


***TD 2002/D13 - Income tax: what is the method for reducing the capital value of a superannuation pension for reasonable benefit limit (RBL) purposes under subsection 140ZP(3) of the Income Tax Assessment Act 1936 (ITAA 1936) 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This document has been Withdrawn.  
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## Draft Taxation Determination

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### **Income tax: what is the method for reducing the capital value of a superannuation pension for reasonable benefit limit (RBL) purposes under subsection 140ZP(3) of the *Income Tax Assessment Act 1936* (ITAA 1936) 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 has already commenced to be paid to the member spouse.
3. In such a case, the pension subject to the split will be divided between the parties either by commutation or by dividing each pension payment. Pension payments will only need to be divided when the pension was not able to be commuted due to the governing rules of the superannuation fund or legislative restrictions.
4. 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).
5. Pursuant to subsection 140ZP(3) of the ITAA 1936, if the pension subject to the split counts or has already counted towards the member spouse’s RBL then the capital value of the member spouse’s pension will be reduced by an amount worked out in accordance with a method determined by the Commissioner. That method is outlined below.

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6. If the pension was commuted or the superannuation fund can determine a lump sum value of the pension on the day before the pension was split then the amount by which the capital value of the member's pension is to be reduced is:

- (i) if the split is within 12 months of the commencement day of the pension – the commutation amount or the lump sum value worked out by the fund minus the part attributable to the undeducted contributions, the concessional component and the post-June 1994 invalidity component; or
- (ii) in any other case – the amount worked out using the following formula:

$$\text{commutation amount or lump sum value} * \frac{\text{index number for payment quarter}}{\text{index number for second last quarter}}$$

where

*commutation amount or lump sum value* means the amount of the commutation or lump sum value calculated by the fund on the day before the split minus the part attributable to the undeducted contributions, the concessional component and the post-June 1994 invalidity component

*index number* as defined in section 140C in relation to a quarter, means the amount of the full-time adult average weekly ordinary time earnings first published by the Australian Statistician for the middle month of that quarter

*quarter* as defined in section 140C means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December

*payment quarter* means the index number for the quarter in which the commencement day of the pension occurs

*second last quarter* means the index number for the quarter two quarters before the quarter in which the pension was commuted or split.

7. When a superannuation fund cannot determine the lump sum value of the pension on the day before the split, the superannuation fund should write to the Commissioner with the details of the pension and the Commissioner will determine a method in writing in relation to that pension.

## Your comments

8. 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  
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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 2002/D14 (deductible amount divorce pensions)
- TD 2002/D15 (RBL valuation of divorce pension)

*Subject references:*

- commutation
- concessional component
- invalidity component

- pension capital value
- reasonable benefit limits
- superannuation
- superannuation pension
- undeducted contributions

*Legislative references:*

- ITAA 1936 140C
- ITAA 1936 140ZP(3)
- Family Law Act 1975 PtVIII B

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ATO References

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