EXPLANATORY STATEMENT

Issued by the authority of the Branch Manager, Older Australians Branch, Delegate of the Secretary of the Department of Social Services

Social Security Act 1991

Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Amendment (Minimum Amount) Principles 2021

Purpose

This instrument amends the Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017 (the Principles) to extend by a further year the halving of the minimum draw-down rate to allow the income stream to remain asset-test exempt, due to the continuing economic impact of the coronavirus known as COVID-19.

Background

A market-linked income stream that meets the requirements of section 9BA of the *Social Security Act 1991* (the Act) is an “asset-test exempt income stream” for the purposes of the social security law.

To meet the definition of an “asset-test exempt income stream” in section 9BA of the Act, an income stream must pay an amount of income each year that is within a range of the amount worked out by the formula in subsection 9BA(5), and have commenced between 20 September 2004 and 19 September 2007 (both dates inclusive).

New market-linked income streams commenced on or after 20 September 2007 are not asset-test exempt income streams for the purposes of the social security law.

Subsection 9BA(5) of the Act allows the Secretary to determine, by legislative instrument, principles for working out the payment factor for an income stream for a financial year to maintain the asset-test exemption. The payment factors in the Principles are designed to ensure that people draw down an increasing proportion of the income stream each year so that the income stream is exhausted at the end of its fixed term. This is consistent with other types of superannuation products, where the minimum drawdown amount increases over time.

Subsection 9BA(5) of the Act states the general rule for the total amount payable under the income stream in each financial year and provides the formula for working out the amount. The subsection also specifies that the payments made under the income stream must be between a minimum 90 per cent and a maximum 110 per cent of the amount worked out under the formula using these payment factors.

The payment factors in the table in the Principles are the same as those in Schedule 6 to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), and are used as the denominator in the same formula at subsection 9BA(5) of the Act and at clause 1 of Schedule 6 to the SIS Regulations.

In 2020, amendments to the Principles to halve the minimum drawdown amount were made to ensure consistency with the amendments to the SIS Regulations and the *Retirement Savings Accounts Regulations 1997* made by Schedule 10 to the *Coronavirus Economic Response Package Omnibus Act 2020* . These amendments reduced the minimum payment amounts that apply to account-based annuities and pensions, allocated annuities and pensions, and market linked annuities and pensions for the 2019-20 and 2020-21 financial years by half. These measures were part of the Government's commitment to provide financial assistance to those who are financially affected by the COVID-19 health crisis.

The Principles provide that for the financial years commencing on 1 July 2019 and 1 July 2020, the payment factor for working out the minimum amount payable in that financial year for an income stream under subsection 9BA(5) of the Act is to be double the relevant payment factor specified in the table at section 4 of the Principles. This instrument will continue this approach for the financial year commencing on 1 July 2021. The payment factors for working out the maximum amount payable in that financial year for an income stream under subsection 9BA(5) of the Act remain unchanged.

Doubling the payment factor to be applied for working out the minimum drawdown amount effectively halves the minimum drawdown required from an income stream in order to maintain asset-test exempt status for the relevant financial years. The effect is to halve the minimum drawdown, reducing it from 90 per cent to 45 per cent of the amount that would otherwise have been calculated under the formula if new subsection 4(1A) of the Principles had not been inserted.

These changes provide additional flexibility to superannuants but do not require them to reduce the amount they draw down from these income streams unless they choose to do so.

Commencement

The instrument commences on the day after it is registered.

Subsection 33(3) of the Acts Interpretation Act 1901 provides 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.

Consultation

The department has consulted with the Treasury and the Department of Veterans' Affairs. These stakeholders support the proposed changes introduced by the Instrument. The reduction in the minimum drawdown by half is optional for individuals who hold these products, and is entirely beneficial to those individuals.

Regulation Impact Statement (RIS)

The Instrument does not require a Regulatory Impact Statement. The Instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. (OBPR reference ID: 44156)

Explanation of the provisions

Section 1 provides how the instrument is to be cited, that is, as the Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Amendment (Minimum Amount) Principles 2021.

Section 2 provides for the commencement of the instrument, which will occur the day after the instrument is registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under subsection 9BA(5) of the *Social Security Act 1991*.

Section 4 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 to the instrument contains the amendment to the Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Principles 2017.

Item 1 omits the reference in subsection 4(1A) of the Principles to "1 July 2020", and substitutes the words "1 July 2020 or 1 July 2021". This extends the halving of the required draw-down on the income stream to include the 2021-22 financial year.

Statement of Compatibility with Human Rights

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

Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Amendment (Minimum Amount) Principles 2021

The 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

The *Social Security (Asset-test Exempt Income Stream (Market-linked) – Payment Factors) Amendment (Minimum Amount) Principles 2021* will have the effect of halving the minimum drawdown amount from market-linked income streams that is assessable for social security purposes.

A market-linked income stream that meets the requirements of section 9BA of the *Social Security Act 1991* (Act) is an “asset-test exempt income stream” for the purposes of the social security law. To meet the definition of an “asset-test exempt income stream” under section 9BA of the Act, an income stream must pay an amount of income each year that is within a range of the amount worked out by the formula in subsection 9BA(5).

Subsection 9BA(5) of the Act states the general rule for the total amount payable under the income stream in each financial year and provides that the payments made under the income stream must be between a minimum 90 per cent and a maximum 110 per cent of the amount worked out under the subsection.

The payment factors in the table in the Payment Factors Principles are the same as those in Schedule 6 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), and are used as the denominator in the same formula at subsection 9BA(5) of the Act and at clause 1 of Schedule 6 of the SIS Regulations.

The amendments to the Payment Factors Principles are being made to ensure consistency with the amendments made by the *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021,* reducing the minimum payment amounts that apply to account-based annuities and pensions, allocated annuities and pensions, and market linked annuities and pensions for the 2021-22 financial year by half. This measure extends to 30 June 2022 the Government’s response to the coronavirus pandemic made for the financial years 2019-20 and 2020-21.

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 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 market-linked income streams. The changes assist pension and annuity account balance holders manage capital losses associated with the economic downturn that has resulted from the Coronavirus health crisis by giving retirees greater flexibility on the amount they draw down from their market-linked income streams.

Conclusion

The Instrument is compatible with Australia’s human rights because it provides additional flexibility for retirees managing their market-linked investments in an economic environment that continues to be affected by COVID-19.

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