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# Self Managed Superannuation Funds Determination

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Self Managed Superannuation Funds: does a payment made as a result of a commutation of an account based pension count towards the minimum annual amount required to be paid under paragraph 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994*?

## Preamble

This publication represents the Commissioner's view about the way in which provisions of the *Superannuation Industry (Supervision) Act 1993*, or regulations under that Act, apply to superannuation funds that the Commissioner regulates: principally self managed superannuation funds.

Self Managed Superannuation Funds Determinations (whether draft or final) are not legally binding on the Commissioner. However, if the Commissioner later takes the view that the law applies less favourably to you than this determination indicates, the fact that you acted in accordance with this determination would be a relevant factor in your favour in the Commissioner's exercise of any discretion as to what action to take in response to a breach of that law. The Commissioner may, having regard to all the circumstances, decide that it is appropriate to take no action in response to the breach.

## Ruling

1. A payment made as a result of a partial commutation of an account based pension<sup>1</sup> (other than a transition to retirement income stream<sup>2</sup>) counts towards the minimum annual amount required to be paid under paragraph 1.06(9A)(a) in the *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994), unless the payment is rolled over within the superannuation system on or after 6 June 2009. An amount rolled over before 6 June 2009 may also count towards the minimum annual amount required to be paid under that paragraph.

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<sup>1</sup> See paragraph 10 of this Determination.

<sup>2</sup> As defined in paragraph (b) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SISR 1994.

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2. A payment made as a result of a full commutation cannot count as the account based pension ceases before the payment is made.<sup>3</sup>

## **Funds to which this Determination applies**

3. This Determination applies to Self Managed Superannuation Funds<sup>4</sup> (SMSFs) and former SMSFs.<sup>5</sup> References in the Determination to SMSFs include former SMSFs unless otherwise indicated.

## **Date of effect**

4. This Determination applies from 1 July 2007.

5. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination.

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**Commissioner of Taxation**

31 July 2013

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<sup>3</sup> This is consistent with the view in Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases*. The Ruling explains (at paragraph 23 to 26) that a superannuation income stream that is an account based pension ceases when a valid request for a full commutation takes effect and therefore ceases before the lump sum payment is made.

<sup>4</sup> As defined in section 17A of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993).

<sup>5</sup> A former SMSF is a fund that has ceased being a SMSF and has not appointed a registrable superannuation entity (RSE) licensee as trustee: see subsection 10(4) of the SISA 1993.

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## Appendix 1 – Examples

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❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached.***

### **Example 1 – payment made upon partial commutation of an account based pension**

6. Daisy, who is a member of the Mallard SMSF, is receiving an account based pension.
7. On 1 January 2011 Daisy contacts the other trustees of the Mallard SMSF and requests, in accordance with the governing rules of the fund, to partially commute her account based pension. The partial commutation payment is \$10,000 and is paid to Daisy on 31 January 2011.
8. As Daisy's pension did not cease as a result of the partial commutation and she did not roll over the partial commutation payment, the \$10,000 paid on 31 January 2011 counts towards the minimum annual amount required to be paid in a year under paragraph 1.06(9A)(a) of the SISR 1994.
9. Daisy's partial commutation payment counts whether it is paid in cash or *in specie*.

## Appendix 2 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached.*

### Background

10. This Determination applies to a pension that satisfies subregulation 1.06(1) and paragraph 1.06(9A)(a) of the SISR 1994. A product that satisfies these provisions is referred to as an 'account based pension'.<sup>6</sup> Although not discussed in this Determination regulation 1.07D of the SISR 1994 also sets out requirements that must be met to commute an account based pension.

11. This Determination does not apply to an account based pension that is a 'transition to retirement income stream' (as defined in paragraph (b) of the definition of transition to retirement income stream in subregulation 6.01(2) of the SISR 1994).

### Explanation

12. Subregulation 1.06(9A) of the SISR 1994 requires that the payment of an account based pension must occur at least annually. Paragraph 1.06(9A)(a) requires that the total amount paid in any year must meet a minimum amount as calculated under clause 1 of Schedule 7 to the SISR 1994.

### Partial commutation

13. Consistent with the view set out in Taxation Ruling TR 2013/5<sup>7</sup> a partial commutation occurs when a member in receipt of a pension consciously exercises their right to exchange something less than their full entitlement to receive future pension payments for an entitlement to be paid a lump sum. As there is still an obligation to continue to pay pension benefits, a partial commutation does not result in the cessation of the pension.

14. The requirement in paragraph 1.06(9A)(a) of the SISR 1994 refers to the total of payments in any year (including under a payment split) but, since 6 June 2009, excluding amounts rolled over.

15. As the pension has not ceased, and the requirement in paragraph 1.06(9A)(a) of the SISR 1994 does not exclude payments made by way of commutation, a partial commutation payment counts towards the minimum annual amount, unless the partial commutation payment is rolled over within the superannuation system on or after 6 June 2009. Further, the partial commutation payment is a lump sum for the purposes of the SISR 1994 and counts regardless of whether the payment is made in cash or *in specie*.<sup>8</sup>

<sup>6</sup> Taxation Ruling TR 2013/5 explains further about account based pensions.

<sup>7</sup> See paragraphs 27 and 28; 103 to 114; and 119 and 120 of the Taxation Ruling.

<sup>8</sup> The definition of 'lump sum' in subregulation 6.01(2) of the SISR 1994 includes an 'asset' for the purposes of the payment standards in Part 6 of the SISR 1994. Thus a partial commutation payment can be paid *in specie*.

### ***Full commutation***

16. Consistent with the views set out in Taxation Ruling TR 2013/5<sup>9</sup> a full commutation takes effect as soon as the trustee's liability to pay periodic pension payments to a member is substituted in full with a liability to pay the member a lump sum instead. The account based pension therefore ceases at this time.

17. As the payment of the commutation lump sum is made after the cessation of the account based pension it cannot count towards the minimum annual payment requirement set out in paragraph 1.06(9A)(a) of the SISR 1994.

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<sup>9</sup> See paragraphs 23 to 26 and 103 to 118 of the Taxation Ruling.

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## References

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*Previous draft:*

TR 2011/D3

*Related Rulings/Determinations:*

TR 2013/5

*Subject references:*

- Account based pension
- Full commutation
- Minimum annual payment
- Partial commutation
- Self managed superannuation funds

*Legislative references:*

- SISA 1993 10(4)
- SISA 1993 17A
- SISR 1994 1.06(1)
- SISR 1994 1.06(9A)
- SISR 1994 1.06(9A)(a)
- SISR 1994 1.07D
- SISR 1994 6.01(2)
- SISR 1994 6.01(2)(b)
- SISR 1994 Part 6
- SISR 1994 Sch 7 cl 1

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ATO references

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