



Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 8)¹

Select Legislative Instrument 2005 No. 334

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 15 December 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

MAL BROUGH
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 8)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and Schedule 1;
- (b) on 1 January 2006 — Schedule 2.

3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedules 1 and 2 amend the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] Subregulation 6.01 (2), definition of *eligible temporary resident visa*

substitute

eligible temporary resident visa means a visa:

- (a) of one of the subclasses mentioned in Part 1 of Schedule 1AB, within the meaning of Part 2 of Schedule 1 to the *Migration Regulations 1994*; or
- (b) that is a special purpose visa mentioned in Part 2 of Schedule 1AB, declared under subparagraph 33 (2) (b) (ii) of the *Migration Act 1958*;

that is held by a person who is not a New Zealand citizen.

Note Some of the visas mentioned in Schedule 1AB no longer exist. However, they remain relevant for regulations 6.20A, 6.20B and 6.24A.

[2] Schedule 1AB, before item 1

insert

Part 1 Visa subclasses

[3] Schedule 1AB, item 110, note

omit

[4] Schedule 1AB, after item 110

insert

Part 2 Special purpose visas

1. Special purpose visa taken to have been granted to a person declared by the Minister for Immigration and Multicultural and Indigenous Affairs under subparagraph 33 (2) (b) (ii) of the *Migration Act 1958* on 8 October 2005.

Note The Minister's declaration relates to a person on behalf of whom an application for the Melbourne 2006 Commonwealth Games accreditation has been received by the Melbourne 2006 Commonwealth Games Corporation.

General Note Some of the visas mentioned in this Schedule no longer exist. However, they remain relevant for regulations 6.20A, 6.20B and 6.24A.

Schedule 2 Amendments commencing on 1 January 2006

(regulation 3)

[1] Subregulation 1.03 (1), after definition of *allocated pension*

insert

allot, for Division 6.7, means to credit an amount from a member's account to another account in the regulated superannuation fund held by, or created for, the receiving spouse otherwise than by transfer or roll-over.

[2] Subregulation 1.03 (1), after definition of *PST*

insert

receiving spouse has the meaning given by regulation 6.46.

[3] Sub-subparagraph 3.01 (h) (ii) (B)

omit

the fund concerned.

insert

the fund concerned; or

[4] After paragraph 3.01 (h)

insert

- (i) a spouse or former spouse of a current or former standard employer-sponsored member for whom an interest has been created in the fund under Division 6.7.

[5] Subregulation 5.06 (1)

substitute

- (1) Subject to this regulation, the following benefits are taken to be minimum benefits in a regulated superannuation fund:
- (a) benefits rolled over or transferred to the regulated superannuation fund;
 - (b) benefits allotted under Division 6.7 to an interest in the regulated superannuation fund held by, or created for, a receiving spouse.

[6] Paragraph 5.08 (1) (b)

omit

member.

insert

member; or

[7] After paragraph 5.08 (1) (b)

insert

- (c) transferred, rolled over or allotted under Division 6.7.

[8] Regulation 6.15

substitute

6.15 Contributions and benefits taken to be preserved benefits

- (1) Contributions made, or benefits rolled over or transferred, to a regulated superannuation fund or an approved deposit fund are taken to be preserved benefits for the purposes of this Division unless and until the trustee is satisfied that they are not preserved benefits.

-
- (2) Benefits rolled over, transferred or allotted under Division 6.7 to an interest in a regulated superannuation fund held by, or created for, a receiving spouse are taken to be preserved benefits for the purposes of this Division.

[9] Subparagraph 6.17 (2) (a) (ii)

substitute

- (ii) by being rolled over or transferred in accordance with Division 6.4, 6.5 or 6.7; or
- (iii) by being allotted under Division 6.7; and

[10] After Division 6.6

insert

Division 6.7 Spouse contributions-splitting amounts

6.40 Interpretation

In this Division:

allocated surplus contribution amount means an amount that is allocated from a regulated superannuation fund surplus, by a trustee, to meet an employer's liability to make contributions.

applicant means a member who makes an application under subregulation 6.44 (1).

defined benefit component has the meaning given by regulation 6.31.

eligible non-resident non-complying superannuation fund has the meaning given by section 27A of the *Income Tax Assessment Act 1936*.

maximum splittable amount, in relation to a financial year, means:

- (a) for taxed splittable contributions — 85% of the amount of the taxed splittable contributions made in the financial year; and

- (b) for untaxed splittable contributions — 100% of the amount of the untaxed splittable contributions made in the financial year.

post-June 83 component, in relation to an ETP, has the meaning given by section 27A of the *Income Tax Assessment Act 1936*.

preservation age has the meaning given by regulation 6.01.

relevant financial year, in relation to an application made under:

- (a) paragraph 6.44 (1) (a), means the last financial year that ended before the date of the application; or
- (b) paragraph 6.44 (1) (b), means the financial year in which the application is made.

splittable contribution has the meaning given by regulation 6.42.

taxed splittable contribution has the meaning given by regulation 6.41.

undeducted contributions, in relation to an ETP, has the meaning given by section 27A of the *Income Tax Assessment Act 1936*.

untaxed splittable contribution has the meaning given by regulation 6.41.

6.41 Meaning of *taxed splittable contribution* and *untaxed splittable contribution*

- (1) Subject to subregulation (2), a ***taxed splittable contribution*** is:
- (a) a contribution that is a taxable contribution for section 274 of the *Income Tax Assessment Act 1936*; or
- (b) a contribution that, but for the Commonwealth's inability to tax the property of a State, would be a taxable contribution for section 274 of the *Income Tax Assessment Act 1936*; or
- (c) an allocated surplus contribution amount.
- (2) Each of the following is not a ***taxed splittable contribution***:
- (a) an amount that has been rolled over, transferred or allotted;

-
- (b) a lump sum payment from an eligible non-resident non-complying superannuation fund.
 - (3) Subject to subregulation (4), an ***untaxed splittable contribution*** is a contribution made by a fund member or by another person to a regulated superannuation fund where that contribution is not a taxable contribution under section 274 of the *Income Tax Assessment Act 1936*.
 - (4) Each of the following is not an ***untaxed splittable contribution***:
 - (a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;
 - (b) an amount that has been rolled over, transferred or allotted;
 - (c) a lump sum payment from an eligible non-resident non-complying superannuation fund.

6.42 Meaning of *splittable contribution*

- (1) Subject to subregulation (2), a ***splittable contribution*** is:
 - (a) a contribution to a regulated superannuation fund on or after 1 January 2006; or
 - (b) an allocated surplus contribution amount that is allocated on or after 1 January 2006.
- (2) Each of the following, received for a member of a regulated superannuation fund, is not a ***splittable contribution***:
 - (a) an amount that has been rolled over or transferred;
 - (b) an amount allotted under this Division;
 - (c) a lump sum payment from an eligible non-resident non-complying superannuation fund;
 - (d) an amount or payment mentioned in paragraph (a) or (jaa) of the definition of ***eligible termination payment*** in subsection 27A (1) of the *Income Tax Assessment Act 1936*.

6.43 Application of Division 6.7

- (1) This Division applies to:
 - (a) an accumulation interest; and
 - (b) a defined benefit interest that is not a defined benefit component.
- (2) This Division does not apply to an interest:
 - (a) that is subject to a payment split; or
 - (b) on which a payment flag (within the meaning of Part VIIIIB of the *Family Law Act 1975*) is operating.

6.44 Application to roll over, transfer or allot an amount of contributions

- (1) A member of a regulated superannuation fund may, in a financial year, apply to the trustee of the fund to roll over, transfer or allot an amount of benefits, for the benefit of the member's spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the member in:
 - (a) the last financial year that ended before the application; or
 - (b) the financial year in which the application is made — where the member's entire benefit is to be rolled over or transferred in that year.

Note This arrangement applies at the request of the member, and is not an arrangement by which the member's superannuation interest is subject to a payment split under Part VIIIIB of the *Family Law Act 1975*. Part 7A of these Regulations deals with those payment splitting arrangements.

- (2) However, the application is taken to be invalid:
 - (a) if in the financial year in which it is made:
 - (i) the member has already made an application in respect of a relevant financial year; and
 - (ii) the trustee:
 - (A) is considering the application; or
 - (B) has given effect to that application; or
 - (b) if the amount of benefits to which the application relates exceeds the maximum splittable amount; or

- (c) subject to subregulation (3), if:
- (i) the member's spouse is aged 65 years or more; or
 - (ii) both:
 - (A) the member's spouse is aged between the relevant preservation age and 65 years; and
 - (B) the member's spouse satisfies item 101 conditions of release, set out in Schedule 1, at the time of application.
- (3) Despite paragraph (2) (c), an application is not taken to be invalid under that paragraph if the application includes a statement by the member's spouse to the effect that the spouse:
- (a) is aged less than the relevant preservation age; and
 - (b) both:
 - (i) is aged between the relevant preservation age and 65 years; and
 - (ii) does not satisfy item 101 conditions of release, set out in Schedule 1.
- (4) The applicant must specify, in the application, the amount of the benefit from the following:
- (a) the member's taxed splittable contributions;
 - (b) the member's untaxed splittable contributions;
- that the member seeks to split for the benefit of the member's spouse.

Note An amount rolled over, transferred or allotted under this Division is a contributions-splitting amount (within the meaning of the *Income Tax Assessment Act 1936*)— see the definition of **contributions-splitting ETP** in subsection 27A (1) of that Act and regulation 98B of the *Income Tax Regulations 1936*.

6.45 Decision on application

- (1) A trustee may accept an application made under subregulation 6.44 (1) if all of the following conditions are satisfied:
- (a) the application complies with regulation 6.44;
 - (b) the trustee has no reason to believe that the statement mentioned in subregulation 6.44 (3) is untrue;

- (c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.

Note A superannuation fund trustee may voluntarily provide a service that allows a member to rollover, transfer or allot an amount to the applicant's spouse (a *splittable contribution*). The fund is not required to offer the service.

- (2) A trustee that accepts an application in accordance with subregulation (1) must as soon as practicable, and in any case within 90 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- (3) If the application requests a split of untaxed splittable contributions the trustee can only give effect to the application where the amount specified in the application is less than or equal to the undeducted contributions that would form part of the ETP that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.
- (4) If the application requests a split of taxed splittable contributions the trustee can only give effect to the application where the amount specified in the application is less than or equal to the taxed element of the post-June 83 component that would form part of the ETP that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.

6.46 Receiving spouse

For this Part, if a trustee accepts an application made under subregulation 6.44 (1), the applicant's spouse is a *receiving spouse*.

Note

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