

# **Superannuation Contributions Tax (Assessment and Collection) Amendment Regulations 2002 (No. 1) 2002 No. 217**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2002 No. 217**

Issued by authority of the Minister for Revenue and Assistant Treasurer

*Superannuation Contributions Tax (Assessment and Collection) Act 1997*

Superannuation Contributions Tax (Assessment and Collection) Amendment Regulations 2002 (No. 1)

Section 42 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act specifies how the superannuation contributions surcharge is assessed and collected.

Recent amendments to the *Family Law Act 1975* and related legislation will in future allow superannuation to be split between couples on the breakdown of a marriage. The *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* (the amending Act) inserted a new section 10A into the Act which sets out the surcharge consequences of a superannuation interest being split.

Section 10A only applies where the split of the superannuation occurs in circumstances specified in the Regulations.

The purpose of the Regulations is to specify that the surcharge consequences of a superannuation interest being split pursuant to section 10A of the Act would apply to all types of splits envisaged under the Family Law legislation. This will be achieved by referring in the regulations to the types of splits mentioned in Division 2.2 of the Family Law (Superannuation) Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*, which received Royal Assent on 18 September 2001, and which is expected to commence in late December 2002.

## ATTACHMENT

### **Superannuation Contributions Tax (Assessment and Collection) Regulations 2002 (No. 1)**

#### **Explanation of the amendments**

**Regulation 1** - specifies the name of the Regulations as the Superannuation Contributions Tax (Assessment and Collection) Amendment Regulations 2002 (No. 1)

**Regulation 2** - provides that the Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*. That Act in turn commences at the same time as the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001* which commences on a date to be proclaimed or 18 months after Royal Assent (which would be 28 December 2002).

**Regulation 3** - provides that Schedule 1 amends the Superannuation Contributions Tax (Assessment and Collection) Regulations 1997.

#### **Schedule 1 amendments**

**Item 1 of Schedule 1** - inserts a new Regulation 20 into the Regulations.

Section 10A of the Act sets out the surcharge consequences of superannuation being split on marriage breakdown (in particular section 10A specifies who is liable to pay surcharge when a surcharge assessment is issued after a split has taken effect but in respect of a period before the split took effect). Section 10A will apply in situations where a new interest in a fund is created for the non-member spouse, or if an amount is transferred or rolled over to another fund for the non-member spouse, but only if the new interest or transfer/rollover occurs in circumstances specified in the regulations.

The intent is to refer in the regulations to all circumstances where the Family Law legislation envisaged such new interests or transfers/rollovers would occur. These circumstances are already referred to in Division 2.2 of the Family Law Regulations in the context of determining what payments are not 'splittable payments' under the *Family Law Act 1975*.

Accordingly new Regulation 20 specifies the circumstances for the purposes of section 10A by providing a cross link to the circumstances in which new interests and transfers/rollovers for the non-member spouse are relevant for the purposes of Division 2.2 of the Family Law Regulations (broadly this is where a new interest is created, or amount transferred or rolled over for the non-member spouse under the Superannuation Industry (Supervision) Regulations or Retirement Savings Account Regulations or under the governing rules of the superannuation entity).