


***TD 2002/D15 - Income tax: what is the method of calculating the capital value of a superannuation pension for reasonable benefit limit purposes under section 140ZO of the Income Tax Assessment Act 1936 (ITAA 1936) that is taken to have commenced when a superannuation pension is split pursuant to an agreement or court order on marriage breakdown?***

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This document has been Withdrawn.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 method of calculating the capital value of a superannuation pension for reasonable benefit limit purposes under section 140ZO of the *Income Tax Assessment Act 1936* (ITAA 1936) 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 VIII B 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. The capital value of the new pensions for the purposes of the reasonable benefit limits will be determined under section 140ZO of the ITAA 1936.

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7. If the pension subject to the split is a lifetime pension then the capital value of the new pensions for both the member spouse and non-member spouse will be determined under subsection 140ZO(1). Attachment A shows how subsection 140ZO(1) applies to the new pensions.

8. If the pension subject to the split is not a lifetime pension then the capital value of the new pensions for both the member spouse and non-member spouse will be determined under subsection 140ZO(2). Under subsection 140ZO(2) the capital value of a pension that is not payable for life is the amount calculated in accordance with a method determined by the Commissioner in writing in relation to the pension.

9. Taxation Determination TD 2000/29 prescribes the method for determining the capital value of purchased pensions not payable for life. Where the pension subject to the split was valued under TD 2000/29 then the new pensions are also to be valued under TD 2000/29. Attachment B shows how TD 2000/29 applies to the new pensions.

10. Taxation Determination TD 2000/28 prescribes the method for determining the capital value of fixed term pensions other than purchased pensions. Where the pension subject to the split was valued under TD 2000/28 then the new pensions are also to be valued under TD 2000/28. Attachment C shows how TD 2000/28 applies to the new pensions.

## Your comments

11. 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  
**Contact Officer:** Mladen Bajic  
**E-mail address:** Mladen.Bajic@ato.gov.au  
**Telephone:** (02) 9374 8096  
**Facsimile:** (02) 9374 8200  
**Address:** Mladen Bajic  
Superannuation TQS  
PO Box 277  
WTC VIC 8005

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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 2000/28
- TD 2000/29
- TD 2002/D14 (deductible amount divorce pensions)
- TD 2002/D13 (RBL divorce reduction of pension)

*Subject references:*

- commutation
- concessional component
- pension capital value
- pension valuation factor
- post-June 1994 invalidity component
- purchase price
- reasonable benefit limits

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

*Legislative references:*

- ITAA 1936 27A(1)
- ITAA 1936 27D
- ITAA 1936 27D(1)(b)(iii)(DA)
- ITAA 1936 140ZO
- ITAA 1936 140ZO(1)
- ITAA 1936 140ZO(2)
- Family Law Act 1975 Pt VIII B
- Superannuation Industry (Supervision) Regulations 1994

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*ATO References*

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## ATTACHMENT A

### Valuing split lifetime pensions

Under subsection 140ZO(1) of the ITAA 1936 the capital values of the new lifetime pension of the member spouse, and the new lifetime pension of the non-member spouse, are worked out using the following formula:

Capital value = (annual value \* pension valuation factor) – undeducted purchase price + residual capital value

In applying this formula to the new pensions the following definitions apply:

*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 12month period beginning on the commencement day of the new pension, by
- (b) the amount of the first regular payment of the new pension

*pension valuation factor* means the factor ascertained in accordance with Sch 1B of the Superannuation Industry (Supervision) Regulations 1994. For the non-member spouse, the member spouse's age is used

*undeducted purchase price* means the undeducted purchase price of the pension immediately before the split, reduced by so much of the notional purchase price of the pension immediately before the split, as is taken, because of section 27D of the ITAA1936, to consist of an amount to which sub-subparagraph 27D(1)(b)(iii)(DA) applies divided by the relevant share. [Where *notional purchase price* means the amount that would have been the purchase price under subsection 27A(1) if the pension had commenced on the day before the split]

*residual capital value* means the residual capital value of the original pension immediately prior to the split divided by the relevant share

*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

**ATTACHMENT B****Valuing split purchased pensions not payable for life**

Under Taxation Determination TD 2000/29 the capital value of the new purchased pension not payable for life of the member spouse, and the new purchased pension not payable for life of the non-member spouse, are worked out using the following formula:

Capital value = purchase price - (undeducted contributions + concessional component + invalidity component)

In applying this formula to the new pensions the following definitions apply:

*purchase price* means the lump sum value of the new pension on commencement

*undeducted contributions* means the undeducted contributions, as defined in subsection 27A(1) of the ITAA 1936, of the original pension immediately prior to the split divided by the relevant share

*concessional component* means the concessional component, as defined in subsection 27A(1), of the original pension immediately prior to the split divided by the relevant share

*invalidity component* means the invalidity component, as defined in subsection 27A(1), of the original pension immediately prior to the split divided by the relevant share

*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

## ATTACHMENT C

### Valuing split fixed term pensions other than purchased pensions

Under Taxation Determination TD 2000/28 the capital value of the new fixed term non-purchased pension of the member spouse, and the new fixed term non-purchased pension of the non-member spouse, are worked out using the following formula:

Capital value = (annual value \* fixed term pension valuation factor) – undeducted purchase price + residual capital value

In applying this formula to the new pensions the following definitions apply:

*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 12month period beginning on the commencement day of the new pension, by
- (b) the amount of the first regular payment of the new pension

*fixed term pension valuation factor* means the factor ascertained in accordance with TD 2000/28, using the Table of Pension Valuation Factors for Fixed Term pensions attached to that Determination, taking account of the amount of the term of the pension remaining as pension term

*undeducted purchase price* means the undeducted purchase price of the pension immediately before the split, reduced by so much of the notional purchase price of the pension immediately before the split, as is taken, because of section 27D of the ITAA 1936, to consist of an amount to which sub-subparagraph 27D(1)(b)(iii)(DA) applies divided by the relevant share. [Where *notional purchase price* means the amount that would have been the purchase price under subsection 27A(1) if the pension had commenced on the day before the split]

*residual capital value* means the residual capital value of the original pension immediately prior to the split divided by the relevant share

*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