



Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013

Select Legislative Instrument No. 103, 2013

I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Income Tax Assessment Act 1997*.

Dated 30 May 2013

Marie Bashir
Administrator

By Her Excellency's Command

William Richard Shorten
Minister for Financial Services and Superannuation

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1 Name of regulation

This regulation is the *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *Income Tax Assessment Act 1997*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Income Tax Assessment Regulations 1997

1 Regulation 295-385.01

Repeal the regulation, substitute:

295-385.01 Segregated current pension assets—prescribed superannuation income stream benefits

For section 295-385 of the Act, the following superannuation income stream benefits are prescribed:

- (a) superannuation income stream benefits payable from:
 - (i) an allocated pension within the meaning of the SIS Regulations; or
 - (ii) a market linked pension within the meaning of the SIS Regulations; or
 - (iii) an account-based pension within the meaning of the SIS Regulations;
- (b) an amount taken to be the amount of a superannuation income stream benefit under subregulation 995-1.01(3) or (4), where the superannuation income stream that was payable to the deceased mentioned in that subregulation was a pension mentioned in subparagraph (a)(i), (ii) or (iii).

Note: This regulation is also mentioned in regulation 307-205.02 to identify superannuation income streams to which that regulation does not apply.

2 At the end of Subdivision 307-C

Add:

307-125.02 Components of superannuation benefits after death of recipient of superannuation income stream

- (1) For paragraph 307-125(4)(a) of the Act, subregulation (2) specifies an alternative method for determining the components of a superannuation benefit to which that subregulation applies if:

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- (a) immediately before the death of a person (the *deceased*), a superannuation interest (the *relevant superannuation interest*) was supporting a superannuation income stream (the *original superannuation income stream*) payable to the deceased; and
 - (b) the original superannuation income stream did not automatically revert to another person on the deceased's death; and
 - (c) no amounts, other than investment earnings or an amount to fund an anti-detriment increase, have been added to the relevant superannuation interest on or after the deceased's death; and
 - (d) one or both of the following occurs after the deceased's death:
 - (i) a superannuation death benefit that is a superannuation lump sum is paid using only an amount from the relevant superannuation interest;
 - (ii) a superannuation income stream (the *new superannuation income stream*) is commenced using only an amount applied from the relevant superannuation interest.
- (2) The method statement sets out how to work out the tax free component and taxable component of:
- (a) a superannuation death benefit mentioned in subparagraph (1)(d)(i); or
 - (b) a superannuation benefit paid from a superannuation interest that supports the new superannuation income stream mentioned in subparagraph (1)(d)(ii).

Method statement

Step 1. Reduce the amount of the benefit by the extent, if any, to which the benefit is attributable to any of the following:

- (a) an anti-detriment increase;
- (b) an amount paid on or after the death of the deceased under a policy of insurance on the life of the deceased;

	(c) an amount arising on or after the death of the deceased from self-insurance.
Step 2.	The tax free component of the benefit is the amount that represents the same proportion of the amount resulting from step 1 as the tax free component of the relevant superannuation interest bore to the value of the relevant superannuation interest when the original superannuation income stream commenced.
Step 3.	The taxable component of the benefit is the amount of the benefit less the tax free component of the benefit worked out under step 2.

(3) In this regulation:

anti-detriment increase, in relation to a benefit, means any increase to the benefit which resulted in the fund that paid the benefit being entitled to a deduction under section 295-485 of the Act.

investment earnings includes:

- (a) an amount paid under a policy of insurance on the life of the deceased; or
- (b) an amount arising from self-insurance.

3 Subparagraph 307-205.02(1)(a)(i)

Repeal the subparagraph, substitute:

- (i) a superannuation income stream that is a pension mentioned in subparagraph 295-385.01(a)(i), (ii) or (iii); or

4 Regulation 995-1.01

Before “In these Regulations”, insert “(1)”.

5 Regulation 995-1.01 (definition of ***superannuation income stream benefit***)

Repeal the definition, substitute:

superannuation income stream benefit: see subregulations (2) to (5).

6 At the end of regulation 995-1.01

Add:

(2) In these Regulations:

superannuation income stream benefit:

- (a) means a payment from an interest that supports a superannuation income stream, other than a payment to which regulation 995-1.03 applies; and
 - (b) for the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act—includes an amount taken to be the amount of a superannuation income stream benefit under subregulation (3) or (4).
- (3) For the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act, if:
- (a) a superannuation death benefit that is a superannuation lump sum is paid after the death of a person (the *deceased*) using only an amount from a superannuation interest; and
 - (b) immediately before the deceased's death, the superannuation interest was supporting a superannuation income stream payable to the deceased; and
 - (c) the superannuation income stream did not automatically revert to another person on the death of the deceased;
- the amount paid as the superannuation lump sum, to the extent it is not attributable to any amount (other than investment earnings) added to the superannuation interest on or after the deceased's death, is taken to be the amount of a payment from a superannuation income stream of a superannuation income stream benefit that was payable from the day of the deceased's death until as soon as it was practicable to pay the superannuation lump sum.
- (4) For the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act, if:
- (a) immediately before the death of a person (the *deceased*), a superannuation interest was supporting a superannuation income stream payable to the deceased; and
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- (b) a new superannuation income stream is commenced using an amount applied from the superannuation interest after the death of the deceased;

the amount so applied, to the extent it is not attributable to any amount (other than investments earnings) added to the superannuation interest on or after the deceased's death, is taken to be the amount of a payment from a superannuation income stream of a superannuation income stream benefit that was payable from the day of the deceased's death until as soon as it was practicable to commence the new superannuation income stream.

- (5) In this regulation:

investment earnings does not include:

- (a) an amount paid under a policy of insurance on the life of the deceased; or
(b) an amount arising from self-insurance.

7 After Part 4

Insert:

Part 5—Administration

Division 910—Transitional and application arrangements

910-1.01 Amendments made by *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013*

- (1) The amendments made by items 1 and 3 to 6 of Schedule 1 to the *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013* apply in relation to the 2012—13 income year and later income years.
- (2) The amendment made by item 2 of Schedule 1 to the *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013* applies to a superannuation benefit to which subregulation 307-125.02(2) applies that is paid on or after the commencement of that regulation.