


# ***LCG 2016/11A1 - Addendum - Superannuation reform: concessional contributions - defined benefit interests and constitutionally protected funds***

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## Addendum

### Law Companion Guideline

#### Superannuation reform: concessional contributions – defined benefit interests and constitutionally protected funds

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Guideline LCG 2016/11 for the calculation of concessional contributions and excess concessional contributions in the Act applying to contributions and amounts allocated by superannuation providers

#### LCG 2016/11 is amended as follows:

**1. Page status (all pages)**

At the top of all pages omit the words ‘draft only – for comment’; substitute ‘legally binding’.

**2. First page header and all footers**

Omit ‘Draft Law Companion Guideline 2016/D11’; substitute ‘Law Companion Guideline LCG 2016/11’.

**3. Preamble**

Omit the preamble; substitute:

#### **Relying on this Guideline**

This Guideline is a public ruling for the purposes of the *Taxation Administration Act 1953*. This Guideline describes how the Commissioner will apply the amendments in Schedule 2, Part 1 of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (the Act) to entities that rely on it in good faith.

If you rely on this Guideline in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Guideline if it does not correctly state how a relevant provision applies to you.

**4. Table of contents**

Omit:

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# LCG 2016/11

Substitute:

*Example 7: Defined benefit interest (partially unfunded) where the defined benefit interest is eligible for the grandfathering transitional rules but those rules do not apply*

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**5. Paragraph 1, 7, 8, 14, 19, 22, 25, 27, 29, 31 and 35**

Omit all occurrences of the word 'draft Guideline'; substitute 'Guideline'.

**6. Footnote 3**

Omit the second sentence.

**7. Paragraph 5**

Omit the second sentence in subparagraph (a); substitute 'For example, personal contributions for which a deduction is allowed and employer contributions (including salary sacrificed amounts), and'.

**8. Footnote 7**

After 'Subsection 291-25(3)' insert 'of the ITAA 1997'.

**9. Paragraph 8**

In the last sentence omit the word 'is'; substitute 'are'.

**10. Footnote 9**

Omit the footnote; substitute:

<sup>9</sup> Item 5.3 in the table in section 50-25.

**11. Footnote 11**

Omit the footnote; substitute:

<sup>11</sup> Section 290-160.

**12. Paragraph 7**

In first sentence omit '1 July 2017'; substitute '30 June 2017'.

**13. Footnote 13**

After 'Subdivision 291-C' insert 'of the ITAA 1997'.

**14. Paragraph 9**

Omit the paragraph; substitute:

9. Your notional taxed contributions are determined under Subdivision 291-C of the ITAA 1997 and Subdivision 292-D<sup>16A</sup> and Schedule 1A to the ITAR 1997. The amount determined to be your notional taxed contributions is based only on the funded part of your benefit. A defined benefit interest is funded to the extent that it is sourced from contributions made into the fund or earnings from those contributions. The amount of your notional taxed contributions is an estimate of the amount of concessional contributions that would be required to be paid to the fund in respect of you in that year to fund your expected final benefits from that interest. The estimate is necessary as contributions made to the fund are not always attributable to particular members.

**15. Paragraph 10**

Omit the paragraph; substitute:

10. Transitional rules<sup>17</sup> (commonly referred to as 'grandfathering') apply to defined benefit interests if certain conditions are met.

10A. For the 2009-10 and later financial years, the grandfathering transitional rules apply to determine your notional taxed contributions for a defined benefit interest trust you held on 12 May 2009 where:

- (a) your notional taxed contributions for that interest would otherwise exceed your concessional contributions cap, and
- (b) the conditions set out under the ITAR 1997 are satisfied.<sup>17A</sup> These conditions place limits on changes to specific factors that are relevant to the calculation of notional taxed contributions.<sup>17B</sup>

10B. The grandfathering transitional rules may also apply to a defined benefit interest you held on 12 May 2009 which is now held in a successor fund where these additional conditions are also met:

- (a) the entire interest was transferred (directly or through a series of transfers) to the successor fund,
- (b) your rights to accrue future benefits under your interest in the successor fund are equivalent to your rights under your interest in the original fund, and
- (c) if your notional taxed contributions under your interest in the successor fund are greater than they would have been if the transfer did not take place, the conditions set out under the *Income Tax*

<sup>16A</sup> *Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013* included 'Saving provisions' which allow certain regulations created for the purposes of Division 292 of the ITAA 1997, before repeal, to apply for the purposes of the re-written provisions in Division 291 of the ITAA 1997 and Division 291 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997).

<sup>17</sup> Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997).

<sup>17A</sup> Regulation 292-170.07 of the ITAR 1997 (*Fairer Taxation of Excess Concessional Contributions Act 2013*) included 'Saving provisions' which allow certain regulations created for the purposes of Division 292 of the ITAA 1997, before repeal, to apply for the purposes of the re-written provisions in Division 291 of the ITAA 1997 and Division 291 of the *Income Tax (Transitional Provisions) Act 1997*.

<sup>17B</sup> Subsection 291-170(4) of the IT(TP)A 1997.

*Assessment Regulations 1997* are satisfied.<sup>17C</sup> These conditions place limits on changes to specific factors that are relevant to the calculation of notional taxed contributions.<sup>17D</sup>

10C. Where these conditions are met, the grandfathering transitional rules apply to modify the amount of notional taxed contributions so that it is equal to your concessional contributions cap.

## 16. Paragraph 11

- (a) Insert in the first sentence 'in respect of these interests'.
- (b) In the last sentence omit 'paragraph 10'; substitute 'paragraphs 10 to 10B'.

## 17. Paragraph 12

Omit the paragraph; substitute:

12. For financial years commencing on or after 1 July 2017, an additional amount may be included in your concessional contributions if you have a defined benefit interest in an unfunded or partially unfunded scheme. This is to ensure the amount of concessional contributions better reflects the full amount of accrued benefits (funded and unfunded) for the defined benefit interest for the financial year. The additional amount included in your concessional contributions is the amount by which the defined benefit contributions for the interest exceed the notional taxed contributions for the interest.<sup>20</sup> This requirement may also apply to defined benefit interests in CPFs.

12A. Where your defined benefit interest is a 'funded benefit interest',<sup>20A</sup> as defined in subregulation 293-115.15(2) of the *ITAR 1997*, your defined benefit contributions for a financial year will be equal to your notional taxed contributions for that year. The grandfathering transitional rules that may apply to determine your notional taxed contributions are ignored for the purpose of calculating your defined benefit contributions where you have a funded benefit interest.<sup>20B</sup> See Example 6 of this Guideline. For schemes that are unfunded or partially unfunded, your defined benefit contributions will typically be greater than your notional taxed contributions and therefore you will have an additional amount to include in your concessional contributions. See Examples 4, 5 and 7 of this Guideline.

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<sup>17C</sup> Regulation 292-170.08 of the *ITAR 1997* (*Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions Act 2013* included 'Saving provisions' which allow certain regulations created for the purposes of Division 292 of the *ITAA 1997*, before repeal, to apply for the purposes of the re-written provisions in Division 291 of the *ITAA 1997* and Division 291 of the *IT(TP)A 1997*).

<sup>17D</sup> Subsection 291-170(5) of the *IT(TP)A 1997*.

<sup>20</sup> Paragraph 291-165(1)(c).

<sup>20A</sup> Defined benefit interests in constitutionally protected funds and certain public sector superannuation schemes will not be 'funded benefit interests' – subregulation 293-115.15(2) of the *ITAR 1997*.

<sup>20B</sup> Subregulation 293-115.15(4) of the *ITAR 1997*.

**18. Paragraph 13**

Omit the first sentence; substitute 'Defined benefit contributions' is defined for the purposes of Division 293 tax in section 293-115 and the method for determining the amount is contained in Subdivision 293-DA and Schedule 1AA to the ITAR 1997.<sup>20C</sup>.

**19. Paragraph 16**

Omit the last sentence.

**20. Paragraph 23**

In the last sentence omit the first occurrence of 'the'; substitute 'any'.

**21. Footnote 29**

Omit the footnote; substitute:

<sup>29</sup>. Section 290-150.

**22. Footnote 30**

Omit the footnote; substitute:

<sup>30</sup>. Section 290-150.

**23. Paragraph 26**

In the second sentence after '\$6,000'; insert '(\$32,000 - \$26,000)'.

**24. Paragraph 29**

Omit the paragraph; substitute:

29. *'Joan has a defined benefit interest in a superannuation fund that is not a CPF. The superannuation fund is fully funded and Joan's interest is a funded benefit interest so her defined benefit contributions are equal to her notional taxed contributions (before applying the grandfathering transitional rules). On the advice of an actuary the superannuation provider calculates Joan's notional taxed contributions (before applying the grandfathering transitional rules) and defined benefit contributions as \$28,000 for the 2017-18 financial year. Joan's concessional contributions cap for the 2017-18 financial year is \$25,000. The grandfathering transitional rules that limit the amount of notional taxed contributions to the amount of an individual's cap apply to limit the notional taxed contributions to \$25,000. Joan also makes a salary sacrifice contribution of \$8,000 to another superannuation fund which is not a CPF. Subject to the modification explained in paragraph 30 of this Guideline, Joan's amount of concessional contributions for the 2017-18 financial year would be \$36,000 (\$8,000 + \$25,000 + (\$28,000 - \$25,000)).'*

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<sup>20C</sup> For 'funded benefit interests', where defined benefit contributions are equal to notional taxed contributions, the amount of notional taxed contributions is calculated under Schedule 1A of the ITAR 1997 – regulation 293-115.15 of the ITAR 1997.

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## 25. Paragraph 31

In the headline of 'Example 7' insert '*(partially unfunded)*'.

## 26. Paragraph 32

After the paragraph; omit:

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**Commissioner of Taxation**  
9 December 2016

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Substitute:

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**Commissioner of Taxation**  
28 February 2017

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## 27. Your comments

Omit the heading and paragraph.

## 28. References

Omit Legislative references; substitute:

ITAA 1997  
ITAA 1997 50-25  
ITAA 1997 290-150  
ITAA 1997 291-15  
ITAA 1997 291-20(2)  
ITAA 1997 291-20(3)  
ITAA 1997 291-20(4)  
ITAA 1997 291-20(5)  
ITAA 1997 291-20(6)  
ITAA 1997 291-20(7)  
ITAA 1997 291-25  
ITAA 1997 291-25(2)  
ITAA 1997 291-25(2)(c)(iii)  
ITAA 1997 291-25(3)  
ITAA 1997 Subdiv 291-C  
ITAA 1997 291-160  
ITAA 1997 291-160(2)  
ITAA 1997 291-165  
ITAA 1997 291-165(1)(a)  
ITAA 1997 291-165(1)(b)  
ITAA 1997 291-165(1)(c)  
ITAA 1997 291-165(2)  
ITAA 1997 291-175  
ITAA 1997 291-370  
ITAA 1997 291-370(1)

ITAA 1997 291-370(1)(a)  
ITAA 1997 291-370(1)(b)  
ITAA 1997 291-370(1)(b)(ii)  
ITAA 1997 291-370(1)(c)  
ITAA 1997 291-370(2)  
ITAA 1997 Subdiv 292-D  
ITAA 1997 Div 293  
ITAA 1997 Subdiv 293-DA  
ITAA 1997 293-115  
ITAA 1997 293-150  
ITAA 1997 293-150(3)  
ITAA 1997 293-195  
ITAA 1997 293-195(2)  
IT(TP)A 1997  
IT(TP)A 1997 Subdiv 291-C  
IT(TP)A 1997 291-170(4)  
IT(TP)A 1997 291-170(5)  
IT(TP)A 1997 291-170(6)  
ITAR 1997  
ITAR 1997 Sch 1A  
ITAR 1997 Sch 1AA  
ITAR 1997 Subdiv 292-D  
ITAR 1997 292-170.07  
ITAR 1997 292-170.08  
ITAR 1997 293-115.15  
ITAR 1997 293-115.15(2)  
ITAR 1997 293-115.15(4)  
ITAR 1997 292-25.01  
Judges' Pension Act 1968  
Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016

This Addendum applies on and from 28 February 2017.

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**Commissioner of Taxation**

28 February 2017

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ATO references

ATOlaw topic: Superannuation ~~ Income tax - individuals (superannuation) ~~ Other

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