

EXPLANATORY STATEMENT

Social Security Act 1991 *Social Security (Deeming Threshold Rates) Determination 2020*

Purpose

Section 1082 of the *Social Security Act 1991* (the Act) allows the Minister for Families and Social Services to determine, by legislative instrument, the below threshold and above threshold rate for the purpose of calculating income from financial assets under the Act.

The effect of the *Social Security (Deeming Threshold Rates) Determination 2020* (this instrument) is to determine the below threshold rate as 0.25 per cent, and the above threshold rate as 2.25 per cent, for the purpose of calculating income from financial assets under Division 1B of Part 3.10 of the Act.

Background

The Act prescribes rules for calculating income from financial investments. These rules are generally known as the 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'. Since 1 July 2019, the first:

- \$51,800 of a single recipient's financial assets;
- \$86,200 of a pensioner couple's combined financial assets; and
- \$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.

Deeming rates are subject to continuing review to ensure they reflect reasonably available market returns. 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 and the current financial climate, it is considered appropriate to reduce the below threshold rate to 0.25 per cent and the above threshold rate to 2.25 per cent, effective from 1 May 2020.

The *Social Security (Deeming Threshold Rates) Determination 2019* (the 2019 instrument) is repealed and replaced by this instrument.

Authority

This instrument is made under section 1082 of the Act.

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 is 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

Commencement

This instrument commences on 1 May 2020.

Consultation

The Prime Minister of Australia publicly announced changes to deeming rates on 22 March 2020.

Consultation for this instrument is not necessary. This instrument is of a machinery nature and is beneficial to the public. Existing arrangements are not substantially altered and this instrument does not change the operation of the deeming provisions. Rather, deeming rates are being reduced in response to the first coronavirus economic response package announced by the Australian Government.

Regulation Impact Statement (RIS)

This instrument does not require a Regulatory Impact Statement (OBPR Reference ID: 26409).

Explanation of the provisions

Section 1 provides that the name of this instrument is the *Social Security (Deeming Threshold Rates) Determination 2020*.

Section 2 provides that this instrument commences on 1 May 2020.

Section 3 provides that the authority for making this instrument is section 1082 of the Act.

Section 4 contains definitions of certain terms used in this instrument.

Act is defined to mean the *Social Security Act 1991*.

Section 5 in conjunction with **Schedule 1** operates to repeal the whole of the 2019 instrument.

Section 6 states that for subsection 1082(1) of the Act, the below threshold rate for Division 1B of Part 3.10 of the Act is 0.25 per cent.

Section 7 states that for subsection 1082(2) of the Act, the above threshold rate for Division 1B of Part 3.10 of the Act is 2.25 per cent.

Senator the Hon Anne Ruston, Minister for Families and Social Services

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 2020

The *Social Security (Deeming Threshold Rates) Determination 2020* (this 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

This instrument will have the effect of changing the deeming rates from 1 per cent and 3 per cent for the below and above threshold deeming rates respectively, to 0.25 per cent and 2.25 per cent. The deeming rates are used to assess income from financial investments for social security and Veterans' Affairs pension/allowance purposes. From 1 May 2020, the first:

- \$51,800 of a single recipient'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 at the below threshold rate, and the balance over this amount is deemed at the above threshold rate. These thresholds are indexed in line with the Consumer Price Index 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. 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, this instrument may increase the rate at which individuals receive social security and veterans' affairs pensions and allowances.

Human rights implications

This 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 level of benefit to all individuals and families that enables them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education.

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

These changes ensure that the income testing of social security payments operates consistently and fairly as financial market conditions change. Where returns are low, the deeming rates are set lower to reflect that income support recipients are earning less from their financial investments and therefore less income should be assessment under the income test. Conversely, where returns from financial investments are high, the deeming rates are generally set higher to reflect that social security recipients' financial investments are earning higher returns, and as such, more income should be assessment under the income test.

By ensuring that income assessed from financial assets held by income support recipients reflects income that can be reasonably achieved by recipients, this instrument enables a simple and fair assessment of financial investment income under the social security means test. This supports the aims of the social security system in appropriately recognising an individuals' 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 an assessment methodology and, as such, its application does not change the core parameters of the relevant income test, which include the income test free threshold and taper rates.

This instrument works to the effect that pensioners will receive increased social security payments. No pensioner is disadvantaged by this instrument.

Conclusion

This instrument is compatible with human rights.

Senator the Hon Anne Ruston, Minister for Families and Social Services