

## **EXPLANATORY STATEMENT**

### **SELECT LEGISLATIVE INSTRUMENT NO. 17, 2015**

#### **Issued by authority of the Assistant Treasurer**

*Income Tax Assessment Act 1997*

*Income Tax Assessment Amendment (Governor-General Pension Scheme)  
Regulation 2015*

Subsection 909-1(1) of the *Income Tax Assessment Act 1997* (the ITAA 1997) provides that the Governor-General may make regulations prescribing matters required or permitted by the ITAA 1997 to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ITAA 1997.

Division 293 tax applies to high income earners, broadly those whose income and concessional tax superannuation contributions exceed \$300,000 in an income year. Individuals are liable to pay the tax, imposed at 15 per cent, on certain superannuation contributions that exceed the \$300,000 threshold. The tax is designed to ensure that the tax concession received by these individuals on superannuation contributions is more closely aligned with the concession received by average income earners.

An individual's concessional tax superannuation contributions include notional contributions in respect of any defined benefit interests the individual has (defined benefit contributions).

The *Income Tax Assessment Regulations 1997* (ITAR) provide a mechanism for estimating an individual's defined benefit contributions as the amount of employer contributions that would be made if contributions to fund the employer provided resignation and retirement benefits were made annually at a flat rate of salary.

The formulae and valuation parameters for this calculation are based on spreading the cost of retirement and resignation benefits over the lesser of the assumed period of service, or the period until maximum benefits have accrued to the individual. This would typically be a period of many years, reflecting how the entitlement to defined benefits usually accrues.

The holder of the Office of the Governor-General is entitled to retirement benefits from a defined benefit interest, for which defined benefit contributions should be calculated for the purposes of Division 293 tax.

Under the current law, the calculation cannot be performed for a person holding the Office of Governor-General because the defined retirement benefit accrues to the holder of that Office – in full – immediately upon appointment, not over a period of time.

The purpose of the *Income Tax Assessment Amendment (Governor-General Pension Scheme) Regulation 2015* (Regulation) is to amend the ITAR so that defined benefit

contributions can be calculated for holders of the Office of Governor-General who are liable for Division 293 tax.

Details of the Regulation are set out in the Attachment.

The ITAA 1997 specifies no conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation commences on the day after registration. The amendments it makes apply in relation to the 2013-14 financial year and later financial years. This retrospective date of effect is specifically permitted by subsection 293-115(6) of the ITAA 1997. The retrospective date of effect ensures that there is a method provided for determining defined benefit contributions for the 2013-14 financial year.

No public consultation was undertaken because the Regulation corrects a technical defect in the law that only affects holders of the Office of Governor-General.

## ATTACHMENT

### Details of the *Income Tax Assessment Amendment (Governor-General Pension Scheme) Regulation 2015*

#### Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Income Tax Assessment Amendment (Governor-General Pension Scheme) Regulation 2015* (Regulation).

#### Section 2 – Commencement

This section provides that the Regulation commences on the day after registration.

#### Section 3 – Authority

This section provides that the Regulation is made under the *Income Tax Assessment Act 1997*.

#### Section 4 – Schedules

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

#### Schedule 1- Amendments

Division 293 tax applies to high income earners, broadly those whose income and concessional superannuation contributions exceed \$300,000 in an income year. Individuals are liable to pay the tax, imposed at 15 per cent, on certain superannuation contributions that exceed the \$300,000 threshold. The tax is designed to ensure that the tax concession received by these individuals on superannuation contributions is more closely aligned with the concession received by average income earners.

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The formulae and valuation parameters for this calculation are based on spreading the cost of retirement and resignation benefits over the lesser of the assumed period of service, or the period until maximum benefits have accrued to the individual. This would typically be a period of many years, reflecting how the entitlement to defined benefits usually accrues.

The holder of the Office of the Governor-General is entitled to retirement benefits from a defined benefit interest, for which defined benefit contributions should be calculated for the purposes of Division 293 tax.

Under the current law, the calculation cannot be performed for person holding the Office of Governor-General because the defined retirement benefit accrues to the holder of that Office – in full – immediately upon appointment, not over a period of time.

The Regulation amends a number of valuation parameters for estimating the cost of providing the benefits of the interest a holder of the Office of Governor-General has so that defined benefit contributions can be calculated.

Item 3 of Schedule 1 to the Regulation defines the Governor-General Pension Scheme as being constituted by the allowances payable under section 4 of the *Governor-General Act 1974* (GG Act). The allowances are payable to individuals that cease to hold Office as Governor-General or to surviving spouses of such individuals.

Clause 6 of Schedule 1AA to the ITAR provides that if the rules of the defined benefit fund provide for a maximum benefit, the cost of providing benefits is to be calculated assuming the benefits are funded over the period to when the maximum benefits are accrued.

Item 4 of Schedule 1 to the Regulation amends this clause so that the maximum benefit payable to the Governor-General is assumed to accrue over the period starting on the day of appointment and ending at the end of the financial year of appointment.

The definition of non-accruing member in subregulation 293-115.05(2) is also amended by item 1 of Schedule 1 to the Regulation to include a member of the Governor-General Pension Scheme for financial years after the year of appointment.

Clause 15 of Schedule 1AA to the ITAR provides assumptions about age for categories of members that apply when calculating the cost of providing benefits. Under the existing law, defined benefit contributions are calculated for groups of individuals in similar circumstances (benefit categories). The Australian Government Actuary has advised that due to the unique circumstances that apply to each new Governor-General appointment which would have a significant impact on the appropriate new entrant rate for each new appointment, a separate benefit category should be established for each Governor-General appointed.

Item 5 of Schedule 1 to the Regulation amends this clause so that the assumed new entrant age for a benefit category covering a member of the Governor-General Pension Scheme is the age specified in the GG Act, or, if the GG Act does not specify an age, the person's age when she or she commences his or her appointment as Governor-General.

Clause 16 of Schedule 1AA to the ITAR provides assumptions about the rates of voluntary exit from the fund to be used in calculating the value of benefits.

Item 6 of Schedule 1 to the Regulation amends this clause so that the voluntary exit rates for members of the Governor-General Pension Scheme are the voluntary exit rates specified in the GG Act, or, if the GG Act does not specify exit rates, a rate of zero between the age at the date of appointment and the age on the fourth anniversary of the appointment day and a rate of one after that. Effectively, this default arrangement assumes that the Governor-General is anticipated to serve a term of five years, which historically has been typically the case. The reference to the GG Act allows for appropriate exit rates to be specified where the expected term in office is not five years.

These amendments apply in relation to the 2013-14 financial year and later financial years. This retrospective date of effect is specifically permitted by subsection 293-115(6) of the ITAA 1997. The retrospective date of effect ensures that there is a method provided for determining defined benefit contributions for the 2013-14 financial year.

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Income Tax Assessment Amendment (Governor-General Pension Scheme) Regulation 2015***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Division 293 tax applies to high income earners, broadly those whose income and concessional tax superannuation contributions exceed \$300,000 in an income year. Individuals are liable to pay the tax, imposed at 15 per cent, on certain superannuation contributions that exceed the \$300,000 threshold. The tax is designed to ensure that the tax concession received by these individuals on superannuation contributions is more closely aligned with the concession received by average income earners.

An individual's concessional tax superannuation contributions include notional contributions in respect of any defined benefit interests the individual has (defined benefit contributions).

The Regulation will make amendments to the Regulations so that defined benefit contributions can be calculated for holders of the Office of Governor-General who are liable for Division 293 tax.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

## **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.