


# ***PCG 2019/D2 (Finalised) - Compliance approach for large APRA-regulated superannuation funds in respect of pension tax bonuses not included in members' opening account balances on commencement of a pension***

 This cover sheet is provided for information only. It does not form part of *PCG 2019/D2 (Finalised) - Compliance approach for large APRA-regulated superannuation funds in respect of pension tax bonuses not included in members' opening account balances on commencement of a pension*

This document has been finalised by [PCG 2019/7](#).



## ATO compliance approach for large APRA-regulated superannuation funds in respect of pension tax bonuses not included in members' opening account balances on commencement of a pension

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### Relying on this draft Guideline

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

*This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.*

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### What this draft Guideline is about

1. This draft Guideline<sup>1</sup> provides a transitional compliance approach for large Australian Prudential Regulation Authority (APRA) regulated superannuation funds that provide a pension tax bonus to members where the superannuation funds are facing practical difficulties in complying with certain legislative requirements.

### Date of effect

2. When finalised, this Guideline will apply from 1 July 2017 to 30 June 2020.

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<sup>1</sup> All further references to 'this Guideline' refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

### Who this Guideline applies to

3. This Guideline will apply to a large APRA-regulated superannuation fund that:
- (a) provides a pension tax bonus to a member who commences a superannuation income stream that is in retirement phase (RP superannuation income stream<sup>2</sup>) within the fund
  - (b) is not able, due to system constraints, to incorporate the value of the pension tax bonus into the opening balance of the new RP superannuation income stream for the income year in which the income stream commences
  - (c) due to (b) above, is not able to ensure that the minimum pension payments as required by the *Superannuation Industry (Supervision) Regulations 1994* (SISR) are paid for the income stream to be an RP superannuation income stream for the income year in which the income stream commences
  - (d) correctly determines the opening balance of RP superannuation income streams, and consequently minimum pension payments, for the income year commencing immediately after the commencement of the RP superannuation income stream and later income years, and
  - (e) deploys a full system solution by 30 June 2020.
4. For the purposes of this Guideline, a pension tax bonus is a payment made by the superannuation fund to its member where:
- the member commences an RP superannuation income stream
  - the superannuation interest supporting the RP superannuation income stream commenced in the superannuation fund where the member held an accumulation interest
  - the pension tax bonus represents a reduction in the superannuation fund's deferred tax liability attributed to the member as a result of the commencement of the RP superannuation income stream, and
  - under the relevant rules governing the superannuation fund, the superannuation fund agrees to pay the pension tax bonus into the superannuation interest supporting the RP superannuation income stream at the time the income stream is commenced.
5. This Guideline does not apply to self-managed superannuation funds and small APRA funds.

### Background

6. A superannuation fund may account for deferred tax liabilities attributable to members who hold a superannuation interest that is in the accumulation phase. When the member commences an RP superannuation income stream, the superannuation fund may recognise a reduction in the fund's deferred tax liability as attributable to that member. This is due to the operation of the exempt current pension income provisions as set out in Subdivision 295-F of the ITAA 1997. In this situation, the superannuation fund may pay a pension tax bonus to the member.
7. A pension<sup>3</sup> is a superannuation income stream where it satisfies the requirements of subregulation 1.06(1) of the SISR.<sup>4</sup> One of these requirements is that specified

<sup>2</sup> Section 307-80 of the *Income Tax Assessment Act 1997* (ITAA 1997) states when a superannuation income stream is in retirement phase.

<sup>3</sup> Section 10 of the *Superannuation Industry (Supervision) Act 1993* (SISA).

<sup>4</sup> See subparagraph (a)(ii) of the definition of a 'superannuation income stream' in subregulation 995-1.01(1) of the *Income Tax Assessment Regulations 1997*.

minimum annual pension payments are made.<sup>5</sup> When a pension is commenced, the member's pension account balance on commencement day must be determined for the purposes of calculating those required minimum pension payment amounts.<sup>6</sup>

8. Where the superannuation fund agrees to pay the pension tax bonus into the superannuation interest supporting the RP superannuation income stream at the commencement of the income stream, the value of the pension tax bonus needs to be taken into account in determining the member's pension account balance to ensure that the required minimum pension payments are made. A consequence of not doing so is that it is possible that the superannuation fund will not pay the required minimum annual pension payment, resulting in the trustee being taken not to have paid an RP superannuation income stream to the member in the relevant income year.<sup>7</sup> This would consequently impact the superannuation fund's calculation of its exempt current pension income.

9. The important feature is that the superannuation fund agrees to pay the pension tax bonus, including by way of a credit or additional units or other form of augmentation, from the day the RP superannuation income stream commences. The fact that a superannuation fund, due to system constraints, may credit this amount to the member's superannuation interest after the commencement of the RP superannuation income stream does not alter the requirement to recognise the value of the credit in determining the member's pension account balance for the purposes of calculating the required minimum pension amount.

10. Further, for the purposes of the transfer balance cap regime, the member will have a transfer balance credit equal to the value of the superannuation interest that supports the RP superannuation income stream on the day that the superannuation income stream commences.<sup>8</sup> Accordingly, the amount of the transfer balance credit will incorporate the value of the pension tax bonus as part of the value of the superannuation interest.

11. We recognise that some superannuation funds that wish to provide pension tax bonuses to members may need to modify existing systems to ensure full automation, and integration with core processing and integrity controls with respect to having the value of the pension tax bonus correctly reflected in the member's pension account balance.

### **The ATO's transitional compliance approach**

12. Where a superannuation fund satisfies all of the conditions set out in paragraph 13 of this Guideline, the ATO will not allocate compliance resources to review the calculation of the superannuation fund's exempt current pension income under Subdivision 295-F of the ITAA 1997 as a result of the superannuation fund not incorporating the value of the pension tax bonus into the member's pension account balance when calculating the required minimum pension payments.

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<sup>5</sup> Subregulation 1.06(9A) of the SISR.

<sup>6</sup> Clause 1 of Schedule 7 to the SISR.

<sup>7</sup> See paragraphs 18 and 19 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases*.

<sup>8</sup> Table item 2 in subsection 294-25(1) of the ITAA 1997.

13. The conditions are:
- (a) the superannuation fund, due to constraints in its or its administrator's systems, cannot include the pension tax bonus in the member's opening account balance on commencement of the RP superannuation income stream for the purposes of calculating the minimum pension payment amount
  - (b) the value of the pension tax bonus is incorporated in the member's pension account balance for the income year commencing immediately after the commencement of the RP superannuation income stream
  - (c) the superannuation fund advises the ATO of the correct value of the superannuation interest supporting the RP superannuation income stream (incorporating the value of the pension tax bonus) for the purposes of the member's transfer balance credit
  - (d) the superannuation fund has notified APRA of the potential breach of the minimum pension payment standards
  - (e) the amount of the pension tax bonus represents less than 1.5% of the member's closing accumulation balance
  - (f) the amount of the pension tax bonus is representative of the member's investment options during the accumulation phase and proportionate to the time they have been a member of the superannuation fund
  - (g) where the superannuation fund has adopted propagation arrangements as part of its asset selection methodology, those propagation arrangements meet all the requirements to be determined to be 'low risk' for the purposes of Practical Compliance Guideline PCG 2018/2 *Propagation arrangements adopted by registrable superannuation entities*
  - (h) the superannuation fund has deployed a full system solution to address the issue set out in (a) by 30 June 2020.

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**Commissioner of Taxation**

17 July 2019

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## Your comments

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14. You are invited to comment on this draft Guideline, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

15. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- may be published on the ATO website at [ato.gov.au](http://ato.gov.au)

Please advise if you do not want your comments included in the edited version of the compendium

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### References

ATOlaw topic(s)	Income tax ~~ Exempt income ~~ Superannuation entities
Legislative references	ITAA 1997 ITAA 1997 294-25(1) ITAA 1997 Subdiv 295-F ITAA 1997 307-80 ITAR 1997 ITAR 1997 995-1.01(1) SISA SISA 10 SISR SISR 1.06(1) SISR 1.06(9A) SISR Clause 1 Schedule 7
Related Rulings/Determinations	TR 2013/5
Other references	PCG 2018/2
ATO reference	1-FBCFDBK
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