

LI 2022/1 -



Legislative Instrument

Income Tax: Alternative method for calculating the tax free component and taxable component of a superannuation benefit paid during the 2021–22 financial year 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, Ben Kelly, Deputy Commissioner of Taxation, make this determination under subsection 307-125(5) of the *Income Tax Assessment Act 1997*.

Ben Kelly

Deputy Commissioner of Taxation
Policy, Analysis and Legislation
Law Design and Practice
Date of Making: 9 December 2021

1. Name of instrument

This determination is the *Income Tax: Alternative method for calculating the tax free component and taxable component of a superannuation benefit paid during the 2021–22 financial year 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 under section 307-125 of the *Income Tax Assessment Act 1997* of a superannuation benefit paid during the 2021–22 financial year. It applies to superannuation benefits that are superannuation lump sums specified in section 4 below which include superannuation benefits that have been paid both before and after the commencement of this instrument.

- (1) 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 subsection 3(2) bears to the value of the superannuation interest.

- (2) For the purposes of subsection 3(1), the superannuation interest is the superannuation interest supporting a pension specified in section 4. For the purposes of this section, assume that the pension is a superannuation income stream.
- (3) For the purposes of subsection 3(1), 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.
- (4) For the avoidance of doubt, the tax free component and taxable component amounts determined in accordance with the alternative method set out in subsection 3(1) 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:

- (1) superannuation benefits paid during the 2021–22 financial year that are superannuation lump sums paid to an individual as a pension in accordance with subsection 31(1) or subsection 32(1) of the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) that commenced on or after 20 September 2007;
- (2) superannuation benefits paid during the 2021–22 financial year 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;
- (3) superannuation benefits paid during the 2021–22 financial year 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;
- (4) superannuation benefits paid during the 2021–22 financial year 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 (MSBS Rules) set out in the Schedule to the Trust Deed as referred to in section 4 of the *Military Superannuation and Benefits Act 1991* that commenced on or after 20 September 2007;
- (5) superannuation benefits paid during the 2021–22 financial year 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 *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991*.