



# ***LCG 2017/D1 - Superannuation reform: defined benefit income streams - pensions or annuities paid from non-commutable, life expectancy or market-linked products***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *13 January 2017*



## **Superannuation reform: defined benefit income streams – pensions or annuities paid from non-commutable, life expectancy or market-linked products**

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

*This draft Guideline describes how the Commissioner proposes to apply the amendments made by the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016 (the Act).*

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

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### What this draft Guideline is about

1. This draft Guideline clarifies how the defined benefit income cap applies to superannuation income stream pensions or annuities that are paid from non-commutable, life expectancy or market-linked products.<sup>1</sup> The guidance follows changes made to the income tax treatment of certain defined benefit income stream benefits from the 2017-18 income year.
2. All references are to the *Income Tax Assessment Act 1997*, unless otherwise stated.

### Defined benefit income streams

3. Defined benefit income<sup>2</sup> is a superannuation income stream benefit<sup>3</sup> that is paid from a capped defined benefit income stream.<sup>4</sup>
4. This draft Guideline covers the following capped defined benefit income streams that cannot be commuted in full or in part:

<b>Product:</b>	<b>Provided the product is:</b>
Life expectancy pension	a pension for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> (SISA) that is provided under rules that meet the standards of subregulation 1.06(7) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (SISR). <sup>5</sup>
Life expectancy annuity	an annuity for the purposes of the SISA that is provided under a contract that meets the standards of subregulation 1.05(9) of the SISR. <sup>6</sup>
Market-linked pension	a pension for the purposes of the SISA that is provided under rules that meet the standards of subregulation 1.06(8) of the SISR. <sup>7</sup>
Market-linked annuity	an annuity for the purposes of the SISA that is provided under a contract that meets the standards of subregulation 1.05(10) of the SISR. <sup>8</sup>

<sup>1</sup> Any reference in this draft Guideline to a superannuation income stream is limited to a non-commutable, life expectancy or market-linked product as outlined in paragraph 4 of this draft Guideline, unless otherwise indicated.

<sup>2</sup> Subsection 303-2(2).

<sup>3</sup> Section 307-70 and subregulations 995-1.01(1) and (2) of the *Income Tax Assessment Regulations 1997*.

<sup>4</sup> Section 294-130(1) lists the capped defined benefit income streams.

<sup>5</sup> Item 3 of the table in s 294-130(1).

<sup>6</sup> Item 4 of the table in s 294-130(1).

<sup>7</sup> Item 5 of the table in s 294-130(1).

<sup>8</sup> Item 6 of the table in s 294-130(1).

Market-linked, RSA pension	a pension for the purposes of the <i>Retirement Savings Accounts Act 1997</i> that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i> . <sup>9</sup>
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5. As with other types of superannuation income streams, the value of capped defined benefit income streams count towards an individual's transfer balance cap. The transfer balance cap regime is designed to limit the amount of an individual's superannuation that can be moved into the retirement phase, where it benefits from the fund earnings tax exemption.<sup>10</sup>

6. Capped defined benefit income streams cannot, of themselves, result in an excess transfer balance for an individual.<sup>11</sup> Instead, modifications to the general transfer balance cap rules apply.

7. Instead of excess capped defined benefit income streams causing a breach of the transfer balance cap that needs to be remedied by removing the excess, modifications result in certain amounts being included in assessable income and adjustments to the availability of tax offsets. The reason for the different treatment arises because capped defined benefit income streams generally cannot be commuted and cashed as a lump sum.

8. The following modifications to the general transfer balance cap rules apply for capped defined benefit income streams:

- (a) the application of a statutory formula to work out the value of an individual's superannuation interest that supports a capped defined benefit income stream. This value is called the 'special value' and gives rise to a credit in an individual's transfer balance account.<sup>12</sup>
- (b) the defined benefit income cap<sup>13</sup>, which affects the defined benefit income that is assessable income for an individual.<sup>14</sup> It also limits the tax offset available in respect of the untaxed element of certain benefits that are defined benefit income.<sup>15</sup>

### Components of defined benefit income

9. A superannuation income stream benefit paid from a capped defined benefit income stream<sup>16</sup> may consist of:

- a tax-free component, and
- a taxable component.<sup>17</sup>

<sup>9</sup> Item 7 of the table in s 294-130(1).

<sup>10</sup> The transfer balance cap regime is contained in Division 294. Refer to Law Companion Guideline LCG 2016/D9 *Superannuation reform: transfer balance cap* for guidance on the transfer balance cap reforms.

<sup>11</sup> Section 294-140.

<sup>12</sup> Section 295-135. Special rules also apply for determining transfer balance debits (equal to their 'debit value') for capped defined benefit income streams. The most common way that a debit arises in a transfer balance account is due to the full or partial commutation of a relevant income stream. However, as set out at paragraph 1 of this draft Guideline, this draft Guideline applies only to certain capped defined benefit income streams that are non-commutable. Therefore, this draft Guideline does not discuss debits. Further explanation of the debit value of a commutation debit is contained at paragraph 3.232 (and following) of the Explanatory Memorandum (EM) to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* (the Bill).

<sup>13</sup> Section 303-4.

<sup>14</sup> Section 303-2.

<sup>15</sup> Section 303-3.

<sup>16</sup> See sections 294-130 and 307-70. The tax-free component may be nil.

In turn, the taxable component of each superannuation benefit consists of either or both of:

- an element taxed in the fund (taxed element), or
- an element untaxed in the fund (untaxed element).<sup>18</sup>

These terms are relevant for applying the defined benefit income cap.

### **Special value of a superannuation interest**

10. Where an individual receives a pension or annuity, from a life expectancy or market-linked product, a credit arises in their transfer balance account. The credit equals the 'special value' of the superannuation interest that supports the superannuation income stream.<sup>19</sup>

11. The special value of a superannuation interest that supports a pension or annuity from a life expectancy or market-linked product is calculated by multiplying the 'annual entitlement' by the product's 'remaining term'.<sup>20</sup>

12. The annual entitlement is worked out by annualising the first income stream benefit payable from the income stream across an income year. The remaining term is the number of years remaining in the period that superannuation income stream benefits are payable under a product (rounded up to the next whole number).

13. The special value of your superannuation interest will be a credit in your transfer balance account. For superannuation income streams that are in the retirement phase prior to 1 July 2017, the credit is equal to the special value just before 1 July 2017 of the superannuation interest that supports that income stream. This will be calculated based on the first superannuation income stream benefit that you are entitled to receive on or after 1 July 2017.

### **Example 1: Special value of a superannuation interest**

14. *Victoria is 62 and purchases a market-linked pension on 1 April 2017 with a 10-year term. The pension has an annual entitlement of \$60,000 just before 1 July 2017.*

*The remaining term in Victoria's pension just before 1 July 2017 is 9.75 years, but this is rounded up to 10 years (being the next whole number) when determining the pension's special value. The special value of her pension just before 1 July 2017 is \$600,000. A credit arises in Victoria's transfer balance account on 1 July 2017 equal to this amount.*

### **Excess transfer balance**

15. For non-commutable defined benefit income streams any potential excess transfer balance is not able to be remedied by commutation. A recipient of a capped defined benefit income stream will only have excess transfer balance if the balance in their transfer balance account exceeds both their transfer balance cap<sup>21</sup> and their capped defined benefit balance.<sup>22</sup>

16. An individual's capped defined benefit balance is the net sum of the transfer balance credits and debits in their transfer balance account for capped defined benefit

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<sup>17</sup> Section 307-120.

<sup>18</sup> Section 307-275.

<sup>19</sup> Subsection 294-135(1).

<sup>20</sup> Subsection 294-135(3).

<sup>21</sup> An individual's transfer balance cap for the 2017–18 financial year is \$1.6 million (section 294-35). Also see LCG 2016/D9.

<sup>22</sup> Subsection 294-140(1).

income streams.<sup>23</sup> If an individual only has a capped defined benefit income stream, the transfer balance in their transfer balance account can never exceed their capped defined benefit balance (as worked out under subsection 294-140(3)). The individual will therefore not have an excess transfer balance regardless of whether the special value of the superannuation interest that supports their capped defined benefit income stream exceeds their transfer balance cap.

17. An individual may have both a capped defined benefit income stream and another type of superannuation income stream (for example, an account-based pension). That individual may exceed both their transfer balance cap and their capped defined benefit balance. In this situation, the individual may choose to make either a full or partial commutation of the other superannuation income stream to reduce the balance of their transfer balance account below their transfer balance cap. However, where the value of the superannuation interest supporting the other superannuation income stream is reduced to nil (for example, by paying superannuation income stream benefits or due to fund losses) so that the individual only has the capped defined benefit income stream, the Commissioner will issue a notice to the individual.<sup>24</sup> At the time the Commissioner issues the notice, a debit arises in their transfer balance account equal to the amount of the excess transfer balance stated in the notice.<sup>25</sup> In this way, the individual will cease to have excess transfer balance in their transfer balance account for their non-commutable, life expectancy or market linked, pension or annuity.

### **Defined benefit income cap**

18. The defined benefit income cap is relevant where an individual is:

- (a) 60 years of age or over, or
- (b) under 60 years of age and a death benefits dependant, where the deceased died at 60 years of age or over.

The defined benefit income cap applies to individuals who receive one or more superannuation income stream benefits that are 'defined benefit income' to which 'concessional tax treatment'<sup>26</sup> applies (see paragraph 27 of this draft Guideline). The defined benefit income cap does not have taxation consequences outside of these circumstances.

19. The defined benefit income cap is an annual cap that is reset, and may be reduced, each year. These circumstances are discussed in paragraphs 20 to 26 of this draft Guideline.

### **Defined benefit income cap threshold**

20. An individual's defined benefit income cap is their general transfer balance cap for the financial year divided by 16.<sup>27</sup> For example, as the general transfer balance cap for the 2017–18 financial year is \$1.6 million, the defined benefit income cap is \$100,000.

21. However, an individual's defined benefit income cap is reduced where the individual only starts to receive their pension or annuity part way through the financial year, or a component of their pension or annuity is not subject to concessional tax treatment.

22. The defined benefit income cap is not indexed. But, it will increase over time because it is based on the general transfer balance cap, which is indexed. As the defined

<sup>23</sup> Subsection 294-140(3).

<sup>24</sup> The notice is issued under section 136-70 of Schedule 1 to the *Taxation Administration Act 1953*.

<sup>25</sup> Item 7 of the table in section 294-80.

<sup>26</sup> The reference to 'concessional tax treatment' is consistent with the terminology used in the EM to the Bill (for example, see paragraph 3.250 of the EM).

<sup>27</sup> Section 303-4.

benefit income cap is based on the general (not the individual's) transfer balance cap, this indexation is not lost if the individual meets or exceeds their personal transfer balance cap.

### **Part-year reduction of the defined benefit income cap**

23. Where an individual only starts to receive defined benefit income part way through a financial year, then the defined benefit income cap is pro-rated for the remaining part of the financial year.<sup>28</sup>

#### **Example 2: Defined benefit income cap – part-year**

24. Greg turns 60 on 1 January 2018 and commences receiving a market-linked, defined benefit pension with a five-year term and an initial, annual entitlement of \$150,000 on that date. As Greg starts receiving his pension part way through the financial year, he must pro-rate his defined benefit income cap.

25. Greg's defined benefit income cap will be pro-rated as follows:

$$\begin{array}{r} \frac{\text{The general transfer balance cap}}{\text{for the financial year}} \\ \hline 16 \end{array} \times \frac{1 + \text{number of days remaining in the}}{\text{financial year after that day}} \\ \hline \text{Number of days in the financial year} \\ \\ = \frac{\$1.6 \text{ million}}{16} \times \frac{1 + 180 \text{ days}}{365}$$

Greg's defined benefit income cap will be \$49,590 for the 2017–18 year.

### **Reduction where some defined benefit income is not subject to concessional tax treatment**

26. The defined benefit income cap is also reduced, where an individual receives both of the following types of defined benefit income during a year:

- (i) defined benefit income that is subject to concessional tax treatment (see paragraph 27 of this draft Guideline).

Broadly, concessional tax treatment applies to certain types of defined benefit income received by an individual aged 60 or over. In addition, it applies where the individual receiving the income is aged under 60, and is also a death benefits dependent of a person who died aged 60 or over<sup>29</sup>, and

- (ii) defined benefit income that is not subject to concessional tax treatment.

This is defined benefit income received by an individual aged under 60, unless they receive the income as a death benefits dependent of a person who died aged 60 or over.<sup>30</sup>

An individual receiving both these types of income during a year reduces their defined benefit income cap for the year. The cap is reduced by the sum of the defined benefit income that is not subject to concessional tax treatment.

<sup>28</sup> Subsection 303-4(2).

<sup>29</sup> Sections 301-10 302-65.

<sup>30</sup> Subsection 303-4(3), which refers to defined benefit income to which sections 301-10, 301-100, 302-65 and 302-85 do not apply.

### **Concessional taxation treatment**

27. Subject to the application of the defined benefit income cap, concessional taxation treatment applies as follows.

- (a) The tax-free component of a superannuation income stream benefit that is defined benefit income is non-assessable, non-exempt income.
- (b) The taxed element of a superannuation income stream benefit that is defined benefit income is non-assessable, non-exempt income if the individual is:
  - (i) 60 years of age or over<sup>31</sup>, or
  - (ii) under 60 years of age and in receipt of a death benefit, where the deceased died at 60 years of age or over.<sup>32</sup>
- (c) The untaxed element of a superannuation income stream benefit that is defined benefit income is included in the assessable income of the individual. The individual is entitled to a tax offset equal to 10% of the untaxed element if they are:
  - (i) 60 years of age or over<sup>33</sup>, or
  - (ii) under 60 years of age and in receipt of a death benefit, where the deceased died at 60 years of age or over.<sup>34</sup>

### **Consequences of exceeding the defined benefit income cap**

28. The consequence of an individual exceeding the defined benefit income cap is that:

- (a) additional amounts of defined benefit income that would otherwise be non-assessable, non-exempt income, may be included in the individual's assessable income, and/or
- (b) the tax offsets otherwise available to the individual, in respect of any untaxed element of their defined benefit income, may be reduced.

### **Additional assessable income**

29. Where the sum of the tax-free component and taxed element of benefits that are defined benefit income and non-assessable, non-exempt income as described in paragraph 27 of this draft Guideline, exceeds an individual's defined benefit income cap, 50% of the excess is assessable income (to which no tax offset applies).<sup>35</sup>

30. PAYG withholding obligations will apply to these payments.<sup>36</sup>

### **Example 3: Capped defined benefit income stream – tax-free component and taxed element.**

31. *Sally is 65 and is receiving a non-commutable, life expectancy pension of \$150,000 per annum, which qualifies as a capped defined benefit income stream. The \$150,000 is comprised entirely of a tax-free component and a taxed element.*

<sup>31</sup> Section 301-10.

<sup>32</sup> Section 302-65.

<sup>33</sup> Section 301-100.

<sup>34</sup> Section 302-85.

<sup>35</sup> Section 303-2.

<sup>36</sup> Sections 12-1(4) and 12-80 in Schedule 1 of the *Taxation Administration Act 1953*, and the EM to the Bill at paragraph 3.302. PAYG withholding schedules will be updated to reflect the amendments.



32. For the 2016–17 financial year, Sally’s pension income is non-assessable, non-exempt income.

33. For the 2017–18 financial year, the sum of the benefits comprising the tax-free component and taxed element<sup>37</sup> exceeds her \$100,000 defined benefit income cap. Therefore, Sally includes in her assessable income 50% of the defined benefit income that exceeds her defined benefit income cap.

34. As \$50,000 of her pension exceeds her defined benefit income cap, she includes \$25,000 in her assessable income for the 2017–18 year. Sally is not entitled to a tax offset in relation to this income. Sally needs to declare this income by lodging an individual income tax return, and she may have an income tax liability for the 2017–18 year.

### **Reduced tax offset**

35. Where:

- (a) an individual is entitled to tax offset(s) in respect of the untaxed element of a defined benefit income stream as described in paragraph 27(c) of this draft Guideline, and
- (b) the sum of the non-assessable, non-exempt income amounts described at paragraphs 27(a) and (b) of this draft Guideline, and the assessable amounts described at paragraph 27(c) of this draft Guideline, exceeds the individual’s defined benefit income cap for a financial year,

the sum of those tax offsets for the year is reduced by 10% of that excess. But, the tax offsets cannot be reduced below zero.

### **Example 4: Capped defined benefit income stream – tax-free component and untaxed element**

36. Alastair is 63 and is receiving a life expectancy pension of \$150,000 per annum. The pension is a capped defined benefit income stream and is comprised of a tax-free component of \$50,000, and an untaxed element of \$100,000. Alastair’s defined benefit income cap for the year is \$100,000.

#### **Tax-free component**

37. The sum of the benefits comprising the tax-free component and the taxed element (\$50,000) does not exceed the defined benefit income cap. From the 2017–18 year, Alastair has no additional assessable income inclusion under section 303-2. The \$50,000 tax-free component of Alastair’s pension is non-assessable, non-exempt income for the 2016–17 and 2017–18 years.

#### **Untaxed element**

38. For the 2016–17 year, Alastair includes the \$100,000 untaxed element of his pension in his assessable income and claims a 10% tax offset (\$10,000).

39. From the 2017–18 year, the total amount of Alastair’s defined benefit income (the sum of the tax-free component, taxed element and untaxed element<sup>38</sup>) (\$150,000) exceeds his defined benefit income cap of \$100,000. Accordingly, his tax offset is reduced by \$5,000 (being 10% of the \$50,000 excess). Alastair therefore receives a tax offset of \$5,000.

<sup>37</sup> That is, the amounts to which sections 301-10 and 302-65 apply.

<sup>38</sup> That is, the amounts to which sections 301-10, 301-100, 302-65 or 302-85 apply.

**Example 5: Capped defined benefit income stream – tax-free component and taxed element**

40. Mary is 59 and receives a life expectancy annuity of \$150,000 per annum. Her annuity is a capped defined benefit income stream that is comprised of a tax-free component of \$50,000, and a taxed element of \$100,000.

41. Mary's annuity started on 1 July 2017, and she turns 60 on 12 September 2017. Mary received 80% of her annuity for the 2017–18 year after turning 60 (that is, a \$40,000 tax-free component, and an \$80,000 taxed element).

42. Both before and after the changes, the income Mary received before turning 60 for the 2017–18 year is treated as follows.<sup>39</sup>

- the \$10,000 tax-free component is non-assessable, non-exempt income, and
- the \$20,000 taxed element is included in her assessable income and she is entitled to a tax offset of 15% of this income (\$3,000).

43. Before the changes, the income Mary received after turning 60 would have been treated as follows:

- the \$40,000 tax-free component was non-assessable, non-exempt income, and
- the \$80,000 taxed element was non-assessable, non-exempt income.

44. In applying the changes from when Mary turns 60, Mary's defined benefit income cap is reduced. The reduction reflects the period during the 2017–18 year that her annuity was subject to concessional tax treatment (that is, the period from when she turned 60).

45. Mary's defined benefit income cap for the 2017–18 year is calculated as follows.

$$\begin{aligned}
 & \frac{\text{The general transfer balance cap for the financial year}}{16} \times \frac{1 + \text{number of days remaining in the financial year after that day}}{\text{Number of days in the financial year}} \\
 = & \frac{\$1.6 \text{ million}}{16} \times \frac{1 + 291 \text{ days}}{365}
 \end{aligned}$$

Mary's defined benefit income cap will be \$80,000 for the 2017–18 year.

The sum of the tax-free component and taxed element of Mary's annuity income that received concessional tax treatment (\$120,000), exceeds her reduced defined benefit income cap (\$80,000). Therefore, Mary includes \$20,000 in her assessable income for the 2017–18 year (being 50% of the \$40,000 excess).

46. As Mary is 60 for the entire 2018–19 financial year, all of her annuity is subject to the defined benefit income cap. No apportioning rules will apply for this year.

**Example 6: Capped defined benefit income stream and a concessional reversionary death benefit income stream**

47. Ann turns 59 on 1 July 2017, and has been receiving a life expectancy pension of \$130,000 per annum. Her pension is a capped defined benefit income stream that is comprised of a tax-free component of \$60,000, a taxed element of \$40,000, and an

<sup>39</sup> Sections 301-15 and 301-25.

*untaxed element of \$30,000. Ann receives 80% of her pension for the 2017-18 year after 12 September 2017.*

48. *Ann's spouse David dies on 12 September 2017 aged 65. She begins receiving a reversionary pension on 12 September 2017 of \$60,000 per annum. It is a capped defined benefit income stream, with an annual tax-free component of \$40,000, and an untaxed element of \$20,000.*

Treatment of Ann's life expectancy pension: 2016–17 & 2017–18 years

49. *The income Ann receives from her pension before turning 60 years of age, but above her preservation age, is treated as follows:*

- *the \$60,000 tax-free component is non-assessable, non-exempt income*
- *the \$40,000 taxed element is included in her assessable income and Ann is entitled to a tax offset of 15% of this income (\$6,000), and*
- *the \$30,000 untaxed element is included in her assessable income and there is no tax offset in relation to this income.*

50. *This treatment applies for both the 2016–17 and 2017–18 years.*

51. *None of this income receives concessional tax treatment (under sections 301-10, 301-100, 302-65, or 302-85).*

Treatment of Ann's reversionary pension: 2017–18 year

52. *The income Ann receives from her reversionary pension is treated as follows:*

- *the \$40,000 tax-free component is non-assessable, non-exempt income, and*
- *the \$20,000 untaxed element is included in her assessable income, and she is entitled to a tax offset of 10% of this income (\$2,000).*

53. *If Ann had received the reversionary pension during the 2016–17 year, this would have been the tax treatment that applied.*

54. *The same treatment applies to her reversionary pension for the 2017–18 year. But, the changes to the law result in Ann having to include an additional \$20,000 in her assessable income. Her \$2,000 tax offset will also be reduced to nil.*

55. *Although Ann is not yet aged 60, the defined benefit income she received from her reversionary pension was subject to concessional tax treatment for the 2017–18 year (under sections 302-65 and 302-85). Therefore, the defined benefit income cap applies to the defined benefit income she received for that year.*

56. *The general defined benefit income cap for the 2017–18 financial year is \$100,000. However, Ann's defined benefit income cap is reduced because she received defined benefit income, some of which received concessional tax treatment (the reversionary pension) and some of which did not (the life expectancy pension). The reduction reflects:*

- (a) *the period in the 2017–18 year that her reversionary pension was subject to concessional tax treatment, and*
- (b) *the life expectancy pension she received that was not subject to concessional tax treatment.*

57. *Ann commenced receiving her reversionary pension on 12 September 2017, so her reduced defined benefit income cap is \$80,000 (see Example 5 of this draft Guideline for an explanation). However, Ann also received defined benefit income that was not subject*

to concessional tax treatment in the 2017–18 financial year. This means that Ann's defined benefit income cap is further reduced as follows:

$$\begin{aligned} & \$80,000 - \text{(the amount of Ann's \$130,000 pension received after 12 September 2017)} \\ & = \$80,000 - (80\% \times \$130,000) \\ & = \$80,000 - \$104,000 \\ & = \text{negative } \$24,000 \end{aligned}$$

The effect of Ann having a reduced defined benefit income cap that is negative is that her defined benefit income cap is nil for the 2017–18 year.

58. The amount of Ann's reversionary pension excluding the untaxed element is \$40,000 for the 2017–18 year. This exceeds her defined benefit income cap for the year (nil). She will need to include an additional \$20,000 in her assessable income for the 2017–18 year (being 50% of the \$40,000 excess).

59. Ann's total reversionary pension (\$60,000) exceeds her defined benefit income cap (nil) for the year. Therefore, she must reduce her \$2,000 tax offset by \$6,000 (being 10% of that excess). The reduction exceeds Ann's tax offset, so she is not entitled to any tax offset (under subsection 302-85(2)) for the 2017–18 year.

Treatment of Ann's income streams for the 2018–19 year – when she is 60

60. Ann turns 60 on 1 July 2018. Before any adjustments under Division 302, Ann's life expectancy pension is treated as follows for the 2018-19 year:

- the \$60,000 tax-free component is non-assessable, non-exempt income
- the \$40,000 taxed element is non-assessable, non-exempt income, and
- the \$30,000 untaxed element is included in her assessable income and Ann is entitled to a tax offset of 10% on this income (\$3,000).

61. Ann's reversionary pension is treated as follows for the 2018–19 year, before any adjustments under Division 302:

- the \$40,000 tax-free component is non-assessable, non-exempt income, and
- the \$20,000 untaxed element is included in her assessable income, and she is entitled to a tax offset of 10% of this income (\$2,000).

62. Ann's defined benefit income cap for the 2018–19 year is \$100,000. The cap is not reduced because all of her defined benefit income is subject to concessional tax treatment.

63. The sum of Ann's defined benefit income excluding the untaxed elements she receives is \$140,000 (\$60,000 + \$40,000 + \$40,000). This exceeds her cap by \$40,000. The changes to the law result in Ann having to include an additional \$20,000 in her assessable income for the 2018–19 year (being 50% of the \$40,000 excess).

64. Ann's tax offsets under s 301-100 and 302-85, before any adjustment, total \$5,000 for the 2018–19 year (\$3,000 + \$2,000). However, her tax offset entitlement is reduced. This is because the sum of Ann's defined benefit income that is subject to concessional tax treatment for the 2018-19 year is \$190,000 (\$130,000 + \$60,000), which exceeds her defined benefit income cap for the year by \$90,000. Her tax offsets will be reduced by \$9,000 (being 10% of the \$90,000 excess). Ann's tax offsets totalling \$5,000 will be reduced to nil for the 2018–19 year.

**Commissioner of Taxation**  
13 January 2017

### **Your comments**

65. You are invited to comment on this draft Law Companion Guideline. Please forward your comments to the contact officer by the due date.

**Due date:** 17 February 2017  
**Contact officer:** Grahame Hager  
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**References**

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