


TD 2013/11 - Income tax: is a payment of all or part of a deceased member's benefits in a regulated superannuation fund from that fund to another regulated superannuation fund, to immediately cash those benefits to a beneficiary of the deceased person, a 'roll-over superannuation benefit' as defined in section 306-10 of the Income Tax Assessment Act 1997?

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Taxation Determination

Income tax: is a payment of all or part of a deceased member's benefits in a regulated superannuation fund from that fund to another regulated superannuation fund, to immediately cash those benefits to a beneficiary of the deceased person, a 'roll-over superannuation benefit' as defined in section 306-10 of the *Income Tax Assessment Act 1997*?

❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No, a payment of all or part of a deceased member's benefits in a regulated superannuation fund from that fund to another regulated superannuation fund, to immediately cash those benefits to a beneficiary of the deceased person, is not a 'roll-over superannuation benefit' as defined in section 306-10 of the *Income Tax Assessment Act 1997* (ITAA 1997).

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Date of effect

2. This Determination applies from 1 July 2007. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

26 June 2013

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Explanation

3. When a member of a regulated superannuation fund dies, the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) impose certain obligations on the trustee of that regulated superannuation fund in respect of the deceased member's benefits in that fund.
4. Subregulation 6.21(1) of the SIS Regulations provides that:

Subject to subregulation (3), a member's benefits in a regulated superannuation fund must be cashed as soon as practicable after the member dies.
5. Subregulation 6.21(2) of the SIS Regulations prescribes the form in which such benefits may be cashed under regulation 6.21 in respect of each person to whom such benefits are cashed. The benefits may be cashed as a single lump sum, or an interim lump sum (up to a certain amount) and a final lump sum, and/or, for certain dependant beneficiaries,¹ as one or more pensions or annuities.
6. Subregulation 6.21(3) of the SIS Regulations provides that:

For the purposes of subregulation (1), it is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.
7. Instead of cashing (in the prescribed form) all or part of the deceased member's benefits in a regulated superannuation fund directly to a beneficiary of the deceased member, subregulation 6.21(3) of the SIS Regulations allows the trustee of that fund to 'roll over' the benefits for a beneficiary to, for example, another regulated superannuation fund for immediate cashing of those benefits (in the prescribed form) to the beneficiary.
8. In the context of subregulation 6.21(3) of the SIS Regulations, 'rolled over' 'means paid as a superannuation lump sum (other than by way of being transferred) within the superannuation system'.²
9. The payment of all or part of a deceased member's benefits in a regulated superannuation fund from that fund to another regulated superannuation fund would not be 'by way of being transferred' as 'transferred' is relevantly defined. That definition refers to certain payments of a member's benefits 'otherwise than upon the satisfaction by the member of a condition of release (within the meaning of Part 6 of the SIS Regulations) for all those benefits'.³
10. 'Condition of release' is defined in subregulation 6.01(2) of the SIS Regulations to mean 'a condition of release specified in Column 2 of Schedule 1' to the SIS Regulations and 'a member of a fund is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to that member'. Item 102 of Schedule 1 to the SIS Regulations specifies that death is a condition of release in respect of a member of a regulated superannuation fund.

¹ See subregulation 6.21(2A) of the SIS Regulations.

² See subregulations 6.01(1) and 5.01(1) of the SIS Regulations.

³ See subregulations 6.01(1) and 5.01(1) of the SIS Regulations.

11. In the context of subregulation 6.21(3) of the SIS Regulations, 'superannuation lump sum' is defined in subregulation 1.03(1) of those Regulations as having the meaning given by subsection 995-1(1) of the ITAA 1997. That provision, in turn, defines 'superannuation lump sum' as having the meaning given by section 307-65 of the ITAA 1997, which is 'a superannuation benefit that is not a superannuation income stream benefit'.⁴

12. The payment of all or part of the deceased member's benefits in a regulated superannuation fund from that fund to another regulated fund, to immediately cash those benefits to a beneficiary of the deceased person, would be a 'superannuation benefit' within the meaning given by subsection 995-1(1) and section 307-5 of the ITAA 1997, as it is a payment described in column 3 of item 1 of the table in subsection 307-5(1). This is because:

- the payment would be taken to be made to, or received by, the beneficiary by virtue of section 307-15 of the ITAA 1997 because the payment would be made for the beneficiary's benefit (and in the majority of cases at the beneficiary's direction or request); and
- the payment would be made from 'a superannuation fund, after another person's death, because the other person was a fund member'.

13. That superannuation benefit would be a superannuation lump sum as it would be a superannuation benefit that is not a payment from a superannuation interest that supports a superannuation income stream.⁵

14. Therefore, the payment of all or part of the deceased member's benefits in a regulated superannuation fund from that fund to another regulated superannuation fund, to immediately cash those benefits to a beneficiary of the deceased person, would amount to a 'roll-over' of those benefits for the purposes of subregulation 6.21(3) of the SIS Regulations.

15. However, because that payment is one described in column 3 of item 1 of the table in subsection 307-5(1) of the ITAA 1997, that superannuation benefit would be a 'superannuation death benefit' rather than a 'superannuation member benefit'.⁶

16. As such, that superannuation benefit would not satisfy one of the requirements in section 306-10 of the ITAA 1997 to be a 'roll-over superannuation benefit' (as that term is defined in subsection 995-1(1) and, in turn, section 306-10 of the ITAA 1997). Paragraph 306-10(a) of the ITAA 1997 requires that the benefit be a superannuation member benefit.

⁴ See section 307-70 of the ITAA 1997.

⁵ See the definitions of 'superannuation income stream benefit' and 'superannuation income stream' in subsection 995-1(1) of the ITAA 1997, section 307-70, and the definitions of those two terms in regulation 995-1.01 of the *Income Tax Assessment Regulations 1997*.

⁶ See the definitions of those two terms in subsection 995-1(1) and subsections 307-5(2) and 307-5(4) of the ITAA 1997.

References

- Previous draft:*
- Not previously issued as a draft
- Related Rulings/Determinations:*
- TR 2006/10
- Previous Rulings/Determinations:*
- Subject references:*
- Death benefits – superannuation benefits
 - Lump sum – superannuation benefits
 - Member benefits – superannuation benefits
 - Roll-overs - superannuation benefits
 - Superannuation benefits
 - Superannuation income stream
 - Superannuation interest
- Legislative references:*
- ITAA 1997
 - ITAA 1997 306-10
 - ITAA 1997 306-10(a)
 - ITAA 1997 307-5
- ITAA 1997 307-5(1)
 - ITAA 1997 307-5(2)
 - ITAA 1997 307-5(4)
 - ITAA 1997 307-15
 - ITAA 1997 307-65
 - ITAA 1997 307-70
 - ITAA 1997 995-1(1)
 - ITAR 1997
 - ITAR 1997 995-1.01
 - SIS Regulations
 - SIS Regulations 1.03(1)
 - SIS Regulations 5.01(1)
 - SIS Regulations 6.01(1)
 - SIS Regulations 6.01(2)
 - SIS Regulations 6.21
 - SIS Regulations 6.21(1)
 - SIS Regulations 6.21(2)
 - SIS Regulations 6.21(2A)
 - SIS Regulations 6.21(3)
 - SIS Regulations Part 6
 - SIS Regulations Schedule 1
 - TAA 1953
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ATO references

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