

**LI 2022/33 -**



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## Legislative Instrument

# Income Tax: Alternative method for calculating the tax free component and taxable component of a superannuation benefit paid during the 2022–23 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*

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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: 19 September 2022

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### **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 2022–23 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. Alternative method**

For subsection 307-125(5) of the ITAA 1997, this instrument specifies an alternative method for calculating the tax free component and taxable component of superannuation benefits specified in section 4 that are paid during the 2022–23 financial year. The alternative method is as follows:

- (1) 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 ITAA 1997.

#### **4. Application**

This instrument applies to the following superannuation benefits paid in the 2022-23 financial year, including any benefits paid before the commencement of this instrument:

- (1) superannuation lump sums paid to an individual as a pension in accordance with subsection 31(1) or subsection 32(1) of the DFRDB Act that commenced on or after 20 September 2007;
- (2) 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 or subsection 32(1) that commenced on or after 20 September 2007;
- (3) 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 lump sums paid to an individual as a pension in accordance with rule 27(1) or rule 28(1) of the MSBS Rules that commenced on or after 20 September 2007;
- (5) 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**

DFRDB Act means the *Defence Force Retirement and Death Benefits Act 1973*.

ITAA 1997 means the *Income Tax Assessment Act 1997*.

MSBS Act means the *Military Superannuation and Benefits Act 1991*.

MSBS Rules means the Military Superannuation and Benefits Rules set out in the Schedule to the Trust Deed referred to in section 4 of the MSBS Act.

Terms in this instrument that are defined in the *Income Tax Assessment Act 1997* have the same meaning as in that Act.

Terms in this instrument that are defined in the *Defence Force Retirement and Death Benefits Act 1973* and the *Military Superannuation and Benefits Act 1991* have the same meaning as in those Acts, to the extent relevant.

#### **6. Repeals**

Each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the applicable items in that Schedule.

## Schedule 1

***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 (F2021L00901)***

1 The whole of the 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 (F2022L00004)***

2 The whole of the instrument