

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security Act 1991

Social Security (Deeming Threshold Rates) Determination 2019

Purpose

The *Social Security Act 1991* (the Act) prescribes rules for calculating income from financial investments. These rules are generally known as deeming rules. Under these rules the value of a person's financial assets are added together and income is deemed on these assets using a 'below threshold rate' and an 'above threshold rate'. From 1 July 2019, the first:

- \$51,800 of a single person's financial assets
- \$86,200 of a pensioner couple's combined financial assets
- \$43,100 of each member of a couple who is a social security allowance recipient's financial assets

is deemed to earn the below threshold rate, and the balance over this amount is deemed to earn the above threshold rate. These thresholds are indexed to the Consumer Price Index, and increase on 1 July each year.

Background

Under section 1082 of the Act, the below threshold and above threshold rates for the purposes of Division 1B of Part 3.10 of the Act are determined, by legislative instrument, by the Minister.

Deeming rates are subject to continuing review to ensure they reflect the returns available in the market to people for their financial investments.

The principles that are considered when reviewing the deeming rates include:

- deeming should be a simple and fair way to assess income from financial investments, so that people with the same amount held in different financial assets receive a similar assessment;
- deeming should reduce the extent to which income support payments fluctuate; and
- deeming should simplify investment choice to encourage people to choose investments on their merits.

When setting the deeming rates, a wide range of investment indicators are taken into account, including, but not limited to:

- returns on safe, accessible investments such as transaction accounts, savings accounts, bonus savings accounts and short-term term deposits
- returns on longer-term investments, such as long-term term deposits
- dividend yields from shares
- returns on superannuation.

Based on these factors, it is considered appropriate to reduce the below threshold rate to 1.00 per cent and the above threshold rate to 3.00 per cent, from 1 July 2019.

The *Social Security (Deeming Threshold Rates) Determination 2019* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The Determination commences on 1 July 2019.

Retrospective commencement of the Determination means the reduced below threshold and above threshold rates for the purposes of Division 1B of Part 3.10 of the Act will apply to income from financial investments from 1 July 2019. As a result, any increase that may apply to the rate at which individuals receive social security and veterans' affairs pensions and allowances will apply from this date. Since there will be no decrease to the rate of a person's pension or allowance as a result of the new rates, the change will not have a disadvantageous effect on the rights of a person as at 1 July 2019. The rate changes will not impose liabilities on people with relevant financial investments.

Consistent with subsection 12(4) of the *Legislation Act 2003*, the Act does not contain any provision contrary to retrospective commencement of the Determination.

Consultation

Consultation for this Determination is not necessary. The Determination is of a machinery nature. Existing arrangements are not substantially altered; the Determination does not change the operation of the deeming provisions. Rather, deeming rates are being changed, informed by returns available in the market for financial investments.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation confirmed that a Regulation Impact Statement is not required for the Determination because the Determination is not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or effect on competition (OBPR ID 25319).

Explanation of the provisions

Section 1 sets out the name of the Determination.

Section 2 provides that the Determination commences on 1 July 2019.

Section 3 provides that the Determination is made under section 1082 of the Act.

Section 4 provides that 'Act' means the *Social Security Act 1991*.

Section 5 provides that the following instruments are revoked on the commencement of the Determination:

- *Social Security (Deeming Threshold Rates) (DEEWR) Determination 2013 (No.1)*
- *Social Security (Deeming Threshold Rates) (DIISRTE) Determination 2013*
- *Social Security (Deeming Threshold Rates) Determination 2015 (No.1)*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Social Security (Deeming Threshold Rates) (DEEWR) Determination 2013* and *Social Security (Deeming Threshold Rates) (DIISRTE) Determination 2013* are no longer required as the relevant provisions of the social security law now fall solely within the responsibility of the Minister for Families and Social Services. The Determination will replace the *Social Security (Deeming Threshold Rates) Determination 2015 (No.1)*.

Section 6 sets out the below threshold rate of 1.00 per cent.

Section 7 sets out the above threshold rate of 3.00 per cent.

Schedule 1

Schedule 1, item 1 repeals the *Social Security (Deeming Threshold Rates) (DEEWR) Determination 2013 (No.1)*.

Schedule 1, item 2 repeals the *Social Security (Deeming Threshold Rates) (DIISRTE) Determination 2013*.

Schedule 1, item 3 repeals the *Social Security (Deeming Threshold Rates) Determination 2015 (No.1)*.

Statement of Compatibility with Human Rights

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

Social Security (Deeming Threshold Rates) Determination 2019

The Determination 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

The Determination will have the effect of changing the deeming rates from 1.75 per cent and 3.25 per cent for the below and above threshold deeming rates respectively, to 1.00 and 3.00 per cent. The deeming rates are used to assess income from financial investments for social security and veterans' affairs pension/allowance purposes. From 1 July 2019, the first:

- \$51,800 of a single person's financial assets
- \$86,200 of a pensioner couple's combined financial assets
- \$43,100 of each member of a couple who is a social security allowance recipient's financial assets

is deemed to earn the below threshold rate, and the balance over this amount is deemed to earn the above threshold rate. These thresholds are indexed to the Consumer Price Index, and increase on 1 July each year.

The deeming rates assume that financial investments are earning a certain rate of income, regardless of the amount of income they are actually earning. If a person earns more than these rates, the extra income is not assessed.

Deeming rates are subject to continuing review to ensure they are set to reflect the returns available in the market to people for their financial investments.

The principles that are considered when reviewing the deeming rates include:

- deeming should be a simple and fair way to assess income from financial investments, so that people with the same amount held in different financial assets receive a similar assessment;
- deeming should reduce the extent to which income support payments fluctuate; and
- deeming should simplify investment choice to encourage people to choose investments on their merits.

When setting the deeming rates, a wide range of investment indicators are taken into account, including, but not limited to:

- returns on safe, accessible investments such as transaction accounts, savings accounts, bonus savings accounts and short-term term deposits
- returns on longer-term investments, such as long-term term deposits
- dividend yields from shares
- returns on superannuation.

As a result of the reduction in the below and above threshold deeming rates the Determination may increase the rate at which individuals receive social security and veterans' affairs pensions and allowances.

Human rights implications

The Instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education.

The Instrument has been created to ensure fair and equitable means test outcomes for recipients of income support who hold financial assets.

These changes are made to ensure that the income testing of social security payments operates consistently and fairly as financial market conditions change. Where returns from financial products are high, the deeming rate is set higher to ensure that social security recipients who hold financial products have more income assessed for the relevant income test. Conversely, when returns are low, the deeming rate is set lower to enable less income to be counted for the assessment of recipients' income support payments.

By ensuring that the income assessed from financial assets held by income support recipients reflects the income that can be reasonably achieved by recipients, the Instrument promotes an accurate and fair assessment under the social security means test. This supports the aims of the social security system in appropriately recognising an individual's capacity for self-support when determining their rate of income support. It also supports the social security system to remain sustainable for future generations.

Deeming is merely an assessment methodology and, as such, its application does not change the core parameters of the relevant income test, which include the income free threshold and taper rates.

Conclusion

The Determination is compatible with human rights.

The Hon Anne Ruston MP, Minister for Families and Social Services