



Legislative Instrument

Income Tax: Pre-1 July 2021 alternative method for calculating the tax free component and taxable component of a superannuation benefit for recipients of certain pensions under the Defence Force Retirement and Death Benefits Act 1973 and the Trust Deed referred to in section 4 of the Military Superannuation and Benefits Act 1991

I, Louise Clarke, Deputy Commissioner of Taxation, make this determination under subsection 307-125(5) of the *Income Tax Assessment Act 1997*.

Louise Clarke

Deputy Commissioner of Taxation
Policy, Analysis and Legislation
Law Design and Practice
Date of Making: 25 June 2021

1. Name of instrument

This determination is the *Pre-1 July 2021 alternative method for calculating the tax free component and taxable component of a superannuation benefit for recipients of certain pensions under the Defence Force Retirement and Death Benefits Act 1973 and the Trust Deed referred to in section 4 of the Military Superannuation and Benefits Act 1991*.

2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3. Application

This instrument specifies an alternative method for calculating the tax free component and taxable component of a superannuation benefit under section 307-125 of the *Income Tax Assessment Act 1997*. It applies to superannuation benefits that are superannuation lump sums specified in clause 4 below which include superannuation benefits that have been paid both before and after the commencement of this instrument.

- (a) The alternative method is that the superannuation benefit is taken to be paid in a way such that the tax free component and the taxable component of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the superannuation interest identified in subclause 3(b) bears to the value of the superannuation interest.

- (b) For the purposes of subclause 3(a), the superannuation interest is the superannuation interest supporting a pension specified in clause 4. For the purposes of this clause, assume that the pension is a superannuation income stream.
- (c) For the purposes of subclause 3(a), determine the value of the superannuation interest and the amount of the tax free component and the taxable component of the interest when the relevant pension commenced.
- (d) For the avoidance of doubt, the tax free component and taxable component amounts determined in accordance with the alternative method set out in subclause 3(a) are subject to any modification to the tax free component and taxable component that may arise due to the application of section 307-145 or section 307-150 of the *Income Tax Assessment Act 1997*.

4. Determination

This instrument applies to:

- (a) superannuation benefits paid before 1 July 2021 that are superannuation lump sums paid to an individual as a pension in accordance with section 31(1) or section 32(1) of the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) that commenced on or after 20 September 2007;
- (b) superannuation benefits paid before 1 July 2021 that are superannuation lump sums paid to an individual (reversionary beneficiary) as a pension in accordance with subsection 39(1), subsection 42(1) or subsection 43(1) of the DFRDB Act where the primary beneficiary received superannuation benefits as a pension in accordance with section 31 that commenced on or after 20 September 2007;
- (c) superannuation benefits paid before 1 July 2021 that are superannuation lump sums paid to an individual (non-reversionary beneficiary) as a pension in accordance with subsection 43A(1) or 43A(2) or subsection 44(2) of the DFRDB Act that commenced on or after 20 September 2007;
- (d) superannuation benefits paid before 1 July 2021 that are superannuation lump sums paid to an individual as a pension in accordance with rule 27(1) or rule 28(1) of the Military Superannuation and Benefits Rules set out in the Schedule to the Trust Deed as referred to in section 4 of the *Military Superannuation and Benefits Act 1991* (MSBS Rules) that commenced on or after 20 September 2007;
- (e) superannuation benefits paid before 1 July 2021 that are superannuation lump sums paid to an individual (reversionary beneficiary) as a pension in accordance with rule 42(1), rule 42(3), or rule 46(1) of the MSBS Rules where the primary beneficiary received superannuation benefits as a pension in accordance with rule 27(1) or rule 28(1) that commenced on or after 20 September 2007.

5. Definitions

All terms take their meaning from the *Income Tax Assessment Act 1997*, the DFRDB Act and the *Military Superannuation and Benefits Act 1991*.