


***TD 2002/D14 - Income tax: what is the deductible amount under section 27H of the Income Tax Assessment Act 1936 (ITAA 1936) for a superannuation pension that is taken to have commenced when a superannuation pension is split pursuant to an agreement or court order on marriage breakdown?***

 This cover sheet is provided for information only. It does not form part of *TD 2002/D14 - Income tax: what is the deductible amount under section 27H of the Income Tax Assessment Act 1936 (ITAA 1936) for a superannuation pension that is taken to have commenced when a superannuation pension is split pursuant to an agreement or court order on marriage breakdown?*

This document has been Withdrawn.

There is a [Withdrawal notice](#) for this document.

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## Draft Taxation Determination

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### **Income tax: what is the deductible amount under section 27H of the *Income Tax Assessment Act 1936* (ITAA 1936) for a superannuation pension that is taken to have commenced when a superannuation pension is split pursuant to an agreement or court order on marriage breakdown?**

#### *Preamble*

*Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.*

1. Under Part VIIIB of the *Family Law Act 1975* superannuation interests can be divided between parties on marriage breakdown.
2. This determination applies to the case where the superannuation interest to be divided takes the form of a superannuation pension (“the pension”) that is not able to be commuted due to the governing rules of the superannuation fund or legislative restrictions. In such circumstances, the split is effected by dividing each pension payment between the member spouse and non-member spouse.
3. The splitting of the pension will result in two regular payments being made in respect of the same pension: one to the original recipient (member spouse) and one to the other party (non-member spouse).
4. When the first payment is made to the non-member spouse as a result of the splitting of a pension, a new pension is taken to have commenced to the non-member spouse.
5. Similarly, when a payment is made to the member spouse as a result of the splitting of a pension a new pension is taken to have commenced to the member spouse.
6. Section 27H of the ITAA 1936 includes in assessable income the amount of the pension received during the year, excluding the deductible amount.

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7. The deductible amount of a pension is the amount calculated in accordance with the formula in subsection 27H(2) of the ITAA 1936 subject to subsection 27H(3).

8. Under subsection 27H(3) when the Commissioner is of the opinion that the amount calculated under subsection 27H(2) is inappropriate, the Commissioner may determine the deductible amount that applies.

9. In relation to each of the new pensions taken to have commenced to the member spouse and non-member spouse the deductible amount pursuant to subsection 27H(3) is the amount calculated in accordance with the following formula:

$$\frac{A (B - C)}{D}$$

where

- A** is the relevant share of the pension in relation to the year of income;
- B** is the amount of the undeducted purchase price of the pension on the commencement day;
- C** is:
  - (a) if there was a residual capital value in relation to the pension on the commencement day that residual capital value; or
  - (b) in any other case – nil; and
- D** is the relevant number under subsection 27H(2) in relation to the pension on the commencement day.

### **Definitions**

*relevant share* means the number ascertained by dividing the annual value of the new pension (member spouse or non-member spouse) by the annual value of the member spouse's new pension plus the annual value of the non-member spouse's new pension

*commencement day* in relation to a pension payable after the partial commutation of another pension is the first day of the period to which the first payment of the pension after the partial commutation relates, otherwise the commencement day is the first day of the period to which the first payment of the pension relates

*annual value* means the amount worked out by multiplying:

- (a) the greatest number of payments of the new pension that could be made in respect of the 12 month period beginning on the commencement day of the new pension, by
- (b) the amount of the first regular payment of the new pension

***Example 1***

10. Rex commenced a lifetime superannuation pension on 1 July 2000 when he was 60. The UPP was \$20,000 and there was no residual capital value. The relevant share was 1 and the relevant number was 20.05. The annual value of the pension was \$50,000.

*The deductible amount of the pension each year was:*

$$= \frac{1x(20\,000 - 0)}{20.05}$$

$$= 998$$

*Rex and Martha divorce and as the rules of the superannuation fund do not allow the pension to be commuted they agree to split the pension payments effective from 1 July 2004. Martha receives \$22 500 of each pension payment and Rex \$27 500.*

*The deductible amount of Rex's new pension is:*

$$= \frac{(27\,500/50\,000) x (20\,000 - 0)}{20.05}$$

$$= 549$$

*The deductible amount of Martha's new pension is:*

$$= \frac{(22\,500/50\,000) x (20\,000 - 0)}{20.05}$$

$$= 449$$

***Example 2***

11. Luke commenced a superannuation pension payable for 15 years on 1 July 1999 when he was 55. The UPP was \$100 000 and the residual capital value was \$25 000. The relevant share was 1 and the relevant number was 15. The annual value of the pension was \$30 000.

*The deductible amount of the pension each year was:*

$$= \frac{1x(100\,000 - 25\,000)}{15}$$

$$= 5\,000$$

*Luke and Angela divorce and as the rules of the superannuation fund do not allow the pension to be commuted they agree to split the pension payments effective from 1 July 2004. Angela receives \$18 000 of each pension payment and Luke \$12 000.*

*The deductible amount of Angela's pension is:*

$$= \frac{(18\,000/30\,000) x (100\,000 - 25\,000)}{15}$$

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$$= 3\,000$$

*The deductible amount of Luke's pension is:*

$$= \frac{(12\,000/30\,000) \times (100\,000 - 25\,000)}{15}$$

$$15$$

$$= 2\,000$$

## Your comments

12. We invite you to comment on this draft Taxation Determination. We are allowing 5 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

**Comments by Date:** 17 January 2003  
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## Commissioner of Taxation

11 December 2002

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### *Previous draft:*

Not previously issued in draft form

### *Related Rulings/Determinations:*

- TD 2002/D13 (RBL divorce reduction of pension)
- TD 2002/D15 (RBL valuation of divorce pension)

### *Subject references:*

- deductible amount

- residual capital value
- superannuation
- superannuation pension
- undeducted purchase price

### *Legislative references:*

- ITAA 1936 27H
- ITAA 1936 27H(2)
- ITAA 1936 27H(3)
- Family Law Act 1975 PtVIII B

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### ATO References

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