spouse; or
- (b) the deceased person's \*child, aged less than 18; or
- (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
- (d) any other person who was a dependant of the deceased person just before he or she died.

### **302-200 What is an *interdependency relationship*?**

- (1) Two persons (whether or not related by family) have an *interdependency relationship* under this section if:
  - (a) they have a close personal relationship; and
  - (b) they live together; and
  - (c) one or each of them provides the other with financial support; and
  - (d) one or each of them provides the other with domestic support and personal care.
- (2) In addition, 2 persons (whether or not related by family) also have an *interdependency relationship* under this section if:
  - (a) they have a close personal relationship; and

- (b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and
  - (c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.
- (3) The regulations may specify:
- (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship* under this section; and
  - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship* under this section.

### **Division 303—Superannuation benefits paid in special circumstances**

#### **Table of sections**

303-5      Commutation of income stream if you are under 25 etc.

#### **303-5 Commutation of income stream if you are under 25 etc.**

- (1) A \*superannuation lump sum that you receive from a \*complying superannuation plan is not assessable income and is not \*exempt income if:
- (a) the superannuation lump sum arises from the commutation of a \*superannuation income stream; and
  - (b) any of these conditions are satisfied:
    - (i) you are under 25 when you receive the superannuation lump sum;
    - (ii) the commutation takes place because you turn 25;
    - (iii) you are permanently disabled when you receive the superannuation lump sum; and
  - (c) you had received one or more \*superannuation income stream benefits from the superannuation income stream before the commutation because of the death of a person of whom you are a \*death benefits dependant.
- (2) Subsection (1) applies despite Divisions 301 and 302.

## **Division 304—Superannuation benefits in breach of legislative requirements etc.**

### **Guide to Division 304**

#### **304-1 What this Division is about**

This Division overrides the tax treatment in Divisions 301 and 302 if payments from complying superannuation plans etc. are in breach of payment and other rules.

#### **Table of sections**

##### **Operative provisions**

304-5	Application
304-10	Superannuation benefits in breach of legislative requirements etc.
304-15	Excess payments from release authorities

#### **Operative provisions**

##### **304-5 Application**

This Division applies despite Divisions 301, 302 and 303.

##### **304-10 Superannuation benefits in breach of legislative requirements etc.**

- (1) Include in your assessable income the amount of a \*superannuation benefit if:
  - (a) any of the following applies:
    - (i) you received the benefit from a \*complying superannuation fund or from a \*superannuation fund that was previously a complying superannuation fund;
    - (ii) the benefit is attributable to the assets of a complying superannuation fund or from a superannuation fund that was previously a complying superannuation fund; and
  - (b) any of the following applies:

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- (i) the fund was not (when you received the benefit) maintained as required by section 62 of the *Superannuation Industry (Supervision) Act 1993*;
  - (ii) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (2) Include in your assessable income the amount of a \*superannuation benefit if:
  - (a) any of the following applies:
    - (i) you received the benefit from a \*complying approved deposit fund or from an \*approved deposit fund that was previously a complying approved deposit fund;
    - (ii) the benefit is attributable to the assets of a complying approved deposit fund or from an approved deposit fund that was previously a complying approved deposit fund; and
  - (b) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 32(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) Include in your assessable income the amount of a \*superannuation benefit you receive from an \*RSA in breach of the *Retirement Savings Accounts Act 1997*, regulations under that Act or payment standards prescribed under subsection 38(2) of that Act.
- (4) However, you do not have to include the amount in your assessable income to the extent that the Commissioner is satisfied that it is unreasonable that it be included having regard to:
  - (a) for subsection (1) or (2)—the nature of the fund; and
  - (b) any other matters that the Commissioner considers relevant.

**304-15 Excess payments from release authorities**

- (1) This section applies to a \*superannuation benefit that you receive, paid in relation to a release authority given in relation to you in accordance with:
  - (a) section 292-410; or
  - (b) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) The \*superannuation benefit is not assessable income and is not \*exempt income to the extent that it does not exceed the amount mentioned in subsection (3).
- (3) The amount is the amount of \*excess contributions tax stated in the release authority, reduced (but not below zero) by the amount of any \*superannuation benefit that was not assessable income and not \*exempt income under a previous operation of subsection (2) in relation to the release authority.
- (4) The \*superannuation benefit is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (3).

## **Division 305—Superannuation benefits paid from non-complying superannuation plans**

### **Table of Subdivisions**

	Guide to Division 305
305-A	Superannuation benefits from Australian non-complying superannuation funds
305-B	Superannuation benefits from foreign superannuation funds

### **Guide to Division 305**

#### **305-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).

## **Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds**

### **Table of sections**

305-5	Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds
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### **305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds**

A \*superannuation benefit that you receive from a \*non-complying superannuation fund that is an \*Australian superannuation fund (for the income year in which the benefit is paid) is \*exempt income, unless:

- (a) if the \*superannuation fund has ever been a \*complying superannuation fund—it last stopped being one for the income year in which 1 July 1995 occurred or a later income year; and
- (b) if it has ever been a \*foreign superannuation fund—it last stopped being one for the income year in which 1 July 1995 occurred or a later income year.

### **Subdivision 305-B—Superannuation benefits from foreign superannuation funds**

#### **Table of sections**

##### **Application of Subdivision**

305-55 Restriction to lump sums received from certain foreign superannuation funds

##### **Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

305-60 Lump sums tax free—foreign resident period

305-65 Lump sums tax free—Australian resident period

##### **Lump sums to which sections 305-60 and 305-65 do not apply**

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75 Lump sums—*applicable fund earnings*

305-80 Lump sums paid into complying superannuation plans—choice



## **Application of Subdivision**

### **305-55 Restriction to lump sums received from certain foreign superannuation funds**

This Subdivision applies if:

- (a) you receive a \*superannuation lump sum from a \*foreign superannuation fund; and
- (b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).

### **Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

#### **305-60 Lump sums tax free—foreign resident period**

A \*superannuation lump sum you receive from a \*foreign superannuation fund is not assessable income and is not \*exempt income if:

- (a) you receive it within 6 months after you become an Australian resident; and
- (b) it relates only to a period:
  - (i) when you were not an Australian resident; or
  - (ii) starting after you became an Australian resident and ending before you receive the payment; and
- (c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

#### **305-65 Lump sums tax free—Australian resident period**

- (1) A \*superannuation lump sum you receive is not assessable income and is not \*exempt income if:
  - (a) you receive it in consequence of:
    - (i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or

- (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
- (b) it relates only to the period of that employment, holding of office, or engagement; and
- (c) you were an Australian resident during the period of the employment, holding of office or engagement; and
- (d) you receive the lump sum within 6 months after the termination; and
- (e) the lump sum is not exempt from taxation under the law of the foreign country; and
- (f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
- (g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the lump sum will fall within section 305-70.

- (2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:
  - (a) retirement from the employment, office or engagement; and
  - (b) cessation of the employment, office or engagement because of death.

### **Lump sums to which sections 305-60 and 305-65 do not apply**

#### **305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.**

*Superannuation lump sums to which section applies*

- (1) This section applies to a \*superannuation lump sum you receive from a \*foreign superannuation fund if:
  - (a) you are an Australian resident when you receive the lump sum; and

(b) sections 305-60 and 305-65 do not apply to the lump sum.

*Assessable part*

- (2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:
- (a) your \*applicable fund earnings (worked out under section 305-75); or
  - (b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

*Non-assessable, non-exempt part*

- (3) The remainder of the lump sum is not assessable income and is not \*exempt income.

*Amount paid into another foreign superannuation fund*

- (4) Any part of the lump sum that is paid into another \*foreign superannuation fund is not assessable income and is not \*exempt income.

Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign superannuation fund may include an amount (*previously exempt fund earnings*) attributable to the lump sum.

**305-75 Lump sums—*applicable fund earnings***

- (1) This section applies if you need to work out an amount (your *applicable fund earnings*) in relation to a \*superannuation lump sum to which section 305-70 applies that you receive from a \*foreign superannuation fund.

*If you were an Australian resident at all times*

- (2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:

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- (a) work out the total of the following amounts:
  - (i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the *start day*);
  - (ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the period;
- (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign tax);
- (c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

*If you were not an Australian resident at all times*

- (3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
  - (a) work out the total of the following amounts:
    - (i) the amount in the fund that was vested in you just before the day (the *start day*) you first became an Australian resident during the period;
    - (ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;
    - (iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the remainder of the period;
  - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign tax);
  - (c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;
  - (d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

*Previous lump sums from the fund*

- (4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the **start day** is the day after you received the most recent such lump sum.

*Previously exempt fund earnings*

- (5) You have an amount of **previously exempt fund earnings** in respect of the lump sum if:
- (a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign tax) is attributable to the amount; and
  - (b) the amount is attributable to a payment received from a \*foreign superannuation fund; and
  - (c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this section, but for the payment having been received by another foreign superannuation fund.
- (6) The amount of your **previously exempt fund earnings** is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

**305-80 Lump sums paid into complying superannuation plans—choice**

- (1) This section applies if:
- (a) section 305-70 applies to a \*superannuation lump sum that is paid from a \*foreign superannuation fund; and
  - (b) you are taken to receive the lump sum under section 307-15; and
  - (c) all of the lump sum is paid into a \*complying superannuation fund; and
  - (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a \*superannuation interest in the foreign superannuation fund.
- (2) You may choose for all or part of your \*applicable fund earnings worked out under section 305-75 (but not exceeding the amount of

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the lump sum) to be included in the assessable income of the  
\*complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.

- (3) Your choice:
- (a) must be in writing; and
  - (b) must comply with the requirements (if any) specified in the regulations.

## **Division 306—Roll-overs etc.**

### **Guide to Division 306**

#### **306-1 What this Division is about**

This Division sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments.

#### **Table of sections**

##### **Operative provisions**

- 306-5 Effect of a roll-over superannuation benefit
- 306-10 ***Roll-over superannuation benefit***
- 306-15 Tax on ***excess untaxed roll-over amounts***
- 306-20 Effect of payment to government of unclaimed superannuation money

#### **Operative provisions**

##### **306-5 Effect of a roll-over superannuation benefit**

A \*roll-over superannuation benefit that you are taken to receive under section 307-15 is not assessable income and is not \*exempt income.

Note: Roll-over superannuation benefits are paid into a complying superannuation plan or are used to purchase a superannuation annuity on your behalf. However, you are taken to receive the benefit under subsection 307-15(1).

### **306-10 *Roll-over superannuation benefit***

A \*superannuation benefit is a ***roll-over superannuation benefit*** if:

- (a) the benefit is a \*superannuation lump sum and a \*superannuation member benefit; and
- (b) the benefit is *not* a superannuation benefit of a kind specified in the regulations; and
- (c) the benefit satisfies any of the following conditions:
  - (i) it is paid from a \*complying superannuation plan;
  - (ii) it is an \*unclaimed money payment;
  - (iii) it arises from the commutation of a \*superannuation annuity; and
- (d) the benefit satisfies any of the following conditions:
  - (i) it is paid to a complying superannuation plan;
  - (ii) it is paid to an entity to purchase a superannuation annuity from the entity.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider.

Note 2: For the treatment of amounts transferred within a superannuation plan, see subsection 307-5(8).

### **306-15 *Tax on excess untaxed roll-over amounts***

- (1) This section applies to a \*superannuation benefit if:
  - (a) it is a \*roll-over superannuation benefit that is paid into a \*superannuation plan; and
  - (b) you are taken to receive the benefit under section 307-15; and
  - (c) the benefit consists of, or includes, an amount that is an \*element untaxed in the fund; and
  - (d) the amount mentioned in paragraph (c) exceeds your \*untaxed plan cap amount (see section 307-350) for the \*superannuation plan just before you are taken to receive the benefit.
- (2) The ***excess untaxed roll-over amount*** is the amount of the excess mentioned in paragraph (1)(d).
- (3) You are liable to pay income tax on the \*excess untaxed roll-over amount at the rate declared by the Parliament in respect of such amounts.

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Note 1: The tax is imposed in the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, and the amount of tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

### **306-20 Effect of payment to government of unclaimed superannuation money**

An \*unclaimed money payment that you are taken to receive under section 307-15 because it is paid in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to the Commissioner or a State or Territory authority (within the meaning of that Act) is not assessable income and is not \*exempt income.

## **Division 307—Key concepts relating to superannuation benefits**

### **Table of Subdivisions**

Guide to Division 307

- 307-A Superannuation benefits generally
- 307-B Superannuation lump sums and superannuation income stream benefits
- 307-C Components of a superannuation benefit
- 307-D Superannuation interests
- 307-E Elements taxed and untaxed in the fund of the taxable component of superannuation benefit
- 307-F Low rate cap and untaxed plan cap amounts
- 307-G Other concepts

### **Guide to Division 307**

#### **307-1 What this Division is about**

This Division defines concepts used in Divisions 301 to 306, such as *superannuation benefit*, and the *tax free component* and *taxable component* of such benefits. To work out those components, it is often necessary to work out the corresponding



components of the *superannuation interest* from which the benefit is paid (see Subdivision 307-D).

This Division also defines the *element taxed in the fund* and the *element untaxed in the fund* of superannuation benefits, which are relevant to superannuation benefits paid from untaxed funds etc. (see Subdivision 307-D).

Subdivision 307-F defines the concessional limits used in Division 301 known as the low rate cap amount and untaxed plan cap amount.

## Subdivision 307-A—Superannuation benefits generally

### Table of sections

307-5	What is a <i>superannuation benefit</i> ?
307-10	Payments that are not <i>superannuation benefits</i>
307-15	Payments for your benefit or at your direction or request

### 307-5 What is a *superannuation benefit*?

- (1) A *superannuation benefit* is a payment described in the table.

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
1	<i>superannuation fund payment</i>	A payment to you from a *superannuation fund because you are a fund member.	A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.
2	<i>RSA payment</i>	A payment to you from an *RSA because you are the holder of the RSA.	A payment to you from an RSA, after another person's death, because the other person was the holder of the RSA.
3	<i>approved deposit fund payment</i>	A payment to you from an *approved deposit fund because you are a depositor	A payment to you from an approved deposit fund after another person's death, because the other person was a

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<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
		with the fund.	depositor with the fund.
4	<i>small superannuation account payment</i>	A payment to you under section 63, 64, 65, 66, 67 or 67A, or subsection 76(6), of the <i>Small Superannuation Accounts Act 1995</i> .  (These provisions authorise payment of money held under the Act.)	A payment to you under section 68 or subsection 76(7) of the <i>Small Superannuation Accounts Act 1995</i> .  (These provisions authorise payment of money held under the Act to the legal personal representative of the deceased.)
5	<i>unclaimed money payment</i>	A payment to you under section 17 or 18 of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> otherwise than because of another person's death.	A payment to you under section 17 or 18 of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> because of another person's death.
6	<i>superannuation co-contribution benefit payment</i>	A payment to you under paragraph 15(1)(c) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .	A payment to you under paragraph 15(1)(d) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .
7	<i>superannuation guarantee payment</i>	A payment to you under section 65A or 66 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected	A payment to you under section 67 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected under the Act to be paid to the legal personal representative of the deceased.)

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
		under the Act to be paid to a person who retires because of incapacity or invalidity.)	
8	<i>superannuation annuity payment</i>	A payment to you: (a) from a *superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because you are the annuitant.	A payment to you: (a) from a superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because of the death of the annuitant.

- (2) A *superannuation member benefit* is a payment described in column 2 of the table.
- (3) A \*superannuation benefit is also a *superannuation member benefit* if:
- (a) the superannuation benefit arises from the commutation of a \*superannuation income stream; and
  - (b) it would be a \*superannuation death benefit apart from this subsection; and
  - (c) the benefit is paid after the later of:
    - (i) 6 months after the death of the deceased person; or
    - (ii) 3 months after the grant of probate of that deceased person's will or letters of administration of that deceased person's estate.
- (4) A *superannuation death benefit* is a payment described in column 3 of the table.
- (5) Subsection (6) applies if a \*contributions-splitting superannuation benefit or a \*family law superannuation payment is paid to you because another person is a member of a \*superannuation fund,

holder of an \*RSA or depositor with an \*approved deposit fund, or the annuitant under a \*superannuation annuity.

- (6) For the purposes of this section (and despite section 307-15):
- (a) treat yourself as a member of the fund, holder of the \*RSA, depositor with the fund or annuitant under the \*superannuation annuity; and
  - (b) do not treat the other person as a member of the fund, holder of the RSA, depositor with the fund or annuitant under the superannuation annuity.

Note: This means that the benefit is a superannuation benefit for you but not for the other person.

- (7) A ***family law superannuation payment*** is a payment that:
- (a) is a payment of any of the following kinds:
    - (i) a payment in accordance with Part VIII B of the *Family Law Act 1975*;
    - (ii) a payment in accordance with the *Family Law (Superannuation) Regulations 2001*;
    - (iii) a payment in accordance with Part 7 A of the *Superannuation Industry (Supervision) Regulations 1994*;
    - (iv) a payment in accordance with Part 4 A of the *Retirement Savings Accounts Regulations 1997*;
    - (v) a payment specified in the regulations; and
  - (b) satisfies the requirements (if any) specified in the regulations.

*Treatment of amounts transferred within a superannuation plan*

- (8) If an amount is transferred from one \*superannuation interest in a \*superannuation plan to another superannuation interest in the same plan, treat the transfer as a payment in determining whether the transfer of the amount is a superannuation benefit or a roll-over superannuation benefit.

### **307-10 Payments that are not *superannuation benefits***

A payment of any of the following kinds is *not a superannuation benefit*:

- (a) an amount payable to a person under an income stream because of the person's temporary inability to perform normal employment duties;
- (b) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (c) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act).

### **307-15 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
  - (a) determining whether a payment is a *superannuation benefit*; and
  - (b) determining whether a \*superannuation benefit is made to you, or received by you.
- (2) A payment is treated as being made to you, or received by you, if it is made:
  - (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

Note: Paragraph (b) would cover, for example, a direction by you that a payment be rolled over from your original superannuation fund into another superannuation fund.

## Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits

### Table of sections

307-65	Meaning of <i>superannuation lump sum</i>
307-70	Meaning of <i>superannuation income stream</i> and <i>superannuation income stream benefit</i>

### 307-65 Meaning of *superannuation lump sum*

A *superannuation lump sum* is a \*superannuation benefit that is not a \*superannuation income stream benefit (see section 307-70).

### 307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit*

- (1) A *superannuation income stream benefit* is a \*superannuation benefit specified in the regulations that is paid from a \*superannuation income stream.
- (2) A *superannuation income stream* has the meaning given by the regulations.

## Subdivision 307-C—Components of a superannuation benefit

### Table of sections

307-120	Components of superannuation benefit
307-125	Proportioning rule
307-130	Superannuation guarantee payment consists entirely of taxable component
307-135	Superannuation co-contribution benefit payment consists entirely of tax free component
307-140	Contributions-splitting superannuation benefit consists entirely of taxable component
307-145	Modification for disability benefits
307-150	Modification in respect of superannuation lump sum with element untaxed in fund

### 307-120 Components of superannuation benefit

- (1) Work out the following components of a \*superannuation benefit under this Subdivision:
  - (a) the *tax free component*;

- (b) the *taxable component*.
- (2) Work out those components under:
- (a) if the benefit is not mentioned in paragraph (b), (c) or (d)—section 307-125; or
  - (b) if the benefit is a \*superannuation guarantee payment—section 307-130; or
  - (c) if the benefit is a \*superannuation co-contribution benefit payment—section 307-135; or
  - (d) if the benefit is a \*contributions-splitting superannuation benefit—section 307-140.
- (3) Those components may be modified under sections 307-145 (which deals with certain disability benefits) and 307-150 (which deals with certain \*elements untaxed in fund).

### **307-125 Proportioning rule**

- (1) The object of this section is to ensure that the \*tax free component and \*taxable component of a \*superannuation benefit are calculated by:
- (a) first, determining the proportions of the \*value of the \*superannuation interest that those components represent; and
  - (b) next, applying those proportions to the benefit.
- (2) The \*superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the \*superannuation interest bears to the \*value of the superannuation interest.
- Example: The amount of a superannuation lump sum is \$100. Just before the benefit is paid, the value of the superannuation interest was \$1000 (of which \$200 was the tax free component and \$800 was the taxable component). For the lump sum, the tax free component is \$20 and the taxable component is \$80.
- (3) For the purposes of subsection (2), determine the \*value of the \*superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:

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- (a) if the \*superannuation benefit is a \*superannuation income stream benefit—when the relevant \*superannuation income stream commenced;
  - (b) if the superannuation benefit is a \*superannuation lump sum—just before the benefit is paid;
  - (c) despite paragraphs (a) and (b), if the superannuation benefit arises from the commutation of a superannuation income stream—when the relevant \*superannuation income stream commenced.
- (4) Subsection (2) does not apply to a \*superannuation benefit if any of the following applies:
- (a) the regulations specify an alternative method for determining those components of the benefit;
  - (b) a determination under subsection (5) specifies an alternative method for determining those components of the benefit;
  - (c) the Commissioner consents in writing to the use of another method for determining those components of the benefit.
- If so, use that method to determine those components of the benefit.
- (5) For the purposes of paragraph (4)(b), the Commissioner may determine, by legislative instrument, one or more alternative methods for determining those components of a \*superannuation benefit.
- (6) If the \*superannuation benefit is an \*unclaimed money payment or a \*small superannuation account payment, for the purposes of this section:
- (a) treat the benefit as a superannuation benefit paid from a \*superannuation interest; and
  - (b) treat the amount of the benefit as the \*value of that superannuation interest just before the time the benefit is paid.

### **307-130 Superannuation guarantee payment consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*superannuation guarantee payment are as follows:

- (a) the \*tax free component is nil;



(b) the \*taxable component is the amount of the benefit.

**307-135 Superannuation co-contribution benefit payment consists entirely of tax free component**

The components of a \*superannuation benefit that is a \*superannuation co-contribution benefit payment are as follows:

- (a) the \*tax free component is the amount of the benefit;
- (b) the \*taxable component is nil.

**307-140 Contributions-splitting superannuation benefit consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*contributions-splitting superannuation benefit are as follows:

- (a) the \*tax free component is nil;
- (b) the \*taxable component is the amount of the benefit.

**307-145 Modification for disability benefits**

- (1) Work out the *tax free component* of the \*superannuation benefit under subsection (2) if the benefit is a \*superannuation lump sum and a \*disability superannuation benefit.
- (2) The *tax free component* is the sum of:
  - (a) the \*tax free component of the benefit worked out apart from this section; and
  - (b) the amount worked out under subsection (3).

However, the tax free component cannot exceed the amount of the benefit.

- (3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

where:

*days to retirement* is the number of days from the day on which the person stopped being capable of being \*gainfully employed to his or her \*last retirement day.

*service days* is the number of days in the \*service period for the lump sum.

- (4) The balance of the \*superannuation benefit is the *taxable component* of the benefit.

**307-150 Modification in respect of superannuation lump sum with element untaxed in fund**

- (1) This section applies to a \*superannuation lump sum if:
- (a) it is not a \*roll-over superannuation benefit; or
  - (b) it is a roll-over superannuation benefit that includes an \*element untaxed in the fund, all or part of which will be included in the assessable income of the \*superannuation provider in relation to the \*superannuation fund into which the benefit is paid.
- (2) However, this section applies to the \*superannuation lump sum only to the extent that it is attributable to a \*superannuation interest that existed just before 1 July 2007.
- (3) If the \*superannuation lump sum includes an \*element untaxed in the fund:
- (a) increase the \*tax free component of the benefit by the amount that is the lesser of these amounts:
    - (i) the amount worked out under subsection (4); and
    - (ii) the amount of the element untaxed in the fund (apart from this section); and
  - (b) reduce the element untaxed in the fund by the lesser of those amounts.
- (4) Work out the amount by applying the following formula:

$$\text{Original tax free component and untaxed element} \times \frac{\text{Number of days in the *service period for the lump sum that occurred before 1 July 1983}}{\text{Number of days in the *service period for the lump sum}}$$

where:

*original tax free component and untaxed element* is the sum of:

- (a) the \*tax free component of the \*superannuation benefit (apart from this section); and
  - (b) the \*element untaxed in the fund of the superannuation benefit (apart from this section).
- (5) If the benefit is in part attributable to a \*crystallised pre-July 83 amount, in working out the \*tax free component of the \*superannuation benefit (apart from this section) for the purposes of subsection (4), disregard the amount of the benefit that is attributable to the \*crystallised segment of the \*superannuation interest from which the benefit is paid.

### **Subdivision 307-D—Superannuation interests**

#### **Table of sections**

307-200	Regulations relating to meaning of superannuation interests
307-205	<i>Value</i> of superannuation interest
307-210	<i>Tax free component</i> of superannuation interest
307-215	<i>Taxable component</i> of superannuation interest
307-220	What is the <i>contributions segment</i> ?
307-225	What is the <i>crystallised segment</i> ?

#### **307-200 Regulations relating to meaning of superannuation interests**

- (1) In the circumstances specified in the regulations, treat a *superannuation interest* as two or more superannuation interests in the way specified in the regulations.
- (2) In the circumstances specified in the regulations, treat 2 or more *superannuation interests* as one superannuation interest in the way specified in the regulations.
- (3) Regulations for the purposes of this section may specify a way of treating a \*superannuation interest in relation to one or more of the following aspects of the interest:
  - (a) the \*tax free component (and the \*contributions segment and \*crystallised segment relating to that component);
  - (b) the \*taxable component;
  - (c) the \*element taxed in the fund of the taxable component;
  - (d) the \*element untaxed in the fund of the taxable component.

- (4) Regulations for the purposes of subsection (1) may specify a way of allocating an amount relating to a \*superannuation interest treated as two or more superannuation interests in accordance with those regulations to those interests.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

### **307-205 Value of superannuation interest**

The *value* of a \*superannuation interest at a particular time is:

- (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or
- (b) otherwise—the total amount of all the \*superannuation lump sums that could be payable from the interest at that time.

### **307-210 Tax free component of superannuation interest**

The *tax free component* of a \*superannuation interest is so much of the \*value of the interest as consists of:

- (a) the \*contributions segment of the interest; and
- (b) the \*crystallised segment of the interest.

Note: If superannuation benefits have been paid from the superannuation interest, the amount of the tax free component of the interest will be reduced by the tax free components of those superannuation benefits: see section 307-125.

### **307-215 Taxable component of superannuation interest**

The *taxable component* of a \*superannuation interest is the \*value of the interest less the \*tax free component of the interest.

### **307-220 What is the contributions segment?**

- (1) The *contributions segment* of a \*superannuation interest is so much of the \*value of the interest as consists of contributions made after 30 June 2007, to the extent that they have not been and will not be included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan in which the interest is held.
- (2) For the purposes of this section:

- (a) in determining whether contributions are included in the contributions segment under subsection (1):
    - (i) disregard the \*taxable component of a \*roll-over superannuation benefit paid into the interest; and
    - (ii) for a \*superannuation plan that is a \*constitutionally protected fund—treat the superannuation plan as if it were not a constitutionally protected fund; and
  - (b) disregard section 295-180 and Subdivision 295-D.
- (3) For the purposes of subparagraph (2)(a)(i), treat the \*excess untaxed roll-over amount (if any) of the \*roll-over superannuation benefit as part of the \*tax free component of the benefit instead of the \*taxable component of the benefit.

**307-225 What is the *crystallised segment*?**

- (1) To work out the *crystallised segment* of a \*superannuation interest, first assume that:
  - (a) an eligible termination payment had been made in respect of the holder of the interest just before 1 July 2007; and
  - (b) the amount of the eligible termination payment had been equal to the \*value of the interest at that time.
- (2) The *crystallised segment* of the \*superannuation interest is so much of the \*value of the interest as consists of the total of the following components of the eligible termination payment:
  - (a) the concessional component;
  - (b) the post-June 1994 invalidity component;
  - (c) the undeducted contributions;
  - (d) the CGT exempt component;
  - (e) the pre-July 83 component.
- (3) For the purposes of paragraph (2)(e), disregard the \*value of the interest just before 1 July 2007 to the extent that it would consist, apart from this subsection, of the \*element untaxed in the fund of the \*taxable component of a \*superannuation benefit constituted by the eligible termination payment.
- (4) In this section, the following terms have the same meaning as in subsection 27A(1) of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007):

- (a) *concessional component*;
- (b) *post-June 1994 invalidity component*;
- (c) *undeducted contributions*;
- (d) *CGT exempt component*;
- (e) *pre-July 83 component*;
- (f) *eligible termination payment*.

### **Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit**

#### **Table of sections**

307-275	<i>Element taxed in the fund and element untaxed in the fund</i> of superannuation benefits
307-280	Superannuation benefits from constitutionally protected funds etc.
307-285	Trustee can choose to convert element taxed in the fund to element untaxed in the fund
307-290	Taxed and untaxed elements of death benefit superannuation lump sums
307-295	Superannuation benefits from public sector superannuation schemes may include untaxed element

#### **307-275 *Element taxed in the fund and element untaxed in the fund of superannuation benefits***

- (1) The \*taxable component of a \*superannuation benefit consists of an *element taxed in the fund* or an *element untaxed in the fund*, or both.
- (2) The \*taxable component of a \*superannuation benefit consists wholly of an *element taxed in the fund* except as provided in a later section of this Subdivision.
- (3) Despite subsection (2), the \*taxable component of any of the following kinds of \*superannuation benefit consists wholly of an *element untaxed in the fund*:
  - (a) a \*small superannuation account payment;
  - (b) a \*superannuation guarantee payment.

**307-280 Superannuation benefits from constitutionally protected funds etc.**

- (1) The \*taxable component of a \*superannuation benefit paid from a \*superannuation fund that is a \*constitutionally protected fund consists wholly of an *element untaxed in the fund*.
- (2) Despite subsection (1), if:
  - (a) the benefit is a \*superannuation lump sum; and
  - (b) the benefit is attributable to one or more \*roll-over superannuation benefits that consisted of, or included, an \*element taxed in the fund;the \*taxable component of the benefit has an *element taxed in the fund* equal to the total of those elements taxed in the fund.
- (3) The \*taxable component of a \*superannuation income stream benefit consists wholly of an *element untaxed in the fund* if it is paid from a \*superannuation fund that was a \*constitutionally protected fund on the first day of the period to which the \*superannuation income stream relates.

**307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund**

- (1) If:
  - (a) you receive a \*superannuation benefit from a \*superannuation fund; and
  - (b) the trustee of the fund gives you written notice specifying an amount as the \*element untaxed in the fund of the \*taxable component of the benefit; and
  - (c) the notice is given within the time and in the manner approved by the Commissioner in writing; and
  - (d) the superannuation fund came into operation on or before 5 September 2006;the taxable component consists of an *element untaxed in the fund* equal to the specified amount.
- (2) The trustee of the fund can give only one notice under subsection (1) in relation to a particular \*superannuation lump sum.

### 307-290 Taxed and untaxed elements of death benefit superannuation lump sums

- (1) This section applies to a \*superannuation death benefit that is a \*superannuation lump sum, in relation to which a deduction has been, or is to be, claimed under section 295-465 or 295-470.

Note: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

- (2) The \*taxable component of the \*superannuation lump sum includes an *element taxed in the fund* worked out as follows:
- (a) first, work out the amount under the formula in subsection (3);
  - (b) next, reduce that amount (but not below zero) by the \*tax free component (if any) of the superannuation lump sum.
- (3) For the purposes of paragraph (2)(a), the formula is:

$$\text{*superannuation lump sum} \times \frac{\text{Service days}}{\text{Service days} + \text{Days to retirement}}$$

*days to retirement* is the number of days from the day on which the deceased died to the deceased's \*last retirement day.

*service days* is the number of days in the \*service period for the lump sum.

- (4) The *element untaxed in the fund* of the \*taxable component is the balance of the taxable component.

### 307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element

- (1) This section applies to a \*superannuation benefit that is paid from a \*public sector superannuation scheme that is not a \*constitutionally protected fund.
- (2) If the \*superannuation benefit paid is not sourced to any extent from contributions made into a \*superannuation fund or earnings on such contributions, the \*taxable component of the superannuation benefit consists wholly of an *element untaxed in the fund*.



- (3) If the benefit is a \*superannuation lump sum that is partly sourced from contributions made into a \*superannuation fund or earnings on such contributions, the *element taxed in the fund* and the *element untaxed in the fund* of the \*taxable component of the benefit are worked out as follows:

*Method statement*

- Step 1.* Subdivide the \*superannuation lump sum (the *original benefit*) into 2 notional superannuation lump sums as follows:
- (a) the amount sourced from contributions made into a \*superannuation fund or earnings on such contributions (the *fund benefit*);
  - (b) the remainder of the lump sum (the *non-fund benefit*).
- Step 2.* The fund benefit consists of an *element taxed in the fund*, an *element untaxed in the fund*, or both, as worked out under this Subdivision.
- Step 3.* The non-fund benefit consists wholly of an *element untaxed in the fund*.
- Step 4.* The *element taxed in the fund* of the original benefit equals the element taxed in the fund of the fund benefit.
- Step 5.* The *element untaxed in the fund* of the original benefit is the sum of the elements untaxed in the fund worked out under steps 2 and 3.

**Subdivision 307-F—Low rate cap and untaxed plan cap amounts**

**Table of sections**

- 307-345 *Low rate cap amount*  
307-350 *Untaxed plan cap amount*

**307-345 Low rate cap amount**

*Starting amount*

- (1) Your **low rate cap amount** for the 2007-2008 income year is \$140,000.

Note: However, if you became entitled to a rebate under the corresponding provision of the *Income Tax Assessment Act 1936*, see section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*.

*Reductions and increases*

- (2) If you receive one or more \*superannuation member benefits that are \*superannuation lump sums in an income year, reduce your **low rate cap amount** for the next income year (but not below zero) by the total of the amounts that:
- (a) are included in your assessable income for the first year in respect of those lump sums; and
  - (b) are counted towards your entitlement to a \*tax offset under subsection 301-20(2) or 301-105(4) for the first year.
- (3) At the start of each income year after the 2007-2008 income year, increase your **low rate cap amount** by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$140,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

**307-350 Untaxed plan cap amount**

- (1) Your **untaxed plan cap amount** for a \*superannuation plan at the start of the 2007-2008 income year is \$1,000,000.

*Reductions and increases*

- (2) If you receive one or more \*superannuation member benefits including an \*element untaxed in the fund from a \*superannuation

plan at a time, reduce your *untaxed plan cap amount* just after that time:

- (a) if the total of the elements untaxed in the fund falls short of your \*untaxed plan cap amount at that time—by the amount of the benefit or of the total of the benefits; or
  - (b) otherwise—to nil.
- (3) At the start of each income year after the 2007-2008 income year, increase your *untaxed plan cap amount* for the \*superannuation plan by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

## Subdivision 307-G—Other concepts

### Table of sections

307-400 Meaning of *service period* for a superannuation lump sum

### 307-400 Meaning of *service period* for a superannuation lump sum

- (1) The *service period* for a \*superannuation lump sum consists of each day that is in the period worked out under the table or a period covered by subsection (2).

<b>Service period for superannuation lump sum types</b>		
<b>Item</b>	<b>For this superannuation lump sum type:</b>	<b>The <i>service period</i> includes:</b>
1	*Superannuation fund payment	The following: <ul style="list-style-type: none"> <li>(a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, a member of the *superannuation fund—the period of membership;</li> <li>(b) if some or all of the superannuation lump sum</li> </ul>

## Schedule 1 Main superannuation amendments

### Part 1 Main amendments

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#### Service period for superannuation lump sum types

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Item	For this superannuation lump sum type:	The <i>service period</i> includes:
		accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.
2	*approved deposit fund payment	The period starting when you or the deceased first made a deposit to the *approved deposit fund and ending when the payment is made.
3	*RSA payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, the holder of the *RSA—the period during which you were, or the deceased was, the holder of the RSA; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.

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- (2) The *service period* for the \*superannuation lump sum (the *later lump sum*) also includes each day that is in the \*service period for an earlier superannuation lump sum if some or all of the later lump sum is attributable, directly or indirectly, to some or all of the earlier lump sum through the payment of one or more \*roll-over superannuation benefits.

## 2 Application

- (1) The amendment made by this Part of this Schedule applies to the 2007-2008 income year and later years.
- (2) Despite subitem (1), Division 292 of the *Income Tax Assessment Act 1997* inserted by this Part of this Schedule applies to the 2007-2008 financial year and later years.

Note: For transitional rules about the application of Division 292 and related provisions in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

- (3) Despite subitem (1), Divisions 301 to 307 of the *Income Tax Assessment Act 1997* inserted by this Part of this Schedule apply on and after 1 July 2007.

## Part 2—Main consequential amendments

### *Income Tax Assessment Act 1936*

#### 3 Subsection 6(1) (at the end of the definition of *assessment*)

Add:

- ; or (h) the ascertainment of the amount of income tax payable on the no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that no tax is payable).

#### 4 At the end of section 161AA

Add:

- ; and (d) for a company that is an RSA provider, or a trustee of a fund that is an eligible superannuation fund (as defined in section 267) in relation to the year of income:
- (i) its no-TFN contributions income as defined by section 295-610 of the *Income Tax Assessment Act 1997* (or that it has no no-TFN contributions income); and
  - (ii) the amount of the income tax payable on that income (or that no income tax is payable).

### *Income Tax Assessment Act 1997*

#### 5 Section 9-1 (table)

Repeal the table, substitute:

<b>Item</b>	<b>Income tax is payable by this kind of entity:</b>	<b>because of this provision:</b>
1	An individual	section 4-1
2	A company, that is: <ul style="list-style-type: none"><li>• a body corporate; or</li><li>• an unincorporated body (except a partnership)</li></ul>	section 4-1
3	A company that was a member of a wholly-owned group if a former subsidiary in	section 45-25

Item	Income tax is payable by this kind of entity:	because of this provision:
	the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment	
4	A superannuation provider in relation to a complying superannuation fund	sections 295-5 and 295-605
5	A superannuation provider in relation to a non-complying superannuation fund	sections 295-5 and 295-605
6	A superannuation provider in relation to a complying approved deposit fund	section 295-5
7	A superannuation provider in relation to a non-complying approved deposit fund	section 295-5
8	The trustee of a pooled superannuation trust	section 295-5
9	A corporate limited partnership	section 94J
10	A mutual insurance association (as described in section 121)	section 121
11	A trustee (except one covered by another item in this table), but only in respect of some kinds of income of the trust	sections 98, 99, 99A and 102
12	The trustee of a corporate unit trust	section 102K
13	The trustee of a public trading trust	section 102S

**6 Subsection 9-5(1) (table)**

Repeal the table, substitute:

Item	This kind of entity is liable to pay income tax worked out by reference to:	See:
1	A company that was a member of a wholly-owned group is jointly and severally liable to pay an amount of income tax if a former subsidiary in the group is treated as having disposed of leased plant and does not pay all of the income tax resulting from that treatment.	section 45-25
2	A superannuation provider in relation to a complying superannuation fund is to be assessed and is liable to pay income tax on	sections 295-5 and 295-605

**Schedule 1** Main superannuation amendments  
**Part 2** Main consequential amendments

<b>Item</b>	<b>This kind of entity is liable to pay income tax worked out by reference to:</b>	<b>See:</b>
	no-TFN contributions income as well as on taxable income.	
3	A superannuation provider in relation to a non-complying superannuation fund is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295-5 and 295-605
4	An RSA provider is to be assessed and is liable to pay income tax on no-TFN contributions income as well as on taxable income.	sections 295-5 and 295-605
5	An Australian resident individual with: <ul style="list-style-type: none"> <li>• eligible foreign remuneration under section 23AF; or</li> <li>• foreign earnings under section 23AG;</li> </ul> (from working in a foreign country) is liable to pay income tax worked out by reference to his or her assessable income less some of his or her deductions.	section 23AF or 23AG
6	A trustee covered by item 11 in the table in section 9-1 is liable to pay income tax worked out by reference to the net income of the trust for the income year.	sections 98, 99 and 99A
7	The trustee of a corporate unit trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	section 102K
8	The trustee of a public trading trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	section 102S
9	An entity that is liable to pay income tax (worked out by reference to taxable income or otherwise) is also liable to pay income tax worked out by reference to diverted income or diverted trust income for the income year.	section 121H
10	An Australian insurer that re-insures overseas can elect to pay, as agent for the	section 148



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<b>Item</b>	<b>This kind of entity is liable to pay income tax worked out by reference to:</b>	<b>See:</b>
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re-insurer, income tax worked out by reference to the amount of the re-insurance premiums.

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**7 Section 11-5 (table item headed “government”)**

Before:

local governing body ..... 50-25

Insert:

constitutionally protected fund ..... 50-25

**8 Section 50-25 (at the end of the table)**

Add:

5.3 a \*constitutionally protected fund none

**9 At the end of section 67-25**

Add:

*Tax offset in respect of no-TFN contributions income*

(6) The \*tax offset available under Subdivision 295-J is subject to the refundable tax offset rules.

**10 Subdivision 118-G (heading)**

Repeal the heading, substitute:

**Subdivision 118-G—Venture capital: investment by superannuation funds for foreign residents**

**11 Paragraph 118-515(1)(b)**

Omit “\*foreign superannuation fund”, substitute “\*superannuation fund for foreign residents”.

**12 Section 118-520**

Repeal the section, substitute:

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**118-520 Meaning of *superannuation fund for foreign residents***

- (1) A fund is a *superannuation fund for foreign residents* at a time if:
- (a) at that time, it is:
    - (i) an indefinitely continuing fund; and
    - (ii) a provident, benefit, superannuation or retirement fund; and
  - (b) it was established in a foreign country; and
  - (c) it was established, and is maintained at that time, only to provide benefits for individuals who are not Australian residents; and
  - (d) at that time, its central management and control is carried on outside Australia by entities none of whom is an Australian resident.
- (2) However, a fund is not a *superannuation fund for foreign residents* if:
- (a) an amount paid to the fund or set aside for the fund has been or can be deducted under this Act; or
  - (b) a \*tax offset has been allowed or is allowable for such an amount.

**13 Paragraph 320-15(1)(i)**

Repeal the paragraph, substitute:

- (i) amounts specified in agreements under section 295-260; and

**14 At the end of section 320-15**

Add:

- (3) An amount included in assessable income under paragraph (1)(i) is included for the income year of the \*life insurance company that includes the last day of the transferor's income year to which the agreement referred to in section 295-260 relates.

**15 After section 320-105**

Insert:

**320-107 Deductions for increased amount of lump sum death benefit**

- (1) A \*life insurance company can deduct an amount under this section if:
- (a) it pays a lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a \*spouse, former spouse or child of the deceased at the time of death or payment; and
  - (b) the payment is in relation to the commutation of, or is of the capital amount payable on the termination of, an \*exempt life insurance policy or a life insurance policy covered by subparagraph (b)(i) of the definition of *virtual PST life insurance policy* in subsection 995-1(1) while the policy was held by the deceased by reason that the deceased would have been entitled to receive the \*annuity concerned; and
  - (c) it increases the lump sum by an amount (the *tax saving amount*) so that the amount of the lump sum is the amount that the company could have paid if no tax were payable on amounts included in its assessable income under Subdivision 320-B.
- (2) The company can deduct the amount for the income year in which the lump sum is paid.
- (3) The amount the company can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Complying superannuation class rate}}$$

where:

*complying superannuation class rate* is the rate of tax imposed on the \*complying superannuation class of the company's taxable income for the income year.

- (4) The amount the company can deduct for a sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

**16 At the end of subsection 960-100(1)**

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Add:  
; (h) an \*approved deposit fund.

**17 Subsection 960-100(2)**

Omit “or of a \*superannuation fund”, substitute “, of a \*superannuation fund or of an \*approved deposit fund”.

***Income Tax Rates Act 1986***

**18 At the end of Part III**

Add:

**29 Rate of tax on no-TFN contributions income**

- (1) This section sets the rate of tax payable:
  - (a) by a trustee of a complying superannuation fund in respect of the no-TFN contributions income of the fund; and
  - (b) by a trustee of a non-complying superannuation fund in respect of the no-TFN contributions income of the fund; and
  - (c) by a company (other than a life insurance company) that is an RSA provider in respect of no-TFN contributions income.
- (2) The rate of tax is worked out in the following way:
  - (a) first, work out the maximum rate specified in column 3 of the table in Part I of Schedule 7 to this Act that applies for the year of income;
  - (b) next, add 1.5%;
  - (c) next, subtract the rate of tax:
    - (i) for a trustee of a complying superannuation fund—set out in paragraph 26(1)(a); or
    - (ii) for a trustee of a non-complying superannuation fund—set out in subsection 26(2); or
    - (iii) for a company (other than a life insurance company) that is an RSA provider—set out in paragraph 23(4BA)(a).

***Taxation Administration Act 1953***

**19 Subsection 10-5(1) in Schedule 1 (after table item 22A)**

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Insert:

22AA An \*excess untaxed roll-over amount 12-312

## **20 After Subdivision 12-FA of Division 12 of Part 2-4 in Schedule 1**

Insert:

### **Subdivision 12-FAA—Excess untaxed roll-over amount**

#### **Table of sections**

12-312	Untaxed roll-over superannuation benefits
12-313	Limits on amount withheld under this Subdivision

#### **12-312 Untaxed roll-over superannuation benefits**

An entity must withhold an amount from an \*excess untaxed roll-over amount it pays to an entity.

Note: An excess untaxed roll-over amount is an amount that may form part of a roll-over superannuation benefit that includes an element untaxed in the fund: see section 306-15 of the *Income Tax Assessment Act 1997*.

#### **12-313 Limits on amount withheld under this Subdivision**

This Subdivision does not require an entity:

- (a) to withhold an amount from an \*excess untaxed roll-over amount if no \*withholding tax is payable on the amount; or
- (b) to withhold from an excess untaxed roll-over amount more than the withholding tax payable on the amount (reduced by each amount already withheld from the excess untaxed roll-over amount under this Subdivision).

Note: Section 306-15 of the *Income Tax Assessment Act 1997* deals with liability to this form of withholding tax.

#### **21 Paragraph 45-287(4)(a) in Schedule 1**

Omit “\*foreign superannuation fund”, substitute “\*superannuation fund for foreign residents”.

#### **22 Paragraph 45-287(4)(b) in Schedule 1**

Omit “foreign superannuation fund”, substitute “superannuation fund for foreign residents”.

## **23 At the end of Division 288 of Part 4-25 in Schedule 1**

### **288-90 Failing to give release authority for excess non-concessional contributions tax**

A person to whom the Commissioner has given a release authority in accordance with paragraph 292-405(1)(b) of the *Income Tax Assessment Act 1997* and who fails to comply with subsection 292-410(2) of that Act in relation to the release authority is liable to an administrative penalty of 20 penalty units.

### **288-95 Failing to comply etc. with release authority**

- (1) A \*superannuation provider that has been given a release authority in accordance with section 292-410 of the *Income Tax Assessment Act 1997* and that fails to comply with subsection 292-415(1) of that Act is liable to an administrative penalty of 20 penalty units.
- (2) A \*superannuation provider that has been given a transitional release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997* and that fails to comply with subsection 292-80C(1) of that Act is liable to an administrative penalty of 20 penalty units.

### **288-100 Excess money paid under release authority**

A person is liable for an administrative penalty of 20 penalty units if:

- (a) the person gives one or more \*superannuation providers a release authority in accordance with:
  - (i) section 292-410 of the *Income Tax Assessment Act 1997*; or
  - (ii) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and
- (b) the total of the amounts paid by the superannuation provider or providers to the person and the Commissioner as a result of being given the release authority exceeds the amount required to be paid in respect of the release authority under:

- (i) if subparagraph (a)(i) applies—subsection 292-415(1) of the *Income Tax Assessment Act 1997*; or
- (ii) if subparagraph (a)(ii) applies—section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*.

**288-105 Superannuation provider to calculate crystallised pre-July 83 amount of superannuation interest by 30 June 2008**

- (1) An entity is liable to an administrative penalty of 5 penalty units if:
  - (a) the entity is the \*superannuation provider in relation to a \*superannuation plan (other than a \*constitutionally protected fund) on 30 June 2008; and
  - (b) the entity has not ensured that the crystallised pre-July 83 amount in relation to each superannuation interest in the plan has been calculated on or before that day.
- (2) For the purpose of paragraph (1)(b), disregard a \*superannuation interest unless the \*element taxed in the fund of the \*taxable component of the interest exceeds nil just before 1 July 2007.
- (3) For the purpose of paragraph (1)(b), disregard a \*superannuation interest that supported a \*superannuation income stream just before 1 July 2007.

**24 Application**

- (1) The amendments made by this Part of this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), the following apply on and after 1 July 2007:
  - (a) the amendments made by items 19 and 20 of this Schedule;
  - (b) section 288-105 of the *Taxation Administration Act 1953* inserted by item 23 of this Schedule.
- (3) Despite subitem (1), sections 288-90, 288-95 and 288-100 of the *Taxation Administration Act 1953* inserted by item 23 of this Schedule apply to the 2007-2008 financial year and later years.

## Part 3—Main transitional amendments

### *Income Tax (Transitional Provisions) Act 1997*

#### 25 After Part 3-6

Insert:

## Part 3-30—Superannuation

### Division 290—Contributions

#### Table of sections

290-10 Directed termination payments not deductible etc.

#### **290-10 Directed termination payments not deductible etc.**

Division 290 of the *Income Tax Assessment Act 1997* does not apply to a contribution that is a directed termination payment (within the meaning of section 82-10F).

### Division 292—Excess contributions tax

#### Table of sections

292-20 Concessional contributions cap for a financial year  
292-25 Excess directed termination payments included in concessional contributions  
292-80 Application of excess non-concessional contributions tax from 10 May 2006 to 1 July 2007  
292-80A Transitional release authority  
292-80B Giving a transitional release authority to a superannuation provider  
292-80C Superannuation provider given transitional release authority must pay amount

#### **292-20 Concessional contributions cap for a financial year**

- (1) This section applies if:
- (a) you have excess concessional contributions for a financial year that:



- (i) begins on or after 1 July 2007; and
  - (ii) ends before 1 July 2012; and
  - (b) you are 50 years or over on the last day of that financial year.
- (2) Despite section 292-20 of the *Income Tax Assessment Act 1997*, your **concessional contributions cap** for that financial year is \$100,000.
- Note: This amount is *not* indexed.
- (3) Subsection (2) does not apply for the purposes of subsection 292-85(2) of that Act.

**292-25 Excess directed termination payments included in concessional contributions**

- (1) A directed termination payment (within the meaning of section 82-10F) made in a financial year on behalf of you is not included in your concessional contributions (see section 292-25 of the *Income Tax Assessment Act 1997*) for the financial year, to the extent that it does not exceed the amount mentioned in subsection (2).
- (2) The amount is \$1,000,000, reduced by every transitional termination payment (within the meaning of section 82-10) made to you during the period:
- (a) starting on 1 July 2007; and
  - (b) ending just before the directed termination payment was made.

**292-80 Application of excess non-concessional contributions tax from 10 May 2006 to 1 July 2007**

- (1) The object of this section is to apply (with modifications) provisions relating to excess non-concessional contributions tax in respect of certain contributions made during the period that:
- (a) begins on 10 May 2006; and
  - (b) ends just before 1 July 2007.
- (2) The provisions are as follows:
- (a) Subdivision 292-C of the *Income Tax Assessment Act 1997* (excess non-concessional contributions tax);

**Schedule 1** Main superannuation amendments

**Part 3** Main transitional amendments

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- (b) any other provision of that Act, or of any instrument made under that Act, to the extent that it relates to the operation of that Subdivision;
- (c) any other provision of any other Act, or of any instrument made under any other Act, to the extent that it relates to the operation of that Subdivision.

Example: Section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.

- (3) Those provisions apply in relation to that period, and do so as if:
    - (a) that period were the 2006-2007 financial year; and
    - (b) the amount of a person's non-concessional contributions for that financial year:
      - (i) did not include the amount of the person's excess concessional contributions for that financial year; and
      - (ii) if subsection (6) applies—included the amount mentioned in that subsection; and
    - (c) the person's non-concessional contributions cap for that financial year were \$1,000,000; and
    - (d) subsections 292-85(3) and (4) of the *Income Tax Assessment Act 1997* were omitted; and
    - (e) the person's CGT cap amount at the start of that financial year were \$1,000,000; and
    - (f) paragraph 292-95(1)(d) of that Act allowed the notification mentioned in that paragraph to be made on or before 31 July 2007; and
    - (g) paragraph 292-100(9)(b) of that Act allowed the choice mentioned in that paragraph to be given on or before 31 July 2007; and
    - (h) contributions made during that period that are covered under section 292-100 of that Act reduce the person's CGT cap amount for the 2007-2008 financial year in accordance with subsection 292-105(2) of that Act (and despite subsection (1) of that section); and
    - (i) if the conditions in subsection (4) are satisfied—the person's excess non-concessional contributions for that financial year were reduced by the amount paid as mentioned in paragraph (4)(d); and
    - (j) the reference in subsection 307-220(1) of that Act to 30 June 2007 were a reference to 9 May 2006.
-

- (4) For the purposes of paragraph (3)(i), the conditions are:
- (a) the person gives the Commissioner an application under subsection 292-80A(1) before 1 July 2007; and
  - (b) the Commissioner gives the person a transitional release authority under subsection 292-80A(2) in response to the application; and
  - (c) the person gives the transitional release authority to a superannuation provider that holds a superannuation interest for the person (other than a defined benefit interest) in accordance with section 292-80B within 21 days after the date of the release authority; and
  - (d) the superannuation provider pays the person the amount required under section 292-80C in relation to the transitional release authority.
- (5) Subsection (6) applies if:
- (a) contributions are made in respect of a person (the *first person*) in either or both of the following periods:
    - (i) 10 May 2006 to 30 June 2006;
    - (ii) 1 July 2006 to 30 June 2007; and
  - (b) those contributions are allowable as a deduction for another person under subsection 82AAC(1) of the *Income Tax Assessment Act 1936* (apart from subsection 82AAC(2) of that Act).
- (6) The amount to be included in the first person's amount of non-concessional contributions under subparagraph (3)(b)(ii) is the sum of:
- (a) the amount of those contributions made in the period mentioned in subparagraph (5)(a)(i), to the extent that they exceed the first person's deduction limit (within the meaning of subsection 82AAC(2A) of the *Income Tax Assessment Act 1936*) for the income year of the other person in which the contributions were made; and
  - (b) the amount of those contributions made in the period mentioned in subparagraph (5)(a)(ii), to the extent that they exceed the first person's deduction limit (within the meaning of subsection 82AAC(2A) of the *Income Tax Assessment Act 1936*) for the income year of the other person in which the contributions were made.

**292-80A Transitional release authority**

- (1) A person may apply to the Commissioner in the approved form for a transitional release authority under subsection (2). The application can only be made before 1 July 2007.
- (2) The Commissioner must give the person a transitional release authority if the Commissioner considers that, apart from subparagraph 292-80(3)(b)(i), the person would have excess non-concessional contributions for the financial year mentioned in paragraph 292-80(3)(a).
- (3) The transitional release authority must:
  - (a) state the amount of excess non-concessional contributions mentioned in subsection (2); and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.
- (4) For the purposes of this section, disregard contributions made in respect of the person after 6 December 2006 in working out:
  - (a) whether the person has excess non-concessional contributions as mentioned in subsection (2); and
  - (b) the amount of those excess non-concessional contributions.

**292-80B Giving a transitional release authority to a superannuation provider**

The person may give the transitional release authority to a superannuation provider that holds a superannuation interest (other than a defined benefit interest) for the person within 21 days after the date of the release authority.

**292-80C Superannuation provider given transitional release authority must pay amount**

- (1) A superannuation provider that has been given a transitional release authority in accordance with section 292-80B must pay to the person within 30 days after receiving the release authority the least of the following amounts:

- (a) if the person requests the provider in writing to pay a specified amount in relation to the release authority—that amount;
- (b) the amount of excess non-concessional contributions stated in the release authority;
- (c) the sum of the values of every superannuation interest (other than a defined benefit interest) held by the superannuation provider for the person.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Note 2: Section 288-100 in Schedule 1 to the *Taxation Administration Act 1953* provides that the person giving the release authority to the superannuation provider can be liable to an administrative penalty if excess amounts are paid in relation to the release authority.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: For the taxation treatment of the payment, see section 304-15 of the *Income Tax Assessment Act 1997*.

- (2) The payment must be made out of one or more superannuation interests (other than a defined benefits interest) held by the superannuation provider for the person.
- (3) Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required under this section.

## **Division 295—Taxation of superannuation entities**

### **Table of Subdivisions**

295-I No-TFN contributions income

### **Subdivision 295-I—No-TFN contributions income**

#### **Table of sections**

295-610 No-TFN contributions income

### 295-610 No-TFN contributions income

Subdivisions 295-I (no-TFN contributions) and 295-J (Tax offset for no-TFN contributions income (TFN quoted within 4 years)) of the *Income Tax Assessment Act 1997* apply to an entity whose 2006-2007 income year ends on a day (the *end day*) after 1 July 2007 as if:

- (a) the period starting on 1 July 2007 and ending on the end day were part of the entity's 2007-2008 income year; and
- (b) the entity's no-TFN contributions income for the entity's 2007-2008 income year included contributions made during that period that would have been income of that kind for the entity's 2007-2008 income year if the contributions concerned had been made in the entity's 2007-2008 income year.

### Division 301—Superannuation member benefits paid from complying plans etc.

#### Table of sections

301-85 Extended meaning of *disability superannuation benefit* for superannuation income stream

#### 301-85 Extended meaning of *disability superannuation benefit* for superannuation income stream

For the purposes of the *Income Tax Assessment Act 1997*, a superannuation income stream benefit is taken to be a *disability superannuation benefit* if, just before 1 July 2007, the superannuation income stream from which the benefit is paid was covered by paragraph (b) of the definition of death or disability annuity/pension in section 159SJ of the *Income Tax Assessment Act 1936*.

### Division 302—Superannuation death benefits paid from complying plans etc.

#### Table of sections

302-195 Extended meaning of *death benefits dependant* for superannuation income stream

**302-195 Extended meaning of *death benefits dependant* for superannuation income stream**

For the purposes of Division 302 of the *Income Tax Assessment Act 1997*, treat a person who receives a superannuation income stream benefit as a *death benefits dependant* in relation to the benefit if:

- (a) the benefit is a superannuation death benefit; and
- (b) just before 1 July 2007, the superannuation income stream from which the benefit is paid was covered by paragraph (a) of the definition of death or disability annuity/pension in section 159SJ of the *Income Tax Assessment Act 1936*.

**Division 307—Key concepts relating to superannuation benefits**

**Table of sections**

307-125	Treatment of tax free component of existing pension payments etc.
307-345	Low rate component—Effect of rebate under the <i>Income Tax Assessment Act 1936</i>

**307-125 Treatment of tax free component of existing pension payments etc.**

- (1) This section applies to a superannuation income stream from which at least one superannuation income stream benefit has been paid before 1 July 2007.
- (2) Despite subsection 307-125(2) of the *Income Tax Assessment Act 1997*, work out the tax free component of superannuation income stream benefits paid from the superannuation income stream in an income year beginning on or after 1 July 2007 as follows:
  - (a) first, work out the deductible amount in relation to the superannuation income stream for the income year including 30 June 2007 in accordance with section 27H of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007);
  - (b) next, allocate the deductible amount worked out under paragraph (a) to each of those benefits in proportion to the amount of those benefits.

The amount allocated to a superannuation income stream benefit under paragraph (b) is the *tax free component* of the benefit. The *taxable component* of the benefit is the remainder of the benefit.

- (3) Subsection (2) does not apply to the payment of a superannuation income stream benefit after at least one of the following events has happened:
- (a) the superannuation income stream has been wholly or partially commuted;
  - (b) the holder of the superannuation interest has died, if:
    - (i) none of the superannuation income stream benefits paid from the superannuation interest after 30 June 2007 consist of, or include, an element untaxed in the fund; or
    - (ii) where no superannuation income stream benefits have been paid from the superannuation interest after 30 June 2007—all payments from the interest on or before that day would have satisfied the requirement in subparagraph (i) if they had been paid after that day;
  - (c) the holder of the superannuation interest turns 60, if:
    - (i) none of the superannuation income stream benefits paid from the superannuation interest after 30 June 2007 consist of, or include, an element untaxed in the fund; or
    - (ii) where no superannuation income stream benefits have been paid from the superannuation interest after 30 June 2007—all payments from the interest on or before that day would have satisfied the requirement in subparagraph (i) if they had been paid after that day.

*Continuing payments of superannuation income stream after subsection (3) event*

- (4) If subsection (2) does not apply to the payment of a superannuation income stream benefit because of subsection (3):
- (a) treat the time mentioned in subsection (5) as the applicable time for the purposes of subsection 307-125(3) of the *Income Tax Assessment Act 1997* in relation to the benefit; and
  - (b) work out the tax free component of the superannuation interest for the purposes of section 307-125 of the *Income Tax Assessment Act 1997* under subsection (6).
- (5) For the purposes of subsection (4), the time is:



- (a) the time just before the event mentioned in subsection (3) happens; or
  - (b) if there are 2 or more such events—the time just before the earliest of those events happens.
- (6) For the purposes of paragraph (4)(b), work out the tax free component of the superannuation interest as follows:
- (a) first, assume that:
    - (i) an eligible termination payment had been made in respect of the holder of the interest just before the time mentioned in subsection (5); and
    - (ii) the amount of the eligible termination payment had been equal to the value of the superannuation interest at that time;
  - (b) next, work out the unused undeducted purchase price (within the meaning of section 27A of the *Income Tax Assessment Act 1936* just before the commencement of this item) of the superannuation income stream, reduced by the tax free components (worked out under subsection (2)) of any benefits paid from the superannuation income stream after 30 June 2007;
  - (c) next, work out the pre-July 83 component (within the meaning of section 27A of the *Income Tax Assessment Act 1936* just before the commencement of this item) of the eligible termination payment.
- The tax free component is equal to the sum of the amounts worked out under paragraphs (b) and (c).
- (7) For the purposes of paragraph (6)(c), disregard the \*value of the interest to the extent that it would consist, apart from this subsection, of the element untaxed in the fund of the taxable component of a superannuation benefit constituted by the eligible termination payment.

*Commutation of superannuation income stream*

- (8) If the superannuation income stream has been wholly or partially commuted as mentioned in paragraph (3)(a), treat the applicable time for the purposes of subsection 307-125(3) of the *Income Tax Assessment Act 1997* in relation to a superannuation benefit arising from the commutation as:

- (a) the time just before the commutation; or
- (b) if 1 or more other events mentioned in subsection (3) happened before the commutation—the time just before the earliest of those events happens.

**307-345 Low rate component—Effect of rebate under the *Income Tax Assessment Act 1936***

If you have become entitled to a rebate under section 159SA of the *Income Tax Assessment Act 1936*, your **low rate cap amount** for the 2007-2008 income year is, despite subsection 307-345(1), the total of:

- (a) your closing balance for the 2006-2007 income year (worked out under subsection 159SF(2) of that Act); and
- (b) the amount by which \$140,000 exceeds the upper limit for the 2006-2007 income year (worked out under section 159SG of that Act).

## **Part 4—TFN consequentials for Division 295**

### *Income Tax Assessment Act 1936*

#### **26 Subsection 202DH(2)**

After “In this section”, insert “and in section 202DHA”.

#### **27 After section 202DH**

Insert:

#### **202DHA Tax file number quoted for Division 3 purposes taken to have been quoted for superannuation purposes**

If:

- (a) a person has made a TFN declaration in relation to a payer; and
- (b) the person is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; and
- (c) the payer makes a contribution to the person’s eligible superannuation entity or regulated exempt public sector superannuation scheme for the benefit of the person;

the person is taken to have authorised the payer to inform the trustee of the superannuation entity or scheme of the person’s tax file number.

### *Superannuation Industry (Supervision) Act 1993*

#### **28 Paragraph 6(1)(a)**

After “paragraph (e)”, insert “or (g)”.

#### **29 Subparagraph 6(1)(a)(xii)**

After “Part 25A”, insert “(except Division 1)”.

#### **30 Subparagraph 6(1)(e)(v)**

Omit “, 24 and 25A”, substitute “and 24, and Divisions 2, 3, 4 and 5 of Part 25A”.

### 31 At the end of subsection 6(1)

Add:

; and (g) the Commissioner of Taxation also has the general administration of Divisions 1 and 3A of Part 25A.

### 32 Paragraph 299C(1)(a)

Repeal the paragraph, substitute:

(a) an employee:

- (i) quotes or first quotes his or her tax file number after the commencement of this section to his or her employer in connection with the operation or the possible future operation of this Act and the other Superannuation Acts; or
- (ii) quotes or first quotes his or her tax file number on or after 1 July 2007 to his or her employer in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936*; and

### 33 At the end of subsection 299C(1)

Add:

Note: Division 3 of Part VA of the *Income Tax Assessment Act 1936* deals with quotation of tax file numbers by recipients of eligible PAYG payments.

### 34 Paragraph 299P(a)

After “the Regulator”, insert “or in the approved form (as defined by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*)”.

### 35 After Division 3 of Part 25A

Insert:

## Division 3A—Incorrect quotation of tax file number

### 299TA Effect of mistaken quotation of tax file number

- (1) The Commissioner may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme notice of the tax file number of a beneficiary of the entity or scheme if:

- (a) the trustee has made a record of a number (the *recorded TFN*) the trustee believes to be the tax file number of the beneficiary; and
  - (b) the Commissioner is satisfied that the recorded TFN:
    - (i) has been cancelled or withdrawn since it was quoted; or
    - (ii) is otherwise wrong; and
  - (c) the Commissioner is satisfied that the beneficiary has a tax file number.
- (2) The beneficiary is taken to have quoted his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act and the other Superannuation Acts at a time if:
- (a) the Commissioner gives the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (1); and
  - (b) had the recorded TFN been the tax file number of the beneficiary, the beneficiary would have quoted his or her tax file number to the trustee in that way at the time.

**299TB Effect of invalid quotation of tax file number**

- (1) The Commissioner may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (2) if:
  - (a) the trustee has made a record of a number (the *recorded TFN*) the trustee believes to be the tax file number of the beneficiary; and
  - (b) the Commissioner is satisfied that the recorded TFN:
    - (i) has been cancelled or withdrawn since it was quoted; or
    - (ii) is otherwise wrong; and
  - (c) the Commissioner is not satisfied that the beneficiary has a tax file number.
- (2) The notice must identify the beneficiary and state that the Commissioner is not satisfied that the beneficiary has a tax file number.
- (3) If the Commissioner gives a notice under subsection (2), the Commissioner must give a copy of the notice to the beneficiary.

***Taxation (Interest on Overpayments and Early Payments) Act  
1983***

**36 After Part IIF**

Insert:

**Part IIG—Interest on certain amounts of tax on  
no-TFN contributions income of  
superannuation providers**

**8ZC Interpretation**

Expressions used in this Part that are defined in the *Income Tax Assessment Act 1997* have the same meanings as in that Act.

**8ZD Entitlement to interest**

- (1) Interest is payable by the Commissioner to a superannuation provider in accordance with this Part on the amount set out in subsection (2) if:
  - (a) an individual quoted his or her tax file number to his or her employer at a time before the end of an income year (the *past year*); and
  - (b) the employer was required by section 299C of the *Superannuation Industry (Supervision) Act 1993* to inform the superannuation provider of the individual's tax file number by the end of the past year, but did not; and
  - (c) as a result, a contribution was an amount of no-TFN contributions income of the superannuation provider of the past year; and
  - (d) an amount of tax (the *interest-bearing tax*) payable in respect of that no-TFN contributions income counts towards the tax offset under Subdivision 295-J of the *Income Tax Assessment Act 1997* for an income year (the *current year*) for the superannuation provider; and
  - (e) the tax offset under that Subdivision is applied in making an assessment in respect of the superannuation provider for the current year.

- (2) The interest is payable on each amount of interest-bearing tax.

### **8ZE Period of interest**

The interest is payable for the period that:

- (a) started on the later of the following days:
- (i) the day on which the amount of interest-bearing tax was paid;
  - (ii) the day by which the amount of interest-bearing tax was required to be paid; and
- (b) ends on the day on which the assessment is made.

### **8ZF Rate of interest**

Interest under this Part is payable at the base interest rate (within the meaning of the Tax Act).

Note: For the meaning of *base interest rate* see section 8AAD of the *Taxation Administration Act 1953*.

### **37 Application**

The amendments made by this Part of this Schedule apply to the 2007-2008 income year and later years.

## **Schedule 2—Employment termination payments**

### **Part 1—Main amendments**

#### *Income Tax Assessment Act 1997*

##### **1 After Part 2-25**

Insert:

### **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**

#### **Division 80—General rules**

##### **Table of Subdivisions**

Guide to Division 80

##### **Guide to Division 80**

##### **80-1 What this Division is about**

<p>This Division sets out rules that apply throughout the Part. The rules are about holding an office, the termination of employment, the transfer of property and receiving and making payments.</p>
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##### **Table of sections**

###### **Operative provisions**

80-5	Holding of an office
80-10	Application to the termination of employment
80-15	Transfer of property
80-20	Payments for your benefit or at your direction or request



## **Operative provisions**

### **80-5 Holding of an office**

If a person holds (or has held) an office, this Part applies to the person in the same way as it would apply if the person were (or had been) employed.

### **80-10 Application to the termination of employment**

For the purposes of this Part, treat the termination of employment as including:

- (a) retirement from employment; and
- (b) the cessation of employment because of death.

### **80-15 Transfer of property**

- (1) Any of the following payments covered by this Part (but no others covered by this Part) can include a transfer of property:
  - (a) an \*employment termination payment;
  - (b) a \*genuine redundancy payment;
  - (c) an \*early retirement scheme payment;
  - (d) a payment covered by Subdivision 83-D (Foreign termination payments);
  - (e) a payment that would be an employment termination payment but for paragraph 82-130(1)(b) (see Subdivision 83-E).

Note: An unused annual leave payment or an unused long service leave payment cannot include a transfer of property.

- (2) If it does, the amount of the payment includes the \*market value of the property.
- (3) The \*market value is reduced by the value of any consideration given for the transfer of the property.

### **80-20 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
  - (a) determining whether Division 82 or 83 applies to a payment; and

**Schedule 2** Employment termination payments

**Part 1** Main amendments

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- (b) determining whether a payment mentioned in Division 82 or 83 is made to you, or received by you.
- (2) A payment is treated as being made to you, or received by you, if it is made:
  - (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

**Division 82—Employment termination payments**

**Table of Subdivisions**

	Guide to Division 82
82-A	Employment termination payments: life benefits
82-B	Employment termination payments: death benefits
82-C	Key concepts

**Guide to Division 82**

**82-1 What this Division is about**

This Division tells you how employment termination payments are treated for the purpose of income tax.

**Subdivision 82-A—Employment termination payments: life benefits**

**Guide to Subdivision 82-A**

**82-5 What this Subdivision is about**

If you receive a life benefit termination payment, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on your age in the year you receive the offset, on the total amount of payments you receive in the same year, and on the total amount of payments you receive in consequence of the same employment termination.

## Table of sections

### Operative provisions

82-10 Taxation of life benefit termination payments

## Operative provisions

### 82-10 Taxation of life benefit termination payments

#### *Tax free component*

- (1) The \*tax free component of a \*life benefit termination payment you receive is not assessable income and is not \*exempt income.

#### *Taxable component*

- (2) The \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed:
- (a) if you are your \*preservation age or older on the last day of the income year in which you receive the payment—15%; or
  - (b) otherwise—30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the *lesser* of:
- (a) the \*ETP cap amount, reduced (but not below zero) by the amount worked out under this subsection for each \*life benefit termination payment you have received earlier in the income year; and
  - (b) the ETP cap amount, reduced (but not below zero) by the amount worked out under this subsection for each life benefit termination payment you have received earlier in

consequence of the same employment termination, whether in the income year or an earlier income year.

- Note 1: For the ETP cap amount, see section 82-160.
- Note 2: If you have also received a death benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the death benefit termination payment (under section 82-65 or 82-70).
- Note 3: Certain other life benefit termination payments made before 1 July 2012 may be treated as earlier payments under paragraph (4)(b): see section 82-10H of the *Income Tax (Transitional Provisions) Act 1997*.

## **Subdivision 82-B—Employment termination payments: death benefits**

### **Guide to Subdivision 82-B**

#### **82-60 What this Subdivision is about**

If you receive a death benefit termination payment after the death of a person, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on whether or not you were a death benefits dependant of the deceased, and on the total amount of payments you receive in consequence of the same employment termination.

If a death benefit termination payment is payable to the trustee of the estate of the deceased for the benefit of another person, the payment is taxed in the hands of the trustee in the same way as it would be taxed if it had been paid directly to the other person.

#### **Table of sections**

##### **Operative provisions**

- 82-65 Death benefits for dependants  
82-70 Death benefits for non-dependants

82-75 Death benefits paid to trustee of deceased estate

## Operative provisions

### 82-65 Death benefits for dependants

#### *Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

#### *Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are a \*death benefits dependant:
  - (a) the part of the \*taxable component of the payment mentioned in subsection (3) is not assessable income and is not \*exempt income; and
  - (b) the remainder of the taxable component (if any) of the payment is assessable income.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (4) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (3) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(2) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax concession under this section is not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

## 82-70 Death benefits for non-dependants

### *Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

### *Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed 30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (5) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (4) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(3) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

## 82-75 Death benefits paid to trustee of deceased estate

- (1) This section applies to you if:
  - (a) you are the trustee of a deceased estate; and

- (b) a \*death benefit termination payment is made to you in your capacity as trustee.

Note: See also subsection 101A(3) of the *Income Tax Assessment Act 1936*.

*Dependants of deceased benefit from payment*

- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

Note: Section 82-65 deals with the taxation of employment termination payments made to persons who are death benefits dependants of deceased persons.

*Non-dependants of deceased benefit from payment*

- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

Note: Section 82-70 deals with the taxation of employment termination payments made to persons who are *not* death benefits dependants of deceased persons.

## **Subdivision 82-C—Key concepts**

### **Guide to Subdivision 82-C**

#### **82-125 What this Subdivision is about**

This Subdivision defines an *employment termination payment* as a payment made in consequence of the termination of a person's employment that is received no later than 12 months after the

termination (though the 12 month restriction is relaxed in some circumstances).

An employment termination payment can be a life benefit termination payment (received by the person whose employment is terminated) or a death benefit termination payment (received by another person after the death of a person whose employment is terminated).

Certain types of payments are declared not to be employment termination payments.

Various other terms used in describing the taxation treatment of employment termination payments are defined in the Subdivision.

## Table of sections

### Operative provisions

- 82-130 What is an *employment termination payment*?
- 82-135 Payments that are not *employment termination payments*
- 82-140 *Tax free component* of an employment termination payment
- 82-145 *Taxable component* of an employment termination payment
- 82-150 What is an *invalidity segment* of an employment termination payment?
- 82-155 What is a *pre-July 83 segment* of an employment termination payment?
- 82-160 What is the *ETP cap amount*?

## Operative provisions

### 82-130 What is an *employment termination payment*?

- (1) A payment is an *employment termination payment* if:
  - (a) it is received by you:
    - (i) in consequence of the termination of your employment;  
or
    - (ii) after another person's death, in consequence of the termination of the other person's employment; and
  - (b) it is received no later than 12 months after that termination (but see subsection (4)); and
  - (c) it is *not* a payment mentioned in section 82-135.



Note 1: If a payment would be an employment termination payment but for paragraph (b), see subsection (4) and section 83-295.

Note 2: The holding of an office is treated as employment for this Part: see section 80-5. Also, the termination of employment is treated as including the termination of employment by retirement or by death: see section 80-10.

*Types of employment termination payment*

- (2) A **life benefit termination payment** is an \*employment termination payment to which subparagraph (1)(a)(i) applies.
- (3) A **death benefit termination payment** is an \*employment termination payment to which subparagraph (1)(a)(ii) applies.

*Exemption from 12 month rule*

- (4) Paragraph (1)(b) does not apply to you if:
  - (a) you are covered by a determination under subsection (5) or (7); or
  - (b) the payment is a \*genuine redundancy payment or an \*early retirement scheme payment.

Note: The part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment: see section 82-135.

- (5) The Commissioner may determine, in writing, that paragraph (1)(b) does not apply to you if the Commissioner considers the time between the employment termination and the payment to be reasonable, having regard to the following:
  - (a) the circumstances of the employment termination, including any dispute in relation to the termination;
  - (b) the circumstances of the payment;
  - (c) the circumstances of the person making the payment;
  - (d) any other relevant circumstances.
- (6) A determination under subsection (5) is not a legislative instrument.
- (7) The Commissioner may, by legislative instrument, determine that paragraph (1)(b) does not apply to either or both of the following, as specified in the determination:
  - (a) a class of payments;

- (b) a class of recipients of payments.
- (8) A determination under subsection (7) may provide for paragraph (1)(b) not to apply in circumstances relating to any (or all) of the following, as specified in the determination:
  - (a) a class of employment termination (including a class described by reference to disputes of a specified type);
  - (b) a class of payments;
  - (c) a class of persons making payments;
  - (d) the period after the employment termination until payment is received;
  - (e) any other relevant circumstances.

### **82-135 Payments that are not *employment termination payments***

The following payments you receive are *not employment termination payments*:

- (a) a \*superannuation benefit (see Divisions 301 to 307);
- (b) a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (c) an \*unused annual leave payment (see Subdivision 83-A);
- (d) an \*unused long service leave payment (see Subdivision 83-B);
- (e) the part of a \*genuine redundancy payment or an \*early retirement scheme payment worked out under section 83-170 (see Subdivision 83-C);
- (f) a payment to which Subdivision 83-D (Foreign termination payments) applies;
- (g) a payment that is an advance or a loan to you on terms and conditions that would apply if you and the payer were dealing at \*arm's length;
- (h) a payment that is deemed to be a \*dividend under paragraph 109(1)(d) of the *Income Tax Assessment Act 1936* (which deals with excessive payments to shareholders, directors and \*associates);
- (i) a capital payment for, or in respect of, personal injury to you so far as the payment is reasonable having regard to the nature of the personal injury and its likely effect on your capacity to \*derive income from personal exertion (within the meaning of the definition of *income derived from personal*

*exertion* in subsection 6(1) of the *Income Tax Assessment Act 1936*);

- (j) a capital payment for, or in respect of, a legally enforceable contract in restraint of trade by you so far as the payment is reasonable having regard to the nature and extent of the restraint;
- (k) a payment:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 37 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (l) a payment:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act).

Note: For paragraph (e)—the remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in the paragraph) is an employment termination payment if section 82-130 applies to that part.

### **82-140 Tax free component of an employment termination payment**

The *tax free component* of an \*employment termination payment is so much of the payment as consists of the following:

- (a) the \*invalidity segment of the payment;
- (b) the \*pre-July 83 segment of the payment.

### **82-145 Taxable component of an employment termination payment**

The *taxable component* of an \*employment termination payment is the amount of the payment less the \*tax free component of the payment (see section 82-140).

**82-150 What is an *invalidity segment* of an employment termination payment?**

- (1) An \*employment termination payment includes an *invalidity segment* if:
- (a) the payment was made to a person because he or she stops being \*gainfully employed; and
  - (b) the person stopped being gainfully employed because he or she suffered from ill-health (whether physical or mental); and
  - (c) the gainful employment stopped before the person's \*last retirement day; and
  - (d) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be gainfully employed in capacity for which he or she is reasonably qualified because of education, experience or training.
- (2) Work out the amount of the *invalidity segment* by applying the following formula:

$$\text{Amount of *employment termination payment} \times \frac{\text{Days to retirement}}{\text{Employment days} + \text{Days to retirement}}$$

where:

*days to retirement* is the number of days from the day on which the person's employment was terminated to the \*last retirement day.

*employment days* is the number of days of employment to which the payment relates.

**82-155 What is a *pre-July 83 segment* of an employment termination payment?**

- (1) An \*employment termination payment includes a *pre-July 83 segment* if any of the employment to which the payment relates occurred before 1 July 1983.
- (2) Work out the amount of the *pre-July 83 segment* as follows:

*Step 1.* Subtract the \*invalidity segment (if any) from the \*employment termination payment.

*Step 2.* Multiply the amount at step 1 by the fraction:

$$\frac{\text{Number of days of employment to which the payment relates that occurred before 1 July 1983}}{\text{Total number of days of employment to which the payment relates}}$$

### **82-160 What is the *ETP cap amount*?**

The *ETP cap amount* for the 2007-2008 income year is \$140,000. This amount is indexed annually.

Note 1: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the ETP cap amount: see section 960-285.

Note 2: The ETP cap amount may be reduced for the purpose of working out tax offsets for individual employment termination payments.

## **Division 83—Other payments on termination of employment**

### **Table of Subdivisions**

	Guide to Division 83
83-A	Unused annual leave payments
83-B	Unused long service leave payments
83-C	Genuine redundancy payments and early retirement scheme payments
83-D	Foreign termination payments
83-E	Other payments

### **Guide to Division 83**

#### **83-1 What this Division is about**

This Division sets out the taxation treatment for a variety of payments, other than employment termination payments, that are made in consequence of the termination of employment.

## Subdivision 83-A—Unused annual leave payments

### Guide to Subdivision 83-A

#### 83-5 What this Subdivision is about

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused annual leave.

#### Table of sections

##### Operative provisions

83-10	Unused annual leave payment is assessable
83-15	Entitlement to tax offset

### Operative provisions

#### 83-10 Unused annual leave payment is assessable

##### *Application—annual leave*

- (1) This section applies to leave (***annual leave***) of the following types (whether it is made available as an entitlement or as a privilege):
  - (a) leave ordinarily known as annual leave, including recreational leave and annual holidays;
  - (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available.

##### *Unused annual leave payments*

- (2) Your assessable income includes an \*unused annual leave payment that you receive.
- (3) A payment that you receive in consequence of the termination of your employment is an ***unused annual leave payment*** if:
  - (a) it is for annual leave you have not used; or
  - (b) it is a bonus or other additional payment for annual leave you have not used; or

- (c) it is for annual leave, or is a bonus or other additional payment for annual leave, to which you were not entitled just before the employment termination, but that would have been made available to you at a later time if it were not for the employment termination.

### **83-15 Entitlement to tax offset**

You are entitled to a \*tax offset to ensure that the rate of tax on an \*unused annual leave payment does not exceed 30%, to the extent that:

- (a) the payment was made in connection with a payment that includes, or consists of, any of the following:
  - (i) a \*genuine redundancy payment;
  - (ii) an \*early retirement scheme payment;
  - (iii) the \*invalidity segment of an \*employment termination payment or \*superannuation benefit; or
- (b) the payment was made in respect of employment before 18 August 1993.

## **Subdivision 83-B—Unused long service leave payments**

### **Guide to Subdivision 83-B**

#### **83-65 What this Subdivision is about**

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused long service leave.

### **Table of sections**

#### **General**

83-70	Application—long service leave
83-75	Meaning of <i>unused long service leave payment</i>
83-80	Taxation of unused long service leave payments
83-85	Entitlement to tax offset
83-90	Meaning of <i>pre-16/8/78 period, pre-18/8/93 period, post-17/8/93 period</i> and <i>long service leave employment period</i>

**Employment wholly full-time or wholly part-time**

- 83-95 How to work out amount of payment attributable to each period  
83-100 How to work out *unused days of long service leave* for each period  
83-105 How to work out long service leave accrued in each period

**Employment partly full-time and partly part-time**

- 83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—  
employment full-time and part-time

**Long service leave taken at less than full pay**

- 83-115 Working out used days of long service leave if leave taken at less than full  
pay

**General**

**83-70 Application—long service leave**

This Subdivision applies to leave (*long service leave*) of the following types (whether it is made available as an entitlement or as a privilege), other than annual leave to which section 83-10 applies:

- (a) leave ordinarily known as long service leave, including long leave, furlough and extended leave;
- (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available;
- (c) if your employer has entered into a \*scheme or \*arrangement for leave and, because of the existence and nature of the scheme or arrangement, the employer does not have to comply with the requirements of a law of the Commonwealth, or of a State or Territory, relating to leave mentioned in paragraph (a) or (b)—leave made available under the scheme or arrangement.

**83-75 Meaning of *unused long service leave payment***

A payment that you receive in consequence of the termination of your employment is an *unused long service leave payment* if:

- (a) it is for long service leave you have not used; or
- (b) it is for long service leave to which you were not entitled just before the employment termination, but that would have been



made available to you at a later time if it were not for the employment termination.

### **83-80 Taxation of unused long service leave payments**

*Assessable and tax-free parts of unused long service leave payments*

- (1) If you receive an \*unused long service leave payment, your assessable income includes the part of the payment shown in this table:

<b>*Unused long service leave payments</b>		
<b>Item</b>	<b>To the extent the payment is attributable to the ...</b>	<b>Your assessable income includes this part of it ...</b>
1	*pre-16/8/78 period	5%
2	*pre-18/8/93 period	100%
3	*post-17/8/93 period	100%

- (2) The remainder of that part (if any) of an \*unused long service leave payment that is attributable to the \*pre-16/8/78 period is not assessable income and is not \*exempt income.

Note 1: If your employment was wholly full-time or wholly part-time during a period, see sections 83-95, 83-100 and 83-105 to work out the amount of an unused long service leave payment that is attributable to the period.

Note 2: If your employment was partly full-time and partly part-time during a period, see section 83-110 to work out the amount of an unused long service leave payment that is attributable to the period.

### **83-85 Entitlement to tax offset**

- (1) You are entitled to a \*tax offset on an \*unused long service leave payment that ensures that the rate of income tax on the amount of the payment mentioned in subsection (2) does not exceed 30%.
- (2) The amount is the part of the \*unused long service leave payment included in your assessable income under subsection 83-80(1):
- to the extent that it is attributable to the \*pre-18/8/93 period;
  - and

- (b) to the extent that it is attributable to the \*post-17/8/93 period, if the payment was made in connection with a payment that includes, or consists of, any of the following:
- (i) a \*genuine redundancy payment; or
  - (ii) an \*early retirement scheme payment; or
  - (iii) an \*invalidity segment of an \*employment termination payment or a \*superannuation benefit.

**83-90 Meaning of *pre-16/8/78 period*, *pre-18/8/93 period*, *post-17/8/93 period* and *long service leave employment period***

- (1) The *pre-16/8/78 period* consists of each day (if any) in your \*long service leave employment period that occurred before 16 August 1978.
- (2) The *pre-18/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 15 August 1978 and before 18 August 1993.
- (3) The *post-17/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 17 August 1993.
- (4) Your *long service leave employment period*, for a period of long service leave, is:
  - (a) the period of employment to which the long service leave relates; or
  - (b) if your entitlement to long service leave changes so that it accrues over a shorter period—the period that would apply under paragraph (a) assuming the change had not happened.

**Employment wholly full-time or wholly part-time**

**83-95 How to work out amount of payment attributable to each period**

- (1) Work out how much of an \*unused long service leave payment is attributable to a period as follows:
  - (a) for the \*pre-18/8/93 period or to the \*post-17/8/93 period—use the formula in subsection (2);

- (b) for the \*pre-16/8/78 period—subtract the sum of the amounts (if any) worked out for paragraph (a) for the other 2 periods from the total amount of the payment.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\text{Amount of payment} \times \frac{\text{Unused long service leave days in the relevant period}}{\text{Total unused long service leave days}}$$

where:

***total unused long service leave days*** means the total number of unused days of long service leave in the \*long service leave employment period for the payment.

***unused long service leave days in the relevant period*** means the number of unused days of long service leave in the \*pre-18/8/93 period or the \*post-17/8/93 period (as applicable), worked out under section 83-100.

Note 1: For the meaning of ***unused days of long service leave***, see section 83-100.

Note 2: Section 83-110 explains how to work out the period of unused long service leave if your employment was partly full-time and partly part-time during the period.

### **83-100 How to work out *unused days of long service leave* for each period**

- (1) The number of ***unused days of long service leave*** for each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93 period is the number of days of long service leave that accrued to you during that period less the number of days of long service leave that you used in the period.

***Exception if days used exceed days accrued in the pre-18/8/93 period and the post-17/8/93 period***

- (2) To the extent that the number of days of long service leave that you used during the \*pre-18/8/93 period or the \*post-17/8/93 period exceeds the number of days of long service leave that accrued to you during the period, apply the excess days as shown in this table:

**Schedule 2** Employment termination payments  
**Part 1** Main amendments

<b>How to apply excess days</b>			
<b>Item</b>	<b>If there are excess days in this period:</b>	<b>Apply the excess days as follows:</b>	<b>If, after you apply the excess days as shown in column 2, excess days remain, apply the remaining days as follows:</b>
1	*pre-18/8/93 period	Subtract the excess days from the unused days in the *post-17/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period
2	*post-17/8/93 period	Subtract the excess days from the unused days in the *pre-18/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period

- (3) The number of *unused days of long service leave* in each period is the number of days after applying the table.

Note: Section 83-115 explains how to work out the number of days of long service leave you are taken to have used if you took long service leave at less than the full pay rate.

**83-105 How to work out long service leave accrued in each period**

- (1) Work out the number of days of long service leave that accrued to you during each part of your \*long service leave employment period as follows:
- (a) for the \*pre-18/8/93 period or the \*post-17/8/93 period—use the formula in subsection (2);
  - (b) for the \*pre-16/8/78 period—subtract the sum of the number of days (if any) worked out under paragraph (a) for the other 2 periods from the total number of days of long service leave accrued to you during the long service leave employment period.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\frac{\text{Days of long service leave accrued during *long service leave employment period}}{\text{Days in *long service leave employment period}} \times \frac{\text{Days in relevant period}}{\text{Days in *long service leave employment period}}$$

where:

**relevant period** means the \*pre-18/8/93 period or the \*post 17/8/93 period (as applicable).

*How to treat fraction of day*

- (3) If long service leave accrued to you during the \*pre-18/8/93 period and the \*post-17/8/93 period but not during the \*pre-16/8/78 period, and the number of days worked out under subsection (2) for the post-17/8/93 period includes a fraction, treat the fraction as having accrued during the pre-18/8/93 period.
- (4) If long service leave accrued to you during all 3 periods and the number of days worked out under subsection (2) for the \*post-17/8/93 period or the \*pre-18/8/93 period includes a fraction, treat the fraction as having accrued during the \*pre-16/8/78 period.

### **Employment partly full-time and partly part-time**

#### **83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—employment full-time and part-time**

- (1) This section applies if the \*long service leave employment period for an \*unused long service leave payment includes:
  - (a) 1 or more periods when you were employed on a full-time basis; and
  - (b) 1 or more periods when you were employed on a part-time basis.
- (2) Work out how much of the payment is attributable to the period or periods when you were employed on a full-time basis (the **full-time payment**) and how much to the period or periods when you were employed on a part-time basis (the **part-time payment**).
- (3) The amount of the payment that is attributable to each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93 period is the sum of the amounts worked out in accordance with sections 83-95, 83-100 and 83-105 that would be attributable to those periods if the full-time payment and the part-time payment were each \*unused long service leave payments.

## Long service leave taken at less than full pay

### 83-115 Working out used days of long service leave if leave taken at less than full pay

If you used days of long service leave at a rate of pay that is less than the rate to which you are entitled, the number of days of long service leave you are taken to have used (disregarding fractions of days) is as follows:

$$\text{Actual days of long service leave} \times \frac{\text{Rate of pay at which leave was actually taken}}{\text{Rate of pay to which you were entitled when taking leave}}$$

Example: If you took 100 actual days of long service leave at a rate of pay of \$30 per hour, while the rate of pay to which you were entitled when taking leave is \$40 per hour, you are taken to have used 75 days of long service leave, worked out as follows:

$$100 \text{ actual days of long service leave} \times \frac{30}{40} = 75 \text{ days of long service leave you are taken to have used}$$

## Subdivision 83-C—Genuine redundancy payments and early retirement scheme payments

### Guide to Subdivision 83-C

#### 83-165 What this Subdivision is about

This Subdivision defines what are genuine redundancy payments and early retirement scheme payments.

If you receive a genuine redundancy payment or an early retirement scheme payment, you do not have to pay income tax on the payment so far as it does not exceed a certain amount worked out under this Subdivision.

A part of a genuine redundancy payment or an early retirement scheme payment that is not tax free under this Subdivision will normally be an employment termination payment.

## Table of sections

### Operative provisions

- 83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments
- 83-175 What is a *genuine redundancy payment*?
- 83-180 What is an *early retirement scheme payment*?

## Operative provisions

### 83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments

- (1) This section applies if you receive a \*genuine redundancy payment or an \*early retirement scheme payment.

Note: A payment cannot be both a genuine redundancy payment and an early retirement scheme payment, because of the nature of each of these types of payment: see sections 83-175 and 83-180.

- (2) So much of the relevant payment as does not exceed the amount worked out under subsection (3) is not assessable income and is not \*exempt income.

- (3) Work out the amount using the formula:

$$\text{Base amount} + \left( \text{Service amount} \times \text{Years of service} \right)$$

where:

**base amount** means:

- (a) for the income year 2006-2007—\$6,783; and
- (b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the base amount.

**service amount** means:

- (a) for the income year 2006-2007—\$3,392; and
- (b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the service amount.

*years of service* means the number of whole years in the period, or sum of periods, of employment to which the payment relates.

Note: The remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in subsection (3)) is an employment termination payment if section 82-130 applies to that part.

### 83-175 What is a *genuine redundancy payment*?

- (1) A *genuine redundancy payment* is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.
- (2) A *genuine redundancy payment* must satisfy the following conditions:
  - (a) the employee is dismissed before the earlier of the following:
    - (i) the day he or she turned 65;
    - (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the dismissal was not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length;
  - (c) at the time of the dismissal, there was no \*arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal.
- (3) However, a *genuine redundancy payment* does not include any part of a payment that was received by the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the payment was received or at a later time.

#### *Payments not covered*

- (4) A payment is *not* a *genuine redundancy payment* if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).



Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

**83-180 What is an *early retirement scheme payment*?**

- (1) An *early retirement scheme payment* is so much of a payment received by an employee because the employee retires under an \*early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.
- (2) An *early retirement scheme payment* must satisfy the following conditions:
  - (a) the employee retires before the earlier of the following:
    - (i) the day he or she turned 65;
    - (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the retirement is not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the retirement were at arm's length;
  - (c) at the time of the retirement, there was no \*arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement.
- (3) A scheme is an *early retirement scheme* if:
  - (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
  - (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

- (4) A scheme is also an *early retirement scheme* if:
- (a) paragraph (3)(a) or (b) does not apply; and
  - (b) the Commissioner is satisfied that special circumstances exist in relation to the scheme that make it reasonable to approve the scheme; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.
- (5) However, an *early retirement scheme payment* does not include any part of the \*employment termination payment that was paid to the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the employment termination payment was made or at a later time.

*Payments not covered*

- (6) A payment is *not* an *early retirement scheme payment* if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

## **Subdivision 83-D—Foreign termination payments**

### **Guide to Subdivision 83-D**

#### **83-230 What this Subdivision is about**

This Subdivision deals with termination payments that arise out of foreign employment.

These payments are not employment termination payments, and are tax free (except for amounts worked out under this Subdivision).

#### **Table of sections**

##### **Operative provisions**

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- 83-235 Termination payments tax free—foreign resident period  
83-240 Termination payments tax free—Australian resident period

## Operative provisions

### 83-235 Termination payments tax free—foreign resident period

A payment received by you is not assessable income and is not \*exempt income if:

- (a) it was received in consequence of the termination of your employment in a foreign country; and
- (b) it is not a \*superannuation benefit; and
- (c) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (d) it relates only to a period of employment when you were not an Australian resident.

### 83-240 Termination payments tax free—Australian resident period

(1) A payment received by you is not assessable income and is not \*exempt income if:

- (a) it was received in consequence of:
  - (i) the termination of your employment in a foreign country; or
  - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
- (b) it relates only to the period of that employment or engagement; and
- (c) it is not a \*superannuation benefit; and
- (d) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (e) you were an Australian resident during the period of the employment or engagement; and
- (f) the payment is not exempt from income tax under the law of the foreign country; and
- (g) for a period of employment—your foreign earnings from the employment are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and

- (h) for a period of engagement—your \*eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.
- (2) For the purposes of subparagraph (1)(a)(ii), treat the termination of engagement on qualifying service on an approved project as including:
- (a) retirement from the engagement; and
  - (b) cessation of the engagement because of the person's death.

Note: The termination of a person's employment is treated in the same way: see section 80-10.

## **Subdivision 83-E—Other payments**

### **Guide to Subdivision 83-E**

#### **83-290 What this Subdivision is about**

If a payment you receive in consequence of the termination of your employment is made more than 12 months after the termination of your employment, it does not qualify as an employment termination payment, subject to certain exceptions (see section 82-130).

The payment is treated as assessable income and no tax concession is allowed under Division 82.

#### **Table of sections**

##### **Operative provisions**

83-295 Termination payments made more than 12 months after termination etc.

#### **Operative provisions**

##### **83-295 Termination payments made more than 12 months after termination etc.**

A payment received by you that would be an \*employment termination payment but for paragraph 82-130(1)(b) is assessable income.

## **2 Application**

The amendment made by this Part of this Schedule applies on and after 1 July 2007.

## **Part 2—Main transitional and consequential amendments**

### ***Income Tax (Transitional Provisions) Act 1997***

#### **3 After Part 2-25**

Insert:

### **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**

#### **Division 82—Pre-10 May 2006 entitlements to life benefit termination payments**

##### **Table of Subdivisions**

82-A	Application of Division
82-B	Transitional termination payments: general
82-C	Pre-payment statements
82-D	Directed termination payments made to superannuation and other entities
82-E	Pre-10 May 2006 entitlements and employment termination payments made after 1 July 2012

##### **Subdivision 82-A—Application of Division**

##### **Table of sections**

82-10	Pre-10 May 2006 entitlements— <i>transitional termination payments</i>
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##### **82-10 Pre-10 May 2006 entitlements—*transitional termination payments***

- (1) This Division applies in relation to a life benefit termination payment received by you on or after 1 July 2007 if:

- (a) the payment is received by you because you are entitled to it under a written contract, a law of the Commonwealth, a State, a Territory or another country, an instrument under such a law or a workplace agreement within the meaning of the *Workplace Relations Act 1996*; and
  - (b) the entitlement is provided for under that contract, law, instrument or agreement as in force just before 10 May 2006.
- (2) However, this Division does not apply in relation to a life benefit termination payment received by you on or after 1 July 2012 (except to the extent provided by Subdivision 82-E).
  - (3) This Division applies in relation to a life benefit termination payment only to the extent that the contract, law or agreement as in force just before 10 May 2006 specifies the amount of the payment, or a way to work out a specific amount of the payment.
  - (4) For the purpose of subsection (3), a specific amount can be worked out in ways including either or both of the following:
    - (a) by a method or formula for working out the amount;
    - (b) by provision for you or another person (or entity) to make a choice between forms of payment allowing amounts to be worked out as provided by subsection (3) and paragraph (a) of this subsection.

Example: For paragraph (b), a specific amount of a life benefit termination payment that you receive on 1 July 2007 can be worked out from the terms of your written contract if the contract provided (just before 10 May 2006) for you to choose between payment in the form of a cash amount of \$100,000 or the transfer to you of 10,000 shares in a specified company.

Note: Section 80-15 of the *Income Tax Assessment Act 1997* allows for employment termination payments to include the transfer of property (for example, shares). If so, the market value of the property is included in the amount of the payment (except any part of the property for which separate consideration has been given).

- (5) To the extent that this Division applies to a life benefit termination payment, Subdivision 82-A of the *Income Tax Assessment Act 1997* does not apply to the payment (subject to Subdivision 82-E of this Act).
- (6) In this Division:  
***transitional termination payment*** means:

- (a) a life benefit termination payment to which this Division applies; or
- (b) if this Division applies to only part of a life benefit termination payment—that part of the payment.

## **Subdivision 82-B—Transitional termination payments: general**

### **Table of sections**

82-10A	Recipient has reached preservation age
82-10B	Lower cap amount
82-10C	Recipient under preservation age
82-10D	Upper cap amount

### **82-10A Recipient has reached preservation age**

#### *Application*

- (1) This section applies to a transitional termination payment you receive (except any part of the payment that is a directed termination payment) if you are your preservation age or older on the last day of the income year in which you receive the payment.

Note 1: You do not pay income tax on directed termination payments: see section 82-10G.

Note 2: Under section 82-10C, you may also be entitled to a tax offset on the taxable component of a transitional termination payment you receive in an income year before the year in which you reached your preservation age.

#### *Tax free component*

- (2) The tax free component of the payment is not assessable income and is not exempt income.

#### *Taxable component*

- (3) The taxable component of the payment is assessable income.
- (4) You are entitled to a tax offset that ensures that the rate of income tax on the amount mentioned in subsection (6) (the ***low rate part***) does not exceed 15%.



- (5) You are entitled to a tax offset that ensures that the rate of income tax on the amount mentioned in subsection (7) (the *middle rate part*) does not exceed 30%.

Note: The remaining part is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (6) The low rate part is so much of the taxable component of the payment as does not exceed your lower cap amount under section 82-10B.
- (7) The middle rate part is so much of the taxable component of the payment as:
- (a) exceeds your low rate part (if any); and
  - (b) does not exceed the amount worked out as follows:

Your upper cap amount    Your lower cap amount  
under section 82-10D    –    under section 82-10B

Note: If you have received another life benefit termination payment in the same income year (or in an earlier income year) that is not a transitional termination payment, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the other payment (under section 82-10 of the *Income Tax Assessment Act 1997*).

## **82-10B Lower cap amount**

*Initial lower cap amount is the ETP cap for the income year*

- (1) Your *lower cap amount* in relation to a transitional termination payment you receive at a time in an income year is the ETP cap amount for the year, reduced in accordance with this section.

Note: For the ETP cap amount, see section 82-160 of the *Income Tax Assessment Act 1997*.

*Reduction of lower cap amount in relation to each payment*

- (2) Reduce your lower cap amount in relation to the payment (but not below zero):
- (a) by the amount (if any) (the *cap excess*) worked out under subsection (3); and
  - (b) by so much of the total amounts of transitional termination payments (if any) that you received at an earlier time (whether in the income year or in an earlier income year) for

which you are entitled to a tax offset under subsection 82-10A(4).

- (3) For paragraph (2)(a), the cap excess is worked out using this method:

*Method statement*

- Step 1.* Work out the total of the taxable components of all the amounts (if any) of transitional termination payments received by you (including any directed termination payments received on your behalf) in any income year before the income year in which you reached your preservation age.
- Step 2.* Work out the total of the taxable components of all the directed termination payments (if any) received on your behalf at an earlier time, in the income year in which you reached your preservation age or later.
- Step 3.* Work out the amount (the *cap difference*) by which \$1,000,000 exceeds the ETP cap for the income year in which you receive the payment to which subsection (1) applies.
- Step 4.* The cap excess is the amount (not less than zero) by which the sum of the amounts in steps 1 and 2 exceeds the cap difference in step 3.

*Directed termination payments—time of receipt when received by entity to which they are directed*

- (4) For the purposes of this section, a directed termination payment is taken to be received on your behalf at the time the entity to which it is directed receives the payment.

*ETP cap not to be reduced under section 82-10 of the Income Tax Assessment Act 1997*

- (5) For the purposes of this section, disregard any reduction of the ETP cap amount under section 82-10 of the *Income Tax Assessment Act 1997*.

### **82-10C Recipient under preservation age**

#### *Application*

- (1) This section applies to a transitional termination payment you receive (except any part of the payment that is a directed termination payment) if you are under your preservation age on the last day of the income year in which you receive the payment.

Note: You do not pay income tax on directed termination payments: see section 82-10G.

#### *Tax free component*

- (2) The tax free component of the payment is not assessable income and is not exempt income.

#### *Taxable component*

- (3) The taxable component of the payment is assessable income.
- (4) You are entitled to a tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (5) The amount is so much of the taxable component of the payment as does not exceed your upper cap amount under section 82-10D.

Note: If you have received another life benefit termination payment in the same income year (or in an earlier income year) that is not a transitional termination payment, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the other payment (under section 82-10 of the *Income Tax Assessment Act 1997*).

### **82-10D Upper cap amount**

*Initial upper cap amount is \$1,000,000*

- (1) Your ***upper cap amount*** in relation to a transitional termination payment you receive at a time in an income year is \$1,000,000, reduced in accordance with this section.

*Reduction of upper cap amount for each payment*

- (2) Reduce your upper cap amount in relation to the payment (but not below zero):
  - (a) by the total of all the amounts (if any) included in your assessable income under subsection 82-10C(3) and subsection 82-10A(3) that you received at an earlier time (whether in the income year or in an earlier income year); and
  - (b) by the total amount of the taxable components of all directed transitional payments (if any) received on your behalf at an earlier time (whether in the income year or in an earlier income year).

*Directed termination payments—time of receipt when received by entity to which they are directed*

- (3) For this section, a directed termination payment is taken to be received on your behalf at the time the entity to which it is directed receives the payment.

## **Subdivision 82-C—Pre-payment statements**

### **Table of sections**

82-10E Transitional termination payments—pre-payment statements

### **82-10E Transitional termination payments—pre-payment statements**

- (1) This section applies if an entity (the *payer*) proposes to pay a transitional termination payment to an individual.
- (2) The payer must give the individual a statement (a *pre-payment statement*) meeting the requirements of this section.
- (3) The statement must include the following information:
  - (a) the amount (if any) that would be the tax free component of the transitional termination payment;
  - (b) the amount (if any) that would be the taxable component of the transitional termination payment;
  - (c) any other information specified in the regulations.

- (4) The statement must also include details of the opportunity to make a choice in accordance with section 82-10F.

### **Subdivision 82-D—Directed termination payments made to superannuation and other entities**

#### **Table of sections**

82-10F	<i>Directed termination payments</i>
82-10G	Directed termination payments not assessable income and not exempt income

#### **82-10F *Directed termination payments***

- (1) A transitional termination payment (or part of such a payment) is a *directed termination payment* if:
- (a) the individual chooses, in accordance with this section, to direct the payment (or part of the payment) to be made; and
  - (b) the payment (or part of the payment) is made on the individual's behalf as directed.

##### *Choice to make payment*

- (2) An individual may choose, within 30 days after a pre-payment statement about a transitional termination payment is given to the individual under section 82-10E, to direct the payer to use all or part of the payment to make a payment on behalf of the individual:
- (a) to a complying superannuation plan; or
  - (b) to purchase a superannuation annuity.
- (3) To make the choice, the individual must:
- (a) make it in the approved form; and
  - (b) give the completed form to the payer.
- (4) The payer must, immediately after receiving a completed form under subsection (3):
- (a) give the entity (or entities) to which payment is directed written notice of the amount that is to be paid, and of the tax free component of the amount; and
  - (b) comply with the direction (or directions) in the form.

**82-10G Directed termination payments not assessable income and not exempt income**

A directed termination payment made on your behalf, that you are taken to receive under section 80-20 of the *Income Tax Assessment Act 1997*, is not assessable income and is not exempt income.

Note 1: Directed termination payments are paid into a complying superannuation plan (or to purchase a superannuation annuity) on your behalf: see section 82-10F.

Note 2: The taxable component of the payment is included in the assessable income of the entity receiving the payment: see section 295-190 of the *Income Tax Assessment Act 1997*.

Note 3: In addition, income tax may be payable on a benefit you later receive from the plan to which the directed termination payment is made: see Divisions 301-307 of the *Income Tax Assessment Act 1997*.

**Subdivision 82-E—Pre-10 May 2006 entitlements and employment termination payments made after 1 July 2012**

**Table of sections**

82-10H Transitional termination payments may reduce ETP cap amount for payments under section 82-10 after 1 July 2012

**82-10H Transitional termination payments may reduce ETP cap amount for payments under section 82-10 after 1 July 2012**

- (1) This section deals with the application of paragraph 82-10(4)(b) of the *Income Tax Assessment Act 1997* to an income year beginning on or after 1 July 2012.
- (2) For the purposes of that paragraph, the ETP cap amount is taken to be further reduced (but not below zero) by the amount mentioned in subsection (3) (the *concessional amount*) of any transitional termination payment made in consequence of the same employment termination as the employment termination to which the paragraph applies.
- (3) The concessional amount of a transitional termination payment is the part (if any) of the taxable component of the payment for which

you are entitled to a tax offset under section 82-10A or 82-10C of this Act.

***Taxation Administration Act 1953***

**4 At the end of paragraph 8C(1)(h)**

Add “or”.

**5 After paragraph 8C(1)(h)**

Insert:

- (i) to comply with subsection 82-10F(4) of the *Income Tax (Transitional Provisions) Act 1997*;

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## Schedule 3—Indexation

### *Income Tax Assessment Act 1997*

#### 1 Section 960-265 (at the end of the table)

Add:

5	*Genuine redundancy payments and *early retirement scheme payments—base amount	subsection 83-170(3)
6	*Genuine redundancy payments and *early retirement scheme payments—service amount	subsection 83-170(3)
7	Reduction of superannuation contributions—pre-1 July 88 funding credits (unused amount at end of previous income year)	subsection 295-265(2)
8	*Employment termination payments—*ETP cap amount	section 82-160
9	*Excess contributions tax on superannuation contributions—*concessional contributions cap	subsection 292-20(2)
10	*Excess contributions tax on superannuation contributions—index amount (*CGT cap amount)	subsection 292-105(4)
11	*Superannuation benefits—index amount (*low rate cap amount)	subsection 307-345(4)
12	*Superannuation benefits—index amount (*untaxed plan cap amount)	subsection 307-350(4)

#### 2 At the end of section 960-270

Add:

- (3) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

#### 3 After subsection 960-275(1)

Insert:

- (1A) However, for indexation of the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the *indexation factor* is:



\*Index number for the quarter ending on  
 31 March just before the start of the relevant income year  
 -----  
 \*Index number for the quarter ending on the previous 31 March

**4 At the end of section 960-275**

Add:

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**5 Before subsection 960-280(2)**

Insert:

*Car limit*

**6 At the end of section 960-280**

Add:

*Genuine redundancy, early retirement schemes, pre-1 July 88  
 funding credits*

- (4) For calculating the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the **index number** for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician in respect of that month.
- (5) Subsection (3) does not apply to the index numbers mentioned in subsection (4).

*Exception—superannuation and employment termination*

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**7 After section 960-280**

Insert:



## **Schedule 4—Reporting**

### ***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

#### **1 Subparagraph 14(1)(b)(iii)**

Repeal the subparagraph, substitute:

- (iii) statements given to the Commissioner under Division 390 in Schedule 1 to the *Taxation Administration Act 1953*; and

#### **2 Sections 26, 27, 28 and 29**

Repeal the sections.

#### **3 Paragraph 33(1)(b)**

Omit “20(3); or”, substitute “20(3).”.

#### **4 Paragraphs 33(1)(c), (d), (e) and (f)**

Repeal the paragraphs.

#### **5 Subsection 49(1) (Note)**

Repeal the note.

### ***Superannuation Guarantee (Administration) Act 1992***

#### **6 Subsection 6(1) (definition of *penalty unit*)**

Repeal the definition.

#### **7 Subsection 6(1) (definition of *superannuation provider*)**

Repeal the definition.

#### **8 Sections 78 and 78A**

Repeal the sections.

### ***Superannuation (Resolution of Complaints) Act 1993***

#### **9 Paragraph 15CA(1)(c)**

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Repeal the paragraph, substitute:

- (c) section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*;

**10 Paragraph 15CA(2)(c)**

Repeal the paragraph, substitute:

- (c) section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*;

***Taxation Administration Act 1953***

**11 After subsection 286-75(2) in Schedule 1**

Insert:

(2A) You are also liable to an administrative penalty if:

- (a) you are required under Division 390 to give a statement to an entity (other than the Commissioner) in the \*approved form by a particular day; and
- (b) you do not give the statement in the approved form to the other entity by that day.

**12 Paragraph 286-80(2)(a) in Schedule 1**

Repeal the paragraph, substitute:

- (a) for failing to give a return, notice or other document on time or in the \*approved form, as mentioned in subsection 286-75(1) or (2A)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it (up to a maximum of 5 penalty units); or

**13 Subsection 286-80(6) in Schedule 1**

Omit “lodged”, substitute “given”.

**14 Paragraph 298-5(d) in Schedule 1**

Repeal the paragraph.

**15 At the end of Part 5-25 in Schedule 1**

Add:

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## Division 390—Superannuation reporting

### Table of Subdivisions

	Guide to Division 390
390-A	Contributions statements and roll-over superannuation benefit statements etc.
390-B	Statements relating to release authorities
390-C	Other statements

### Guide to Division 390

#### 390-1 What this Division is about

Superannuation providers must give the Commissioner information about superannuation plans (such as contributions to superannuation plans) periodically.

Superannuation providers are also required to give information about roll-over superannuation benefits paid from superannuation plans.

#### Subdivision 390-A—Contributions statements and roll-over superannuation benefit statements etc.

#### 390-5 Contributions statements

- (1) A \*superannuation provider in relation to a \*superannuation plan must give the Commissioner a statement in relation to contributions (if any) made to the plan in respect of an individual during a period specified in a determination under subsection (6) if:
  - (a) for a superannuation plan that is a \*self managed superannuation fund—either or both of these conditions are satisfied:
    - (i) the individual held a \*superannuation interest in the plan at the end of the period;
    - (ii) the individual held a superannuation interest in the plan at any time during the period and received one or more

\*superannuation benefits from the plan during the period; or

- (b) for a superannuation plan that is *not* a self managed superannuation fund:
  - (i) contributions were made to the plan in respect of the individual during the period; and
  - (ii) either or both of the conditions in subparagraphs (a)(i) and (ii) are satisfied.

Note 1: Section 286-75 provides an administrative penalty for breach of this subsection.

Note 2: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section.

- (2) Treat the following as contributions for the purposes of this section:
    - (a) \*notional taxed contributions in relation to a \*defined benefit interest in the \*superannuation plan;
    - (b) amounts mentioned in subsection 292-25(3) of the *Income Tax Assessment Act 1997* allocated by the \*superannuation provider in relation to the superannuation plan.
  - (3) For the purposes of subparagraph (1)(a)(ii), disregard \*roll-over superannuation benefits that the individual is taken to receive under section 307-15 of the *Income Tax Assessment Act 1997*.
  - (4) A statement under subsection (1) must be in the \*approved form.
  - (5) The statement must be given to the Commissioner on a day specified in the determination under subsection (6).

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
  - (6) The Commissioner may determine, by legislative instrument:
    - (a) the period mentioned in subsection (1); and
    - (b) the day on which a statement must be given to the Commissioner.
  - (7) The period specified in the determination:
    - (a) may be:
      - (i) all or part of an income year; or
-

- 
- (ii) all or part of a financial year; or
      - (iii) any other period; and
    - (b) may be different:
      - (i) for different kinds of \*superannuation provider; and
      - (ii) in relation to any other matter.
  - (8) Subsection (7) does not limit the way in which the determination may specify the period.
  - (9) The \*approved form may require the statement to contain the following information:
    - (a) information relating to the contributions, including the amount and type of the contributions;
    - (b) if the plan is a \*self managed superannuation fund and no contributions were made to the plan in respect of the individual during the period—a statement to that effect.
  - (10) Subsection (9) does not limit the information that the \*approved form may require the statement to contain.
  - (11) The \*approved form may require the statement to contain the \*tax file number of:
    - (a) the \*superannuation provider; and
    - (b) the \*superannuation plan; and
    - (c) the individual in respect of whom the contributions are made if:
      - (i) the individual has quoted the individual's tax file number to the superannuation provider; or
      - (ii) a person who made at least some of the contributions has quoted the individual's tax file number to the superannuation provider (and had authority to do so).

### **390-10 Statements about roll-over superannuation benefits etc.**

- (1) This section applies if:
  - (a) a \*superannuation provider (the *first provider*) in relation to a \*superannuation plan (the *first plan*) pays a \*roll-over superannuation benefit to another superannuation provider in relation to another superannuation plan; or
  - (b) a superannuation provider (also the *first provider*) in relation to a superannuation plan (also the *first plan*) pays to another

superannuation provider in relation to another superannuation plan a \*superannuation benefit (other than a roll-over superannuation benefit) in these circumstances:

- (i) the first plan or the other superannuation plan is, or both are, a \*non-complying superannuation plan for the income year in which the benefit is paid; or
  - (ii) the first plan or the other superannuation plan was, or both were, a non-complying superannuation plan for the previous income year.
- (2) The first provider in relation to the first plan must:
- (a) give the other superannuation provider a statement in relation to the benefit within 7 days after the day on which the benefit is paid; and
  - (b) give the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.
- Note: Section 286-75 provides an administrative penalty for breach of this subsection.
- (3) A statement under subsection (2) must be in the \*approved form.
- Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (4) The \*approved form may require the statement to contain the following information:
- (a) information relating to contributions made to the first plan in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;
  - (b) other information relating to the benefit, including the \*tax free component, \*taxable component, \*element taxed in the fund and \*element untaxed in the fund (as applicable) of the benefit.
- (5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).
- (6) The period specified in the determination:
- (a) may be:
    - (i) all or part of an income year; or



- 
- (ii) all or part of a financial year; or
  - (iii) any other period; and
  - (b) may be different:
    - (i) for different kinds of \*superannuation provider; and
    - (ii) in relation to any other matter.
  - (7) Subsection (6) does not limit the way in which the determination may specify the period.
  - (8) The \*approved form may require the statement to contain different information depending on whether paragraph (1)(a) or (b) applies.
  - (9) Subsections (4) and (8) do not limit the information that the \*approved form may require the statement to contain.

### **390-15 Superannuation statements to members**

- (1) An individual, or the trustee of an individual's estate:
  - (a) may ask a \*superannuation provider who has given information in a statement under section 390-5 or 390-10 in relation to the individual to give the individual or the trustee the same information; and
  - (b) may ask the superannuation provider to give the information in writing.
- (2) The \*superannuation provider must:
  - (a) comply with the request within 30 days after receiving the request; and
  - (b) if the individual or the trustee asked for the information to be given in writing—give the information in the \*approved form.

Note 1: Section 286-75 provides an administrative penalty for breach of this subsection.

Note 2: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (3) Subsection (2) does not apply if the \*superannuation provider has given the same information to the individual or the trustee previously (whether or not on request by the individual or trustee).
  - (4) If the individual or the trustee does not ask for the information to be given in writing, the \*superannuation provider may give the
-

information to the individual or trustee in a way that the provider considers appropriate.

## **Subdivision 390-B—Statements relating to release authorities**

### **390-65 Statements relating to release authorities**

- (1) A \*superannuation provider in relation to a \*superannuation plan must give the Commissioner a statement under this section if the superannuation provider has:
  - (a) been given a release authority in accordance with section 292-410 of the *Income Tax Assessment Act 1997* or section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and
  - (b) paid an amount out of the plan in accordance with the release authority.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) The statement must be given within 30 days after the amount is paid out of the plan.
- (3) A statement under subsection (1) must be in the \*approved form.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.
- (4) The \*approved form must require the statement to contain information relating to the release authority.
- (5) The \*approved form may require the statement to contain the following information:
  - (a) the amount paid;
  - (b) details relating to the \*superannuation provider in relation to the \*superannuation plan;
  - (c) the individual in respect of whom the release authority was given to the superannuation provider.
- (6) Subsection (5) does not limit the information that the \*approved form may require the statement to contain.
- (7) The \*superannuation provider must also give the individual to whom the release authority relates a copy of the statement within 30 days after the amount is paid out of the plan.

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Note: Section 286-75 provides an administrative penalty for breach of this subsection.

## **Subdivision 390-C—Other statements**

### **390-115 Change or omission in information given to the Commissioner**

- (1) If a \*superannuation provider in relation to a \*superannuation plan becomes aware of a material change or material omission in any information given to the Commissioner in relation to the plan under this Division, the provider must:
- (a) tell the Commissioner of the change in the \*approved form;
  - or
  - (b) give the omitted information to the Commissioner in the approved form.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) Information required by subsection (1) must be given no later than 30 days after the \*superannuation provider becomes aware of the change or omission.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

## **16 Application**

The amendments made by this Schedule apply in relation to things that are done and events that occur on or after 1 July 2007.

Note: For transitional rules about provisions related to the application of Division 292 of the *Income Tax Assessment Act 1997* in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

## Schedule 5—Self-managed superannuation funds

### *Fringe Benefits Tax Assessment Act 1986*

**1 Subsection 136(1) (subparagraph (j)(i) of the definition of *fringe benefit*)**

Omit “payment of money”, substitute “contribution”.

**2 Subsection 136(1) (subparagraph (j)(i) of the definition of *fringe benefit*)**

Omit “the payment”, substitute “the contribution”.

**3 Subsection 136(1) (subparagraph (j)(ii) of the definition of *fringe benefit*)**

Omit “payment of money”, substitute “contribution”.

**4 Subsection 136(1) (sub-subparagraph (j)(ii)(A) of the definition of *fringe benefit*)**

Omit “the payment”, substitute “the contribution”.

**5 Subsection 136(1) (sub-subparagraph (j)(ii)(B) of the definition of *fringe benefit*)**

Omit “the payment”, substitute “the contribution”.

### *Income Tax Assessment Act 1997*

**6 Subsection 995-1(1) (paragraph (a) of the definition of *taxation law*)**

After “administration”, insert “(including a part of an Act to the extent to which the Commissioner has the general administration of the Act)”.

**7 Subsection 995-1(1) (paragraph (b) of the definition of *taxation law*)**

After “Act”, insert “(including such a part of an Act)”.

**8 Transitional—meaning of *taxation law***

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In determining the meaning of *taxation law* in the *Income Tax Assessment Act 1997* before the commencement of this item, the amendments made by this Schedule are to be disregarded.

***Superannuation Industry (Supervision) Act 1993***

**9 Subsection 10(1) (at the end of the definition of *self managed superannuation fund*)**

Add:

Note: Subsection (4) of this section extends the meaning of *self managed superannuation fund* for the purposes of sections 6, 42 and 42A.

**10 At the end of section 10**

Add:

- (4) Treat an entity that is a superannuation fund as a self managed superannuation fund for the purposes of sections 6, 42 and 42A if:
  - (a) it has ceased being a self managed superannuation fund for the purposes of the rest of this Act; and
  - (b) the trustee of the fund is not an RSE licensee.

**11 Paragraph 17A(1)(f)**

Omit “fund.”, substitute “fund;”.

**12 At the end of subsection 17A(1)**

Add:

- (g) if the trustee of the fund is a body corporate—no director of the body corporate receives any remuneration from the fund or from any person (including the body corporate) for any duties or services performed by the director in relation to the fund.

**13 Paragraph 17A(2)(c)**

Omit “fund.”, substitute “fund;”.

**14 At the end of subsection 17A(2)**

Add:

- (d) if the trustee of the fund is a body corporate—no director of the body corporate receives any remuneration from the fund

or from any person (including the body corporate) for any duties or services performed by the director in relation to the fund.

**15 At the end of subsection 17A(10)**

Add “or a director of a body corporate that is a trustee of a self managed superannuation fund”.

**16 After paragraph 38A(aa)**

Insert:

- (ab) for a superannuation entity that is a self managed superannuation fund—any of the following provisions in Schedule 1 to the *Taxation Administration Act 1953*:
  - (i) section 288-85;
  - (ii) Division 390; or

**17 Paragraph 39(1)(b)**

Omit “provision.”, substitute “provision; or”.

**18 At the end of subsection 39(1)**

Add:

- (c) a contravention of a provision mentioned in paragraph 38A(ab).

**19 After subsection 39(1A)**

Insert:

- (1B) To avoid doubt, for the purposes of this Division, treat conduct giving rise to an administrative penalty under section 288-85 in Schedule 1 to the *Taxation Administration Act 1953* as a contravention of that section.

**20 Paragraph 129(3)(b)**

Omit “if the”, substitute “if the superannuation entity is not a self managed superannuation fund and the”.

**21 Paragraph 129(3)(b)**

Omit “writing.”, substitute “writing; and”.

**22 At the end of subsection 129(3)**

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Add:

- (c) if the superannuation entity is a self managed superannuation fund and the matter is specified in the approved form—tell the Regulator about the matter in the approved form.

Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

### **23 After subsection 129(3)**

Insert:

- (3AA) To avoid doubt, for the purposes of paragraph (3)(c), the approved form may specify matters by reference to a class or classes of matters.

### ***Superannuation (Self Managed Superannuation Funds) Taxation Act 1987***

### **24 Section 15DAA**

Insert:

*general interest charge* means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

### **25 Section 15DAA (definition of *late payment penalty*)**

Repeal the definition.

### **26 Section 15DC**

Repeal the section, substitute:

#### **15DC General interest charge**

If an amount of levy payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the amount of levy was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) an amount of levy;

- (ii) general interest charge on an amount of levy.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

**27 Section 15DD**

Repeal the section, substitute:

**15DD Recovery of levy**

Levy that is due and payable may be recovered by the Commonwealth as a debt due to the Commonwealth.

Note: The heading to section 15DD is altered by omitting “**and late payment penalty**”.

**28 Section 15DE**

Omit “and late payment penalty are”, substitute “is”.

**29 Section 15DE (Note)**

Omit “and late payment penalty”.

**30 Section 15DF**

Repeal the section, substitute:

**15DF Remission of levy**

The Commissioner of Taxation may remit the whole or a part of an amount of levy.

***Taxation Administration Act 1953***

**31 Subsection 2(1) (definition of *taxation law*)**

Repeal the definition, substitute:

*taxation law* has the meaning given by the *Income Tax Assessment Act 1997*.

**32 Transitional—meaning of *taxation law***

In determining the meaning of *taxation law* in the *Taxation Administration Act 1953* before the commencement of this item, the amendments made by this Schedule are to be disregarded.



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**33 Subsection 8AAB(5) (after table item 13)**

Insert:

13A      15DC      *Superannuation (Self Managed  
Superannuation Funds) Taxation Act 1987*

**34 At the end of section 286-75 in Schedule 1**

Add:

- (5) Subsection (6) applies if:
- (a) an entity is liable to an administrative penalty under subsection (1) or (2A) as the \*superannuation provider in relation to a \*self managed superannuation fund; and
  - (b) the entity is a body corporate.
- (6) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the \*tax-related liability in respect of the penalty.

Note:      See section 265-45 for rules on joint liability.

**35 After section 288-80 in Schedule 1**

Insert:

**288-85 False or misleading statements in approved forms given by trustee of self managed superannuation fund etc.**

- (1) This section applies to the trustee of:
- (a) a \*self managed superannuation fund; or
  - (b) a fund that is treated as a self managed superannuation fund under subsection 10(4) of the *Superannuation Industry (Supervision) Act 1993*.
- (2) The trustee is liable to an administrative penalty of 20 penalty units if:
- (a) the trustee gives the Commissioner or another entity a statement in an \*approved form in relation to the fund; and
  - (b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.
- (3) Subsection (4) applies if:

- (a) a trustee is liable to an administrative penalty under subsection (2); and
  - (b) the trustee is a body corporate.
- (4) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the \*tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

### **36 Application**

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), items 1, 2, 3, 4, 5, 34 and 35 of this Schedule apply on and after 1 July 2007.

## **Schedule 6—Government Co-contribution for Low Income Earners**

### ***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

#### **1 Paragraph 6(1)(b)**

Repeal the paragraph, substitute:

- (b) 10% or more of the person's total income for the income year is attributable to either or both of the following:
  - (i) the person engaging in activities covered under subsection (2);
  - (ii) the person carrying on a business (within the meaning of the *Income Tax Assessment Act 1997*); and

#### **2 Subsection 6(2)**

Repeal the subsection, substitute:

- (2) A person engages in activities covered under this subsection if:
  - (a) the person engages in any of these activities in the income year in which the person makes the contribution:
    - (i) holding an office or appointment;
    - (ii) performing functions or duties;
    - (iii) engaging in work;
    - (iv) doing acts or things; and
  - (b) the activities result in the person being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).

#### **3 Section 7**

Before "A contribution", insert "(1)".

#### **4 Subparagraph 7(b)(ii)**

Omit "person.", substitute "person; and".

#### **5 At the end of section 7**

Add:

- (c) the contribution is not any of the following:
  - (i) a roll-over superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*);
  - (ii) a superannuation lump sum that is paid from a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*);
  - (iii) a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*).

## 6 At the end of section 7

Add:

- (2) However, the contribution is an *eligible personal superannuation contribution* only to the extent that the Commissioner has not allowed the contribution as a deduction for the person.

## 7 Section 8

Before “The”, insert “(1)”.

## 8 At the end of section 8

Add:

- (2) However, the person’s *total income* for the income year is reduced by amounts (if any) for which the person is entitled to a deduction as a result of carrying on a business (within the meaning of the *Income Tax Assessment Act 1997*).
- (3) Subsection (2) does not apply for the purposes of paragraph 6(1)(b).

## 9 Application

The amendments made by this Schedule apply in relation to income years starting on or after 1 July 2007.

## **Schedule 7—Portability and unclaimed money**

### ***Retirement Savings Accounts Act 1997***

#### **1 Section 50**

Repeal the section.

### ***Superannuation (Unclaimed Money and Lost Members) Act 1999***

#### **2 Section 7**

Omit “immediately payable”.

#### **3 Paragraph 12(1)(b)**

Repeal the paragraph.

#### **4 Paragraph 12(1)(d)**

Repeal the paragraph, substitute:

- (d) after the end of a period of 5 years since the superannuation provider last had contact with the member, the provider has been unable to contact the member again after making reasonable efforts.

#### **5 Subsection 12(1) (note)**

Repeal the note.

#### **6 Subsection 13(1)**

Repeal the subsection, substitute:

- (1) A superannuation provider in relation to a fund must make reasonable efforts to contact a member of the fund if:
  - (a) paragraphs 12(1)(a) and (c) are satisfied in relation to the member; and
  - (b) 5 years have passed since the provider last had contact with the member.

Note: The heading to section 13 is amended by omitting “**to ensure that the member receives the benefit**” and substituting “**to contact the member or to ensure that a benefit is received**”.

**7 Application**

The amendments made by this Schedule apply on and after 1 July 2007.

## **Schedule 8—Social Security Act 1991**

### **Part 1—Amendments commencing 20 September 2007**

#### **1 Before paragraph 9A(1)(a)**

Insert:

- (aa) subject to subsection (1AA), the income stream's commencement day happens before 20 September 2007; and

#### **2 After subsection 9A(1A)**

Insert:

*Defined benefit income streams*

- (1AA) Paragraph (1)(aa) does not apply if the income stream is a defined benefit income stream.

#### **3 Subsection 9A(5)**

Omit “that does not meet the requirements of subsection (2)”.

#### **4 After subsection 9A(5)**

Insert:

- (5A) To avoid doubt, a determination under subsection (5) may be made in respect of an income stream regardless of the income stream's commencement day.
- (5B) A determination under subsection (5) is not a legislative instrument.

#### **5 Subsection 9B(1)**

Repeal the subsection, substitute:

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:
  - (a) the following criteria are satisfied:
    - (i) the income stream's commencement day happens before 20 September 2007;

- (ii) subsection (1A) applies; or
- (b) subsection (1B) applies.

#### **6 Subsection 9B(4)**

Omit “that does not meet the requirements of subsection (2)”.

#### **7 After subsection 9B(4)**

Insert:

- (4A) To avoid doubt, a determination under subsection (4) may be made in respect of an income stream regardless of the income stream’s commencement day.
- (4B) A determination under subsection (4) is not a legislative instrument.

#### **8 Subparagraph 9BA(1)(a)(i)**

Omit “on or after 20 September 2004”, substitute “during the period from 20 September 2004 to 19 September 2007 (both dates inclusive)”.

#### **9 Subsection 9BA(11)**

Omit “that does not meet the requirements of subsection (2)”.

#### **10 After subsection 9BA(11)**

Insert:

- (11A) To avoid doubt, a determination under subsection (11) may be made in respect of an income stream regardless of the income stream’s commencement day.
- (11B) A determination under subsection (11) is not a legislative instrument.

#### **11 Point 1064-G4 (cell at table item 1 of Table G-2, column 3)**

Repeal the cell, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

#### **12 Point 1064-G4 (cell at table item 2 of Table G-2, column 3)**

Repeal the cell, substitute:

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$$\frac{\text{Assets excess} \times 9.75}{250}$$

**13 Point 1064-G4 (cell at table item 3 of Table G-2, column 3)**

Repeal the cell, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

**14 Point 1066-G4 (formula)**

Repeal the formula, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

**15 Point 1066A-H4 (cell at table item 1 of Table H-2, column 3)**

Repeal the cell, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

**16 Point 1066A-H4 (cell at table item 2 of Table H-2, column 3)**

Repeal the cell, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

**17 Point 1066A-H4 (cell at table item 3 of Table H-2, column 3)**

Repeal the cell, substitute:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

**18 Subsection 1118(1A) (definition of *partially asset-test exempt income stream*)**

Repeal the definition, substitute:

*partially asset-test exempt income stream* means:

- (a) an asset-test exempt income stream that:
  - (i) is an income stream (other than a defined benefit income stream) covered by subsection 9A(1) or (1A), 9B(1) or 9BA(1); and
  - (ii) has a commencement day during the period from 20 September 2004 to 19 September 2007 (both dates inclusive); and
  - (iii) is not covered by principles (if any) determined for the purposes of this subparagraph, by legislative instrument, by the Secretary; or
- (b) an income stream that:
  - (i) has a commencement day happening on or after 20 September 2007; and
  - (ii) is covered by principles determined for the purposes of this subparagraph, by legislative instrument, by the Secretary.

## 19 Paragraph 1130(3)(d)

Omit "\$19.50", substitute "\$9.75".

## 20 Transitional arrangements

(1) If:

- (a) a person is not receiving a particular relevant social security payment immediately before 20 September 2007; and
- (b) the person makes a claim for the relevant social security payment during the claim period;

then the person's start day in relation to the relevant social security payment is the earlier of:

- (c) the later of:
  - (i) 20 September 2007; and
  - (ii) the day on which the relevant social security payment first becomes payable to the person; and
- (d) the day worked out in accordance with Schedule 2 to the *Social Security (Administration) Act 1999* as the start day in relation to the relevant social security payment.

(2) If:

- (a) a person is not receiving a particular relevant social security payment immediately before 20 September 2007; and
- (b) the person makes a claim for the relevant social security payment during the claim period; and
- (c) on the day on which the claim is made:
  - (i) the person is not qualified for the relevant social security payment; or
  - (ii) the payment is not payable to the person; and
- (d) the person was qualified for the relevant social security payment, and the relevant social security payment was payable to the person, during a period (the **relevant period**) that fell before that day and within the claim period;

then:

- (e) the Secretary may grant the claim; and
- (f) the person's start day in relation to the relevant social security payment is the earlier of:
  - (i) the first day of the relevant period; and
  - (ii) the day worked out in accordance with Schedule 2 to the *Social Security (Administration) Act 1999* as the start day in relation to the relevant social security payment.

(3) In this item:

**claim period** means the period commencing on 20 September 2007 and ending on 20 December 2007 (both dates inclusive).

**relevant social security payment** means one of the following social security payments:

- (a) an age pension;
- (b) a disability support pension;
- (c) a wife pension;
- (d) a carer payment;
- (e) a widow B pension;
- (f) a bereavement allowance.

## Part 2—Amendment commencing 1 July 2007

### 21 Subsection 9(1) (definition of *deductible amount*)

Repeal the definition, substitute:

*deductible amount*, in relation to a defined benefit income stream for a year, means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997* or, if applicable, section 307-125 of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the defined benefit income stream during the year.

## **Schedule 9—Veterans' Entitlements Act 1986**

### **Part 1—Amendments commencing 20 September 2007**

#### **1 Before paragraph 5JA(1)(a)**

Insert:

- (aa) subject to subsection (1AA), the income stream's commencement day happens before 20 September 2007; and

#### **2 After subsection 5JA(1A)**

Insert:

*Defined benefit income streams*

- (1AA) Paragraph (1)(aa) does not apply if the income stream is a defined benefit income stream.

#### **3 Subsection 5JA(5)**

Omit “that does not meet the requirements of subsection (2)”.

#### **4 After subsection 5JA(5)**

Insert:

- (5A) To avoid doubt, a determination under subsection (5) may be made in respect of an income stream regardless of the income stream's commencement day.
- (5B) A determination under subsection (5) is not a legislative instrument.

#### **5 Subsection 5JB(1)**

Repeal the subsection, substitute:

- (1) An income stream provided to a person is also an *asset-test exempt income stream* for the purposes of this Act if:
  - (a) the following criteria are satisfied:
    - (i) the income stream's commencement day happens before 20 September 2007;

- (ii) subsection (1A) applies; or
- (b) subsection (1B) applies.

**6 Subsection 5JB(4)**

Omit "that does not meet the requirements of subsection (2)".

**7 After subsection 5JB(4)**

Insert:

- (4A) To avoid doubt, a determination under subsection (4) may be made in respect of an income stream regardless of the income stream's commencement day.
- (4B) A determination under subsection (4) is not a legislative instrument.

**8 Subparagraph 5JBA(1)(a)(i)**

Omit "on or after 20 September 2004", substitute "during the period from 20 September 2004 to 19 September 2007 (both dates inclusive)".

**9 Subsection 5JBA(11)**

Omit "that does not meet the requirements of subsection (2)".

**10 After subsection 5JBA(11)**

Insert:

- (11A) To avoid doubt, a determination under subsection (11) may be made in respect of an income stream regardless of the income stream's commencement day.
- (11B) A determination under subsection (11) is not a legislative instrument.

**11 Subsection 52(1AA) (definition of *partially asset-test exempt income stream*)**

Repeal the definition, substitute:

*partially asset-test exempt income stream* means:

- (a) an asset-test exempt income stream that:

- (i) is an income stream (other than a defined benefit income stream) covered by subsection 5JA(1) or (1A), 5JB(1) or 5JBA(1); and
  - (ii) has a commencement day during the period from 20 September 2004 to 19 September 2007 (both dates inclusive); and
  - (iii) is not covered by principles (if any) determined for the purposes of this subparagraph, by legislative instrument, by the Commission; or
- (b) an income stream that:
- (i) has a commencement day happening on or after 20 September 2007; and
  - (ii) is covered by principles determined for the purposes of this subparagraph, by legislative instrument, by the Commission.

## **12 Subsection 52(1AB)**

Repeal the subsection, substitute:

(1AB) The Commission may determine principles for the purposes of subparagraph (a)(iii) of the definition of *partially asset-test exempt income stream* in subsection (1AA).

(1AC) The Commission may determine principles for the purposes of subparagraph (b)(ii) of the definition of *partially asset-test exempt income stream* in subsection (1AA).

## **13 Paragraph 52Z(3)(d)**

Omit "\$19.50", substitute "\$9.75".

## **14 Subpoint SCH6-F4(1) of Schedule 6 (formula)**

Repeal the formula, substitute:

$$\frac{(\text{Assets excess}) \times 9.75}{250}$$

## **15 Transitional arrangements**

- (1) If:
- (a) a person is not receiving a particular relevant payment immediately before 20 September 2007; and

- (b) the person makes a claim for the relevant payment during the claim period;

then:

- (c) if the relevant payment is an age service pension—the day on which the determination under section 36L of the *Veterans' Entitlements Act 1986* in relation to that pension takes effect is the earlier of:
  - (i) the transitional day for the person in relation to the relevant payment; and
  - (ii) the day on which the determination would take effect under section 36M of that Act, but for this item; and
- (d) if the relevant payment is an invalidity service pension—the day on which the determination under section 37L of the *Veterans' Entitlements Act 1986* in relation to that pension takes effect is the earlier of:
  - (i) the transitional day for the person in relation to the relevant payment; and
  - (ii) the day on which the determination would take effect under section 37M of that Act, but for this item; and
- (e) if the relevant payment is a partner service pension—the day on which the determination under section 38L of the *Veterans' Entitlements Act 1986* in relation to that pension takes effect is the earlier of:
  - (i) the transitional day for the person in relation to the relevant payment; and
  - (ii) the day on which the determination would take effect under section 38M of that Act, but for this item; and
- (f) if the relevant payment is income support supplement—the day on which the determination under section 45Q of the *Veterans' Entitlements Act 1986* in relation to the income support supplement takes effect is the earlier of:
  - (i) the transitional day for the person in relation to the relevant payment; and
  - (ii) the day on which the determination would take effect under section 45R of that Act, but for this item.

(2) If:

- (a) a person is not receiving a particular relevant payment immediately before 20 September 2007; and



- (b) the person makes a claim for the relevant payment during the claim period; and
- (c) on the day on which the claim is made:
  - (i) the person is not eligible to receive the relevant payment; or
  - (ii) the relevant payment is not payable to the person; and
- (d) the person was eligible to receive the relevant payment, and the relevant payment was payable to the person, during a period (the **relevant period**) that fell before that day and within the claim period;

then:

- (e) the Commission may make a determination granting the claim; and
- (f) the day on which the determination under section 36L, 37L, 38L or 45Q of the *Veterans' Entitlements Act 1986* takes effect (despite sections 36M, 37M, 38M and 45R of that Act) is the earlier of:
  - (i) the first day of the relevant period; and
  - (ii) the day on which the determination would take effect under section 36M, 37M, 38M or 45R of that Act but for this item.

(3) In this item:

**claim period** means the period commencing on 20 September 2007 and ending on 20 December 2007 (both dates inclusive).

**relevant payment** means one of the following:

- (a) a service pension;
- (b) income support supplement.

**transitional day**, for a person in relation to a relevant payment, means the day that is the later of:

- (a) 20 September 2007; and
- (b) the day on which the relevant payment first becomes payable to the person.

## Part 2—Amendment commencing 1 July 2007

### 16 Subsection 5J(1) (definition of *deductible amount*)

Repeal the definition, substitute:

*deductible amount*, in relation to a defined benefit income stream for a year, means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997* or, if applicable, section 307-125 of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the defined benefit income stream during the year.

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## Schedule 10—Definitions and related amendments

### *Income Tax Assessment Act 1997*

#### **1 Subsection 67-25(1A)**

Omit “\*non-complying ADF”, substitute “\*non-complying approved deposit fund”.

#### **2 Subsection 703-20(2) (table item 7)**

Omit “non-complying ADF or non-complying superannuation fund (as those terms are defined in section 267 of the *Income Tax Assessment Act 1936*)”, substitute “\*non-complying approved deposit fund or a \*non-complying superannuation fund”.

#### **3 Subsection 995-1(1)**

Insert:

*applicable fund earnings* has the meaning given by section 305-75.

#### **4 Subsection 995-1(1)**

Insert:

*approved deposit fund payment* has the meaning given by section 307-5.

#### **5 Subsection 995-1(1)**

Insert:

*Australian superannuation fund* has the meaning given by section 295-95.

#### **6 Subsection 995-1(1)**

Insert:

*CGT cap amount* has the meaning given by section 292-105.

#### **7 Subsection 995-1(1)**

Insert:

*complying superannuation plan* means:

- (a) a \*complying superannuation fund; or
- (b) a \*public sector superannuation scheme that is:
  - (i) a regulated superannuation fund (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*); or
  - (ii) an exempt public sector superannuation scheme (within the meaning of section 10 of that Act); or
- (c) a \*complying approved deposit fund; or
- (d) an \*RSA.

### 8 Subsection 995-1(1)

Insert:

*concessional contributions* has the meaning given by sections 292-25 and 292-165.

### 9 Subsection 995-1(1)

Insert:

*concessional contributions cap* has the meaning given by section 292-20.

### 10 Subsection 995-1(1) (definition of *constitutionally protected fund*)

Repeal the definition, substitute:

*constitutionally protected fund* means a fund that is declared by the regulations to be a constitutionally protected fund.

### 11 Subsection 995-1(1)

Insert:

*contributions segment* has the meaning given by section 307-220.

### 12 Subsection 995-1(1)

Insert:

*contributions-splitting superannuation benefit* has the meaning given by the regulations.

**13 Subsection 995-1(1)**

Insert:

*crystallised pre-July 83 amount*, in relation to a \*superannuation interest, means the amount mentioned in paragraph 307-225(2)(e) in relation to the interest.

**14 Subsection 995-1(1)**

Insert:

*crystallised segment* has the meaning given by section 307-225.

**15 Subsection 995-1(1)**

Insert:

*death benefits dependant* has the meaning given by section 302-195.

**16 Subsection 995-1(1)**

Insert:

*death benefit termination payment* has the meaning given by subsection 82-130(3).

**17 Subsection 995-1(1)**

Insert:

*defined benefit interest* has the meaning given by section 292-175.

**18 Subsection 995-1(1)**

Insert:

*departing Australia superannuation payment* has the meaning given by section 301-170.

**19 Subsection 995-1(1)**

Insert:

*disability superannuation benefit* means a \*superannuation benefit if:

- (a) the benefit is paid to a person because he or she suffers from ill-health (whether physical or mental); and
- (b) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be \*gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

**20 Subsection 995-1(1)**

Insert:

*early retirement scheme* has the meaning given by section 83-180.

**21 Subsection 995-1(1)**

Insert:

*early retirement scheme payment* has the meaning given by section 83-180.

**22 Subsection 995-1(1)**

Insert:

*element taxed in the fund* has the meaning given by section 307-275.

**23 Subsection 995-1(1)**

Insert:

*element untaxed in the fund* has the meaning given by section 307-275.

**24 Subsection 995-1(1)**

Insert:

*employment termination payment* has the meaning given by section 82-130.

**25 Subsection 995-1(1) (definition of *endowment policy*)**

Repeal the definition, substitute:

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*endowment policy* has the meaning given by section 295-480.

**26 Subsection 995-1(1)**

Insert:

*ETP cap amount* has the meaning given by section 82-160.

**27 Subsection 995-1(1)**

Insert:

*excess concessional contributions* has the meaning given by section 292-20.

**28 Subsection 995-1(1)**

Insert:

*excess concessional contributions tax* means tax imposed under the *Superannuation (Excess Concessional Contributions Tax) Act 2007*.

**29 Subsection 995-1(1)**

Insert:

*excess contributions tax* means:

- (a) \*excess concessional contributions tax; or
- (b) \*excess non-concessional contributions tax.

**30 Subsection 995-1(1)**

Insert:

*excess contributions tax assessment* has the meaning given by section 292-230.

**31 Subsection 995-1(1)**

Insert:

*excess non-concessional contributions* has the meaning given by section 292-85.

**32 Subsection 995-1(1)**

Insert:

*excess non-concessional contributions tax* means tax imposed under the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007*.

**33 Subsection 995-1(1)**

Insert:

*excess untaxed roll-over amount* has the meaning given by section 306-15.

**34 Subsection 995-1(1)**

Insert:

*family law superannuation payment* has the meaning given by section 307-5.

**35 Subsection 995-1(1) (definition of *foreign superannuation fund*)**

Repeal the definition, substitute:

*foreign superannuation fund*:

- (a) a \*superannuation fund is a *foreign superannuation fund* at a time if the fund is not an \*Australian superannuation fund at that time; and
- (b) a superannuation fund is a *foreign superannuation fund* for an income year if the fund is not an Australian superannuation fund for the income year.

**36 Subsection 995-1(1)**

Insert:

*gainfully employed* means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**37 Subsection 995-1(1)**

Insert:

*genuine redundancy payment* has the meaning given by section 83-175.

**38 Subsection 995-1(1)**

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Insert:

*invalidity segment*, of an \*employment termination payment, has the meaning given by section 82-150.

### **39 Subsection 995-1(1)**

Insert:

*last retirement day* means:

- (a) if an individual's employment or office would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be); or
- (b) in any other case—the day on which he or she would turn 65.

### **40 Subsection 995-1(1)**

Insert:

*life benefit termination payment* has the meaning given by subsection 82-130(2).

### **41 Subsection 995-1(1)**

Insert:

*long service leave employment period* has the meaning given by subsection 83-90(4).

### **42 Subsection 995-1(1)**

Insert:

*low rate cap amount* has the meaning given by section 307-345.

### **43 Subsection 995-1(1)**

Insert:

*low tax component* has the meaning given by section 295-545.

### **44 Subsection 995-1(1)**

Insert:

*non-arm's length component* has the meaning given by section 295-545.

**45 Subsection 995-1(1)**

Insert:

*non-arm's length income* has the meaning given by section 295-550.

**46 Subsection 995-1(1) (definition of *non-complying ADF*)**

Repeal the definition.

**47 Subsection 995-1(1) (definition of *non-complying approved deposit fund*)**

Repeal the definition, substitute:

*non-complying approved deposit fund* means an \*approved deposit fund that is not a \*complying approved deposit fund.

**48 Subsection 995-1(1) (definition of *non-complying superannuation fund*)**

Repeal the definition, substitute:

*non-complying superannuation fund* means a \*superannuation fund that is not a \*complying superannuation fund.

**49 Subsection 995-1(1)**

Insert:

*non-concessional contributions* has the meaning given by section 292-90.

**50 Subsection 995-1(1)**

Insert:

*non-concessional contributions cap* has the meaning given by section 292-85.

**51 Subsection 995-1(1)**

Insert:

*no-TFN contributions income* has the meaning given by section 295-610.

**52 Subsection 995-1(1)**

Insert:

*notional taxed contributions* has the meaning given by section 292-170.

**53 Subsection 995-1(1)**

Insert:

*original excess contributions tax assessment day* has the meaning given by section 292-305.

**54 Subsection 995-1(1)**

Insert:

*post-17/8/93 period* has the meaning given by subsection 83-90(3).

**55 Subsection 995-1(1)**

Insert:

*pre-16/8/78 period* has the meaning given by subsection 83-90(1).

**56 Subsection 995-1(1)**

Insert:

*pre-18/8/93 period* has the meaning given by subsection 83-90(2).

**57 Subsection 995-1(1)**

Insert:

*pre-July 83 segment*, of an \*employment termination payment, has the meaning given by section 82-155.

**58 Subsection 995-1(1)**

Insert:

*preservation age* has the meaning given by Part 6 of the Superannuation Industry (Supervision) Regulations 1994.

**59 Subsection 995-1(1)**

Insert:

*public sector superannuation scheme* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**60 Subsection 995-1(1)**

Insert:

*quoted (for superannuation purposes)* has the meaning given by section 295-615.

**61 Subsection 995-1(1)**

Insert:

*roll-over superannuation benefit* has the meaning given by section 306-10.

**62 Subsection 995-1(1)**

Insert:

*RSA component* has the meaning given by section 295-555.

**63 Subsection 995-1(1)**

Insert:

*RSA payment* has the meaning given by section 307-5.

**64 Subsection 995-1(1)**

Insert:

*segregated current pension assets* has the meaning given by section 295-385.

**65 Subsection 995-1(1)**

Insert:

*segregated non-current assets* has the meaning given by section 295-395.

**66 Subsection 995-1(1)**

Insert:

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*self managed superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**67 Subsection 995-1(1)**

Insert:

*service period* has the meaning given by section 307-400.

**68 Subsection 995-1(1)**

Insert:

*SIS dependant* means a dependant within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

**69 Subsection 995-1(1)**

Insert:

*small superannuation account* means an account within the meaning of the *Small Superannuation Accounts Act 1995*.

**70 Subsection 995-1(1)**

Insert:

*small superannuation account payment* has the meaning given by section 307-5.

**71 Subsection 995-1(1)**

Insert:

*standard component* has the meaning given by section 295-555.

**72 Subsection 995-1(1)**

Insert:

*superannuation annuity* has the meaning given by the regulations.

**73 Subsection 995-1(1)**

Insert:

*superannuation annuity payment* has the meaning given by section 307-5.

**74 Subsection 995-1(1)**

Insert:

*superannuation benefit* has the meaning given by section 307-5.

Note: Sections 307-10 and 307-15 affect the meaning of *superannuation benefit*.

**75 Subsection 995-1(1)**

Insert:

*superannuation co-contribution benefit payment* has the meaning given by section 307-5.

**76 Subsection 995-1(1)**

Insert:

*superannuation death benefit* has the meaning given by section 307-5.

**77 Subsection 995-1(1)**

Insert:

*superannuation fund for foreign residents* has the meaning given by section 118-520.

**78 Subsection 995-1(1)**

Insert:

*superannuation fund payment* has the meaning given by section 307-5.

**79 Subsection 995-1(1)**

Insert:

*superannuation guarantee payment* has the meaning given by section 307-5.

**80 Subsection 995-1(1)**

Insert:

*superannuation income stream* has the meaning given by section 307-70.

**81 Subsection 995-1(1)**

Insert:

*superannuation income stream benefit* has the meaning given by section 307-70.

**82 Subsection 995-1(1)**

Insert:

*superannuation interest* means:

- (a) an interest in a \*superannuation fund; or
- (b) an interest in an \*approved deposit fund; or
- (c) an \*RSA; or
- (d) an interest in a \*superannuation annuity.

Note: The meaning of *superannuation interest* may be affected by regulations made for the purposes of section 307-200.

**83 Subsection 995-1(1)**

Insert:

*superannuation lump sum* has the meaning given by section 307-65.

**84 Subsection 995-1(1)**

Insert:

*superannuation member benefit* has the meaning given by section 307-5.

**85 Subsection 995-1(1)**

Insert:

*superannuation plan* means:

- (a) a \*superannuation fund; or
- (b) an \*approved deposit fund; or
- (c) an \*RSA.

**86 Subsection 995-1(1)**

Insert:

*superannuation provider*, in relation to a \*superannuation plan, means:

- (a) for a \*superannuation fund—the trustee of the fund; or
- (b) for an \*approved deposit fund—the trustee of the fund; or
- (c) for an \*RSA—the \*RSA provider.

### 87 Subsection 995-1(1)

Insert:

*taxable component*:

- (a) the *taxable component* of an \*employment termination payment has the meaning given by section 82-145; and
- (b) the *taxable component* of a \*superannuation benefit has the meaning given by section 307-120; and
- (c) the *taxable component* of a \*superannuation interest has the meaning given by section 307-215.

### 88 Subsection 995-1(1)

Insert:

*tax free component*:

- (a) the *tax free component* of an \*employment termination payment has the meaning given by section 82-140; and
- (b) the *tax free component* of a \*superannuation benefit has the meaning given by section 307-120; and
- (c) the *tax free component* of a \*superannuation interest has the meaning given by section 307-210.

### 89 Subsection 995-1(1) (definition of *trustee*)

Repeal the definition, substitute:

*trustee*:

- (a) of a \*superannuation fund, an \*approved deposit fund or a \*pooled superannuation trust—means:
    - (i) if there is a trustee (within the ordinary meaning of that expression) of the fund or trust—the trustee; or
    - (ii) in any other case—the person who manages the fund or trust; and
  - (b) otherwise—has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.
-



**90 Subsection 995-1(1)**

Insert:

*unclaimed money payment* has the meaning given by section 307-5.

**91 Subsection 995-1(1)**

Insert:

*untaxed plan cap amount* has the meaning given in section 307-350.

**92 Subsection 995-1(1)**

Insert:

*unused annual leave payment* has the meaning given by section 83-10.

**93 Subsection 995-1(1)**

Insert:

*unused long service leave payment* has the meaning given by section 83-75.

**94 Subsection 995-1(1) (at the end of the definition of *value*)**

Add:

; and (d) the *value* of a \*superannuation interest has the meaning given by section 307-205.

**95 Subsection 995-1(1) (definition of *whole of life policy*)**

Repeal the definition, substitute:

*whole of life policy* has the meaning given by section 295-480.

**96 Application**

An amendment made by this Schedule applies in relation to another amendment (the *primary amendment*) made by this Act in the same way as the primary amendment applies.

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*[Minister's second reading speech made in—  
House of Representatives on 7 December 2006  
Senate on 26 February 2007]*

(208/06)

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