





# **Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013**

**No. 118, 2013**

**An Act to amend the law relating to taxation and  
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013**

**No. 118, 2013**

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**An Act to amend the law relating to taxation and  
superannuation, and for related purposes**

*[Assented to 29 June 2013]*

The Parliament of Australia enacts:

**1 Short title**

This Act may be cited as the *Tax Laws Amendment (Fairer  
Taxation of Excess Concessional Contributions) Act 2013*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedule 1, Parts 1 to 5	The day this Act receives the Royal Assent.	29 June 2013
3. Schedule 1, items 88 to 91	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	29 June 2013 (paragraph (a) applies)
4. Schedule 1, item 92	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 8 of Schedule 1 to the <i>Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	29 June 2013 (paragraph (a) applies)
5. Schedule 1,	The later of:	29 June 2013

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
items 93 to 96	<p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	(paragraph (a) applies)
6. Schedule 1, item 97	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (New Zealand Arrangement) Act 2012</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
7. Schedule 1, item 98	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 11; and</p> <p>(b) immediately after the commencement of the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	29 June 2013 (paragraph (a) applies)
8. Schedule 1, item 99	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of the <i>Tax and Superannuation Laws</i></p>	29 June 2013 (paragraph (a) applies)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p><i>Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013.</i></p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
9. Schedule 1, item 100	<p>Immediately after the time specified in the <i>Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013</i> for the commencement of item 19 of Schedule 1 to that Act.</p> <p>However, the provision(s) do not commence at all if section 2 of the <i>Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013</i> does not commence.</p>	2 July 2019
10. Schedule 1, items 101 to 109	<p>The later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013.</i></p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	29 June 2013 (paragraph (a) applies)
11. Schedule 1, Part 7	The day this Act receives the Royal Assent.	29 June 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Fairer taxation of excess concessional contributions

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

#### 1 After Division 290

Insert:

### Division 291—Excess concessional contributions

#### Table of Subdivisions

	Guide to Division 291
291-A	Object of this Division
291-B	Excess concessional contributions
291-C	Modifications for defined benefit interests
291-D	Other provisions

#### Guide to Division 291

##### 291-1 What this Division is about

There is a cap on the amount of superannuation contributions that may receive concessional tax treatment for an individual in a financial year.

Superannuation contributions that exceed your concessional contributions cap are included in your assessable income for the corresponding income year.

A tax offset compensates for the tax that generally applies to the contributions in the superannuation fund.

Note: Part 2-35 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about a charge you may be liable to pay, and about releasing the excess concessional contributions from superannuation.

## Subdivision 291-A—Object of this Division

### Table of sections

291-5 Object of this Division

### 291-5 Object of this Division

The object of this Division is to ensure, in relation to *concessional* contributions to superannuation, that the amount of concessionally taxed \*superannuation benefits that an individual receives results from contributions that have been made gradually over the course of the individual's life.

Note: Division 292 has the same object, in relation to non-concessional contributions.

## Subdivision 291-B—Excess concessional contributions

### Guide to Subdivision 291-B

#### 291-10 What this Subdivision is about

This Subdivision includes excess concessional contributions in your assessable income and provides a tax offset.

### Table of sections

#### Operative provisions

291-15 Excess concessional contributions—assessable income, 15% tax offset  
291-20 Your *excess concessional contributions* for a financial year  
291-25 Your *concessional contributions* for a financial year

### Operative provisions

#### 291-15 Excess concessional contributions—assessable income, 15% tax offset

If you have \*excess concessional contributions for a \*financial year:

**Schedule 1** Fairer taxation of excess concessional contributions  
**Part 1** Main amendments

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- (a) an amount equal to the excess concessional contributions is included in your assessable income for your corresponding income year; and
- (b) you are entitled to a \*tax offset for that income year equal to 15% of the excess concessional contributions.

Note 1: This offset cannot be refunded, transferred or carried forward: see item 20 of the table in subsection 63-10(1).

Note 2: You may be liable to pay excess concessional contributions charge: see Division 95 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: You can elect to release excess concessional contributions from superannuation: see Division 96 in that Schedule.

**291-20 Your excess concessional contributions for a financial year**

- (1) You have *excess concessional contributions* for a \*financial year if the amount of your \*concessional contributions for the year exceeds your \*concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.
- (2) Your *concessional contributions cap* is:
  - (a) for the 2013-2014 financial year—\$25,000; or
  - (b) for the 2014-2015 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (a).

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

**291-25 Your concessional contributions for a financial year**

- (1) The amount of your *concessional contributions* for a \*financial year is the sum of:
  - (a) each contribution covered under subsection (2); and
  - (b) each amount covered under subsection (3).
- Note: For rules about defined benefit interests, see Subdivision 291-C.
- (2) A contribution is covered under this subsection if:
  - (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and

- (b) it is included in the assessable income of the \*superannuation provider in relation to the plan, or, by way of a \*roll-over superannuation benefit, in the assessable income of a \*complying superannuation fund or \*RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds); and
  - (c) it is *not* any of the following:
    - (i) an amount mentioned in subsection 295-200(2);
    - (ii) an amount mentioned in item 2 of the table in subsection 295-190(1);
    - (iii) a contribution made to a \*constitutionally protected fund.
- (3) An amount in a \*complying superannuation plan is covered under this subsection if it is allocated by the \*superannuation provider in relation to the plan for you for the year in accordance with conditions specified in the regulations.
- (4) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

## **Subdivision 291-C—Modifications for defined benefit interests**

### **Guide to Subdivision 291-C**

#### **291-155 What this Subdivision is about**

This Subdivision modifies the meaning of <i>concessional contributions</i> relating to defined benefits interests.
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#### **Table of sections**

##### **Operative provisions**

291-160	Application
291-165	Concessional contributions—special rules for defined benefit interests
291-170	<i>Notional taxed contributions</i>
291-175	<i>Defined benefit interest</i>

## Operative provisions

### 291-160 Application

- (1) This Subdivision applies if, in a \*financial year, you have:
  - (a) a \*superannuation interest that is or includes a \*defined benefit interest; or
  - (b) more than one superannuation interest that is or includes a defined benefit interest.
- (2) However, this Subdivision does not apply in relation to a \*superannuation interest in a \*constitutionally protected fund.

### 291-165 Concessional contributions—special rules for defined benefit interests

Despite section 291-25, the amount of your *concessional contributions* for the \*financial year is the sum of:

- (a) the contributions covered by subsection 291-25(2), and the amounts covered by subsection 291-25(3), to the extent to which they do *not* relate to the \*defined benefit interest or interests; and
- (b) your \*notional taxed contributions for the financial year in respect of the defined benefit interest or interests.

### 291-170 Notional taxed contributions

- (1) Your *notional taxed contributions* for a \*financial year in respect of a \*defined benefit interest has the meaning given by the regulations.

Note: For transitional provisions about notional taxed contributions that were previously in former subsections 292-170(6) to (9), see Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the *notional taxed contributions*.
- (3) Regulations made for the purposes of subsection (1) may define the \*notional taxed contributions, and the amount of notional taxed

contributions, in different ways depending on any of the following matters:

- (a) the individual who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.
- (4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of \*notional taxed contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.

### **291-175 *Defined benefit interest***

- (1) An individual's \*superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to \*superannuation benefits payable from the interest by reference to one or more of the following matters:
- (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (c) a specified amount;
  - (d) specified conversion factors.
- (2) However, an individual's \*superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:
- (a) \*disability superannuation benefits;
  - (b) \*superannuation death benefits;
  - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

## Subdivision 291-D—Other provisions

### Guide to Subdivision 291-D

#### 291-460 What this Subdivision is about

The Commissioner has a discretion to disregard concessional contributions or allocate them to a different financial year.

#### Table of sections

##### Operative provisions

291-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

#### Operative provisions

##### 291-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

- (1) The Commissioner may make a written determination that, for the purposes of working out the amount of your \*excess concessional contributions for a \*financial year, all or part of your \*concessional contributions for a financial year is to be:
  - (a) disregarded; or
  - (b) allocated instead for the purposes of another financial year specified in the determination.

##### *Conditions for making of determination*

- (2) The Commissioner may make the determination only if:
  - (a) you apply for the determination in accordance with this section; and
  - (b) the Commissioner considers that:
    - (i) there are special circumstances; and
    - (ii) making the determination is consistent with the object of this Division and Division 292.

*Matters to which regard may be had*

- (3) In making the determination the Commissioner may have regard to the following:
- (a) whether a contribution made in the relevant \*financial year would more appropriately be allocated towards another financial year instead;
  - (b) whether it was reasonably foreseeable, when a relevant contribution was made, that you would have \*excess concessional contributions or \*excess non-concessional contributions for the relevant financial year, and in particular:
    - (i) if the relevant contribution is made in respect of you by another individual—the terms of any agreement or arrangement between you and that individual as to the amount and timing of the contribution; and
    - (ii) the extent to which you had control over the making of the contribution;
  - (c) any other relevant matters.

*Requirements for application*

- (4) The application:
- (a) must be in the \*approved form; and
  - (b) can only be made after all of the contributions sought to be disregarded or reallocated have been made; and
  - (c) if you receive an \*excess concessional contributions determination for the \*financial year—must be given to the Commissioner within:
    - (i) 60 days after receiving the determination; or
    - (ii) a further period allowed by the Commissioner.

*Notification*

- (5) The Commissioner must give you:
- (a) a copy of the determination; or
  - (b) if the Commissioner decides not to make a determination—notice of that decision.
- (6) The determination or notice may be included in any other notice under this Act.

*Review*

- (7) If you are dissatisfied with:
- (a) a determination made under this section in relation to you; or
  - (b) a decision the Commissioner makes not to make such a determination;
- you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) To avoid doubt:
- (a) subject to subsection 14ZVB(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a determination or decision, relating to all or part of your \*concessional contributions for a \*financial year:
    - (i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or
    - (ii) under section 97-10 in Schedule 1 to the *Taxation Administration Act 1953* against an \*excess concessional contributions determination made in relation to you for the financial year; and
  - (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a determination under this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

***Taxation Administration Act 1953***

**2 At the end of Chapter 2 in Schedule 1**

Add:

**Part 2-35—Excess concessional contributions**

**Division 95—Excess concessional contributions charge**

**Table of Subdivisions**

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- Guide to Division 95
- 95-A Object of Division
- 95-B Excess concessional contributions charge

## **Guide to Division 95**

### **95-1 What this Division is about**

You are liable to pay a charge on the income tax you pay on excess concessional contributions.

The charge is applied at a uniform rate that is the same as the shortfall interest charge.

The period for the excess concessional contributions charge starts at the start of the income year and ends just before tax is due to be paid under your first assessment for the year.

### **Subdivision 95-A—Object of Division**

#### **Table of sections**

- 95-5 Object of Division

#### **95-5 Object of Division**

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from \*excess concessional contributions, so that they do not receive an advantage in the form of:

- (a) the later time at which \*tax is collected, as compared to tax that is collected through the Pay as you go system; and
- (b) the earnings on the contributions, which receive a concessional tax rate and remain in superannuation even if the contributions are released under Division 96.

### **Subdivision 95-B—Excess concessional contributions charge**

#### **Table of sections**

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**Schedule 1** Fairer taxation of excess concessional contributions  
**Part 1** Main amendments

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95-10	Liability to excess concessional contributions charge
95-15	Amount of excess concessional contributions charge
95-20	When excess concessional contributions charge is due and payable
95-25	General interest charge

**95-10 Liability to excess concessional contributions charge**

(1) If:

- (a) you have \*excess concessional contributions for a \*financial year; and
- (b) you are liable to pay an amount of \*tax (your *actual tax*) for the corresponding income year; and
- (c) your actual tax exceeds the amount of tax you would be liable to pay for the income year if the excess concessional contributions were disregarded;

the excess is an amount of tax on which you are liable to pay ***excess concessional contributions charge***.

Note 1: Excess concessional contributions are included in assessable income and give rise to a tax offset: see section 291-15 of the *Income Tax Assessment Act 1997*.

Note 2: In this Act, ***tax*** is an assessed amount: see subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

- (2) If you would not be liable to pay \*tax for the income year if the \*excess concessional contributions were disregarded, apply paragraph (1)(c) as if you would be liable to pay a nil amount of tax.

*Period for which the charge is payable*

- (3) The liability is for each day in the period:
- (a) beginning on the first day of the income year; and
  - (b) ending on the day before the day on which \*tax under your first notice of assessment for that income year is due to be paid, or would be due to be paid if there were any.

**95-15 Amount of excess concessional contributions charge**

The \*excess concessional contributions charge for a day is worked out by multiplying the rate worked out under section 4 of the *Superannuation (Excess Concessional Contributions Charge) Act 2013* for that day by the sum of the following amounts:

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- (a) the amount of \*tax on which you are liable to pay the charge;
- (b) the excess concessional contributions charge on that amount from previous days.

### **95-20 When excess concessional contributions charge is due and payable**

- (1) The \*excess concessional contributions charge you are liable to pay for an income year is due and payable on the day on which \*tax is due to be paid under your first notice of assessment for that income year that includes an amount of tax on which you are liable to pay the charge.

Note: For when income tax is due and payable, see section 5-5 of the *Income Tax Assessment Act 1997*.

#### *Determination required*

- (2) An amount of \*excess concessional contributions charge is only due and payable if the Commissioner gives you an \*excess concessional contributions determination stating the amount of the charge (although it may be taken by subsection (1) to have been due and payable at a time before the determination was made).

Note: For excess concessional contributions determinations, see Division 97.

#### *Amended determinations*

- (3) However, if the Commissioner amends your \*excess concessional contributions determination, any extra charge resulting from the amendment is due and payable 21 days after the Commissioner gives you notice of the amended determination.

### **95-25 General interest charge**

If an amount of \*excess concessional contributions charge or \*shortfall interest charge on excess concessional contributions charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) begins on the day on which the amount was due to be paid;
- and

- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
- (i) the excess concessional contributions charge or shortfall interest charge;
  - (ii) the general interest charge on any of the excess concessional contributions charge or shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA.

Note 2: Shortfall interest charge is worked out under Division 280 in this Schedule.

Note 3: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

## **Division 96—Releasing money from superannuation**

### **Table of Subdivisions**

96-A Releasing money from superannuation

### **Subdivision 96-A—Releasing money from superannuation**

#### **Guide to Subdivision 96-A**

##### **96-1 What this Subdivision is about**

You may elect to release up to 85% of your excess concessional contributions for a financial year from a superannuation interest.

Superannuation providers will usually be required to pay an amount from the superannuation interest. However, for certain interests the provider may choose whether or not to pay.

Released amounts are paid by the superannuation provider to the Commissioner.

You get a credit for the released amount. Surplus credits are refunded to you under Division 3A of Part IIB.

#### **Table of sections**

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### **Requesting a release authority**

96-5 Electing to release money from superannuation

### **Issuing a release authority to superannuation provider**

96-10 Issuing a release authority to a superannuation provider

96-15 Varying and revoking a release authority

### **Complying with a release authority**

96-20 Obligations of superannuation providers

96-25 Voluntary compliance with a release authority relating to voluntary release interests

96-30 Meaning of *maximum available release amount*

96-35 Notifying Commissioner

96-40 Notifying individual of unsuccessful release attempt

96-45 Compensation for acquisition of property

### **Consequences of releasing amounts**

96-50 Entitlement to credits

96-55 Interest for late payments of money received by the Commissioner in accordance with release authority

96-60 Income tax treatment of amounts released—proportioning rule does not apply

## **Requesting a release authority**

### **96-5 Electing to release money from superannuation**

#### *Original determinations*

- (1) If you receive an \*excess concessional contributions determination, you may elect to release from a \*superannuation interest an amount not exceeding 85% of the \*excess concessional contributions stated in the determination.

Note 1: For excess concessional contributions determinations, see Division 97.

Note 2: Released excess concessional contributions are not included in your non-concessional contributions (a gross-up also applies): see subsection 292-90(1A) of the *Income Tax Assessment Act 1997*.

#### *Amended determinations*

- (2) However, if the \*excess concessional contributions determination is an amended determination increasing the stated amount of your

\*excess concessional contributions, you may elect to release an amount not exceeding:

- (a) 85% of the excess concessional contributions stated in the amended determination; less
- (b) any amount you elect to release under subsection (1) in relation to an earlier determination.

*Requirements for election*

- (3) You make the election by:
  - (a) notifying the Commissioner of the amount you elect to release; and
  - (b) identifying the \*superannuation interest or interests you have from which the amount is to be released; and
  - (c) if you identify more than one superannuation interest—stating the amount to be released from each such interest.
- (4) The election must:
  - (a) be in the \*approved form; and
  - (b) be given to the Commissioner within:
    - (i) 21 days after receiving notice of the \*excess concessional contributions determination or amended excess concessional contributions determination; or
    - (ii) a further period allowed by the Commissioner.

*Unsuccessful elections—making a further election*

- (5) If:
  - (a) you make a valid election under this section; and
  - (b) the Commissioner gives you a notice under section 96-40 stating an amount (the **unreleased amount**) that a \*superannuation provider did not pay in relation to the release authority issued in relation to that election;you may make a further election to release the unreleased amount from another superannuation interest you have.
- (6) The further election must comply with subsection (3) and paragraph (4)(a), and must be given to the Commissioner within:
  - (a) 21 days after receiving the notice mentioned in paragraph (5)(b); or

(b) a further period allowed by the Commissioner.

*Election is irrevocable*

(7) An election under this section is irrevocable.

## **Issuing a release authority to superannuation provider**

### **96-10 Issuing a release authority to a superannuation provider**

- (1) If you make a valid election under section 96-5 in relation to \*excess concessional contributions you have for a \*financial year, the Commissioner must issue a release authority to each \*superannuation provider that holds a \*superannuation interest identified in the election.
- (2) The release authority must:
  - (a) state the amount to be released from the \*superannuation interest, as stated in the election; and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.

### **96-15 Varying and revoking a release authority**

The Commissioner may vary or revoke a release authority at any time before the Commissioner receives a payment relating to the release authority.

## **Complying with a release authority**

### **96-20 Obligations of superannuation providers**

- (1) A \*superannuation provider that has been issued with a release authority under section 96-10 must, within 7 days after the release authority is issued, pay to the Commissioner the lesser of:
  - (a) the amount stated in the release authority; and
  - (b) the sum of the \*maximum available release amounts for each \*superannuation interest held by the superannuation provider for the individual in \*superannuation plans.

**Schedule 1** Fairer taxation of excess concessional contributions  
**Part 1** Main amendments

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Note 1: Subsection 288-95(3) provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see section 96-60.

*Exception—interests not subject to compulsory release*

- (2) However, the \*maximum available release amount for a \*superannuation interest is not to be included in the sum worked out under paragraph (1)(b) if the interest is of any of the following kinds (a ***voluntary release interest***):
- (a) a \*defined benefit interest;
  - (b) a superannuation interest in a \*non-complying superannuation fund;
  - (c) a superannuation interest that is treated as a separate interest under regulations made for the purposes of section 307-200 of the *Income Tax Assessment Act 1997* in circumstances where the interest is supporting a \*superannuation income stream.

**96-25 Voluntary compliance with a release authority relating to voluntary release interests**

- (1) A \*superannuation provider that has been issued with a release authority under section 96-10 may, within 7 days after the release authority is issued, pay to the Commissioner the lesser of:
- (a) the amount stated in the release authority; and
  - (b) the sum of the \*maximum available release amounts for each voluntary release interest held by the superannuation provider for the individual in \*superannuation plans.
- (2) However, the amount mentioned in paragraph (1)(a) must be reduced by any amount the provider pays to the Commissioner under section 96-20 in relation to the release authority.

**96-30 Meaning of *maximum available release amount***

The ***maximum available release amount*** for a \*superannuation interest at a particular time is the total amount of all the \*superannuation lump sums that could be payable from the interest at that time.

### **96-35 Notifying Commissioner**

- (1) A \*superannuation provider that has been issued with a release authority under section 96-10 must notify the Commissioner of a payment made in accordance with this Subdivision.
- (2) A \*superannuation provider that:
  - (a) has been issued with a release authority under section 96-10; and
  - (b) is not required to pay an amount under section 96-20, or is required under that section to pay an amount less than the amount stated in the release authority;must notify the Commissioner that the provider is not required to comply with the release authority.
- (3) A notice under this section must be given:
  - (a) in the \*approved form; and
  - (b) within 7 days after the release authority is issued.

Note: Subsection 286-75(1) provides for an administrative penalty for failing to comply with this section.

### **96-40 Notifying individual of unsuccessful release attempt**

- (1) If the Commissioner:
  - (a) receives a notice from a \*superannuation provider under subsection 96-35(2); or
  - (b) does not receive a payment from a superannuation provider of the full amount stated in a release authority within the time mentioned in subsection 96-20(1);the Commissioner must give the individual a written notice under this section.
- (2) The notice must:
  - (a) identify the \*superannuation provider; and
  - (b) state how much of the amount stated in the release authority was not paid to the Commissioner.

### **96-45 Compensation for acquisition of property**

- (1) If the operation of section 96-20 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the

Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.

- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **Consequences of releasing amounts**

### **96-50 Entitlement to credits**

- (1) If a \*superannuation provider pays an amount in relation to a release authority issued under section 96-10 in relation to an election you make, you are entitled to a credit equal to that amount.

Note: Division 3 of Part IIB provides for the treatment of credits that an entity is entitled to under a taxation law.

- (2) The credit arises on the day the Commissioner receives the amount.

### **96-55 Interest for late payments of money received by the Commissioner in accordance with release authority**

- (1) You are entitled to an amount of interest worked out under subsection (2) if:
  - (a) the Commissioner is required under Division 3A of Part IIB to refund all or part of a credit you are entitled to under section 96-50; and
  - (b) the Commissioner does not so refund all or part of that credit within 60 days after receiving the payment that gave rise to the credit.
- (2) The interest is to be calculated:
  - (a) on so much of the amount of the credit as the Commissioner fails to refund under that Division; and
  - (b) for the period:
    - (i) beginning 60 days after the day the Commissioner receives the amount; and

- (ii) ending on the day the Commissioner refunds the amount mentioned in paragraph (1)(a); and
- (c) on a daily basis; and
- (d) at the \*base interest rate for the day the interest is calculated.

### **96-60 Income tax treatment of amounts released—proportioning rule does not apply**

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Subdivision.

Note: Further provision about the income tax treatment of amounts released is in section 303-15 of that Act.

## **Division 97—Excess concessional contributions determinations**

### **Table of Subdivisions**

97-A Excess concessional contributions determinations

### **Subdivision 97-A—Excess concessional contributions determinations**

### **Guide to Subdivision 97-A**

#### **97-1 What this Subdivision is about**

The Commissioner must give you a determination stating the amount of your excess concessional contributions and any excess concessional contributions charge.

### **Table of sections**

#### **Operative provisions**

97-5 Determination of excess concessional contributions and charge  
97-10 Review

## **Operative provisions**

### **97-5 Determination of excess concessional contributions and charge**

- (1) If you have \*excess concessional contributions for a \*financial year, the Commissioner must make a written determination stating:
  - (a) the amount of those excess concessional contributions; and
  - (b) the amount (if any) of \*excess concessional contributions charge you are liable to pay for the corresponding income year.
- (2) A determination under this section is an *excess concessional contributions determination*.
- (3) The Commissioner may amend a determination at any time.
- (4) Notice of the determination may be included in any other notice given to you by the Commissioner.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

### **97-10 Review**

If you are dissatisfied with an \*excess concessional contributions determination made in relation to you, you may object against the determination in the manner set out in Part IVC.

## **Part 2—Updating cross-references to concessional contributions**

### ***Fair Work Act 2009***

#### **3 Paragraph 332(4)(b)**

Omit “section 292-175”, substitute “section 291-175”.

### ***Income Tax Assessment Act 1997***

#### **4 Paragraph 292-320(2)(b)**

Omit “subsection 292-25(3)”, substitute “subsection 291-25(3)”.

#### **5 Paragraph 292-320(2)(c)**

Omit “section 292-165”, substitute “section 291-165”.

#### **6 Section 960-265 (table item 9)**

Repeal the item, substitute:

- 9 \*Excess concessional contributions—\*concessional contributions cap subsection 291-20(2)

#### **7 Subsection 995-1(1) (definition of *concessional contributions*)**

Repeal the definition, substitute:

*concessional contributions* has the meaning given by sections 291-25 and 291-165.

#### **8 Subsection 995-1(1) (definition of *concessional contributions cap*)**

Repeal the definition, substitute:

*concessional contributions cap* has the meaning given by section 291-20.

#### **9 Subsection 995-1(1) (definition of *defined benefit interest*)**

Repeal the definition, substitute:

*defined benefit interest* has the meaning given by section 291-175.

**10 Subsection 995-1(1) (definition of excess concessional contributions)**

Repeal the definition, substitute:

*excess concessional contributions* has the meaning given by section 291-20.

**11 Subsection 995-1(1) (definition of notional taxed contributions)**

Repeal the definition, substitute:

*notional taxed contributions* has the meaning given by section 291-170.

***Income Tax (Transitional Provisions) Act 1997***

**12 Section 292-25**

Repeal the section.

***Superannuation (Unclaimed Money and Lost Members) Act 1999***

**13 Paragraph 24B(1)(c)**

Omit “section 292-175”, substitute “section 291-175”.

**14 Paragraph 24B(2)(d)**

Omit “section 292-175”, substitute “section 291-175”.

## **Part 3—Other consequential amendments**

### *Administrative Decisions (Judicial Review) Act 1977*

#### **15 Paragraph (e) of Schedule 1**

Omit “Part 3-10,” substitute “Part 2-35, 3-10,”

### *Income Tax Assessment Act 1997*

#### **16 Section 10-5 (table item headed “superannuation”)**

After:

death benefits .....	302-75
	302-85
	302-90
	302-145

insert:

excess concessional contributions .....	291-15(a)
---	-----------

#### **17 Section 13-1 (table item headed “superannuation”)**

After:

death benefits .....	302-75
	302-85
	302-145

insert:

excess concessional contributions .....	291-15(b)
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#### **18 Subsection 61-570(3)**

Omit “any contributions disregarded under section 292-467 for you”,  
substitute “any \*excess concessional contributions you have”.

#### **19 Subsection 280-15(2)**

Repeal the subsection, substitute:

- (2) If concessional contributions exceed an indexed cap, the excess is included in the individual’s assessable income and gives rise to a tax offset. The individual can release the excess concessional contributions from his or her superannuation interests.

**20 Subsection 280-15(3)**

After “including any excess for the purposes of the first cap”, insert “that has not been released”.

**21 Subsection 290-160(3)**

Omit “included in your assessable income under paragraph 292-467(2)(a)”, substitute “you have”.

**22 Subsection 290-230(5)**

Omit “any contributions disregarded under section 292-467 for your \*spouse”, substitute “any \*excess concessional contributions your \*spouse has”.

**23 After subsection 292-90(1)**

Insert:

*Modification for released excess concessional contributions*

(1A) However, if:

- (a) you make a valid election under section 96-5 in Schedule 1 to the *Taxation Administration Act 1953* in relation to \*excess concessional contributions you have for the \*financial year; and
- (b) a \*superannuation provider pays an amount in relation to the release authority issued under section 96-10 in that Schedule in relation to that election;

the amount paid is first increased, by dividing it by 85%, and the increased amount is applied to reduce the amount of excess concessional contributions mentioned in paragraph (1)(b) of this section.

*Non-concessional contributions and amounts*

**24 Section 303-15**

Repeal the section, substitute:

### **303-15 Payments from release authorities—excess concessional contributions**

A \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued in relation to an election you make under section 96-5 in Schedule 1 to the *Taxation Administration Act 1953*, is not assessable income and is not \*exempt income.

### **25 Subsection 995-1(1)**

Insert:

*excess concessional contributions charge* means charge imposed by the *Superannuation (Excess Concessional Contributions Charge) Act 2013*.

*excess concessional contributions determination* has the meaning given by section 97-5 in Schedule 1 to the *Taxation Administration Act 1953*.

*maximum available release amount*, for a \*superannuation interest, has the meaning given by section 96-30 in Schedule 1 to the *Taxation Administration Act 1953*.

### **26 Subsection 995-1(1) (definition of reportable superannuation contributions)**

Omit “any contributions disregarded under section 292-467 for the individual”, substitute “any \*excess concessional contributions the individual has”.

### ***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

### **27 Subsection 6(3)**

Repeal the subsection.

### **28 Subsection 8(1A)**

Omit “included in the person’s assessable income under paragraph 292-467(2)(a) of that Act for the financial year corresponding to the income year”, substitute “included in the person’s assessable income under paragraph 291-15(a) of that Act for the income year”.

## ***Taxation Administration Act 1953***

### **29 Subsection 2(1)**

Insert:

*excess concessional contributions determination* has the same meaning as in subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

### **30 Subsection 8AAB(4) (before table item 45)**

Insert:

44Q	95-25 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of excess concessional contributions charge or shortfall interest charge
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### **31 After section 14ZVA**

Insert:

#### **14ZVB Objections relating to excess concessional contributions**

*Taxation decisions to which section applies*

- (1) This section applies to the following taxation decisions:
- (a) an assessment against which a taxation objection may be made under section 175A of the *Income Tax Assessment Act 1936*;
  - (b) an excess concessional contributions determination;
  - (c) a determination under section 291-465 of the *Income Tax Assessment Act 1997*;
  - (d) a decision not to make a determination under that section;
  - (e) 2 or more taxation decisions that are taken to be a single taxation decision under subsection (2).

*Decisions treated as single decision for common objection ground*

- (2) If:

- (a) a person makes a taxation objection at a particular time, on a particular ground, against a taxation decision to which this section applies; and
- (b) at that time, the person also objects, or could also object, on that ground, against another taxation decision to which this section applies;

then, for the purposes of this Part, those taxation decisions are taken to be one taxation decision.

*Limited objection rights because of earlier objection*

- (3) A person cannot object under this Part against a taxation decision to which this section applies on a particular ground if:
  - (a) the ground was a ground for an objection the person has made against another decision to which this section applies; or
  - (b) the ground could have been a ground for an objection the person has made against another decision to which this section applies.

**32 Paragraph 14ZW(1)(aac)**

Repeal the paragraph, substitute:

- (aac) if the taxation objection is made under section 97-10 in Schedule 1 on a particular ground—within the same period that the person:
  - (i) must lodge a taxation objection on that ground under section 175A of the *Income Tax Assessment Act 1936*; or
  - (ii) would be required to lodge such a taxation objection, if, disregarding subsection 175A(2) of that Act, one could be made; or

**33 Subsection 250-10(2) in Schedule 1 (before table item 136)**

Insert:

135Q	excess concessional contributions charge	95-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
135R	amount in accordance with excess concessional contributions release	96-20 in Schedule 1	<i>Taxation Administration Act 1953</i>

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authority

### **34 Subsection 280-100(4) in Schedule 1**

Repeal the subsection, substitute:

*Liability to shortfall interest charge—excess concessional contributions charge*

- (4) Despite subsection (1), if:
- (a) you are liable under that subsection to pay \*shortfall interest charge on an additional amount of income tax; and
  - (b) that additional amount includes an amount of income tax on which you are liable to pay an amount of \*excess concessional contributions charge;
- the additional amount of income tax on which you are liable to pay shortfall interest charge is taken to be increased by the amount of excess concessional contributions charge mentioned in paragraph (b).

### **35 Subsection 288-95(3) in Schedule 1**

Repeal the subsection, substitute:

- (3) A \*superannuation provider that fails to comply with section 96-20 (about release authority for excess concessional contributions) is liable to an administrative penalty of 20 penalty units.

### **36 Paragraph 390-5(9A)(b) in Schedule 1**

Omit “subsection 292-25(3)”, substitute “subsection 291-25(3)”.

## ***Taxation (Interest on Overpayments and Early Payments) Act 1983***

### **37 Subsection 3(1) (paragraph (a) of the definition of *income tax crediting amount*)**

Repeal the paragraph, substitute:

- (a) any amount of a credit that does not arise under any of the following:
  - (i) Division 770 of the *Income Tax Assessment Act 1997*;

- (ii) section 96-50 in Schedule 1 to the *Taxation Administration Act 1953*;
- (iii) the *International Tax Agreements Act 1953*; or

## **Part 4—Repeal of excess concessional contributions tax**

### *Income Tax Assessment Act 1997*

#### **38 Section 12-5 (table item headed “excess contributions tax”)**

Repeal the item, substitute:

**excess non-concessional contributions tax**

no deduction ..... 26-75

#### **39 Section 13-1 (table item headed “superannuation”)**

Omit:

refunded excess concessional contributions ..... 292-467(2)(b)

#### **40 Section 26-75**

Repeal the section, substitute:

#### **26-74 Excess concessional contributions charge cannot be deducted**

You cannot deduct under this Act an amount of \*excess concessional contributions charge that you pay.

#### **26-75 Excess non-concessional contributions tax cannot be deducted**

You cannot deduct under this Act an amount of \*excess non-concessional contributions tax that you pay.

#### **41 Section 67-23 (table item 14)**

Repeal the item.

#### **42 Division 292 (heading)**

After “Excess”, insert “non-concessional”.

#### **43 Section 292-5**

Repeal the section, substitute:

## **292-5 Object of this Division**

The object of this Division is to ensure, in relation to *non-concessional* contributions to superannuation, that the amount of concessionally taxed \*superannuation benefits that an individual receives results from contributions that have been made gradually over the course of the individual's life.

Note: Division 291 has the same object, in relation to concessional contributions.

## **44 Subdivision 292-B**

Repeal the Subdivision.

## **45 Subdivision 292-D**

Repeal the Subdivision.

## **46 Subdivision 292-E (heading)**

After “**Excess**”, insert “**non-concessional**”.

## **47 Section 292-225**

After “excess” (wherever occurring), insert “non-concessional”.

## **48 Section 292-230**

Repeal the section, substitute:

### **292-230 Commissioner must make an *excess non-concessional contributions tax assessment***

- (1) The Commissioner must make an assessment (an *excess non-concessional contributions tax assessment*) of:
  - (a) if a person has \*excess non-concessional contributions for a \*financial year—the amount of the excess non-concessional contributions; and
  - (b) the amount (if any) of \*excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.
- (2) The Commissioner must give the person notice in writing of an \*excess non-concessional contributions tax assessment as soon as practicable after making the assessment.

- (3) The notice may be included in a notice of any other assessment under this Act.

**49 Section 292-235**

Repeal the section.

**50 Sections 292-240, 292-245 and 292-250**

Before “contributions” (wherever occurring), insert “non-concessional”.

**51 Subdivision 292-F (heading)**

After “excess”, insert “non-concessional”.

**52 Section 292-300**

After “excess”, insert “non-concessional”.

**53 Subsection 292-305(1)**

Before “contributions” (wherever occurring), insert “non-concessional”.

**54 Subsection 292-305(2)**

Repeal the subsection, substitute:

- (2) The *original excess non-concessional contributions tax assessment day* for a person for a \*financial year is the day on which the Commissioner gives the first \*excess non-concessional contributions tax assessment to the person for the financial year.

**55 Section 292-310**

Repeal the section, substitute:

**292-310 Amended assessments are treated as excess non-concessional contributions tax assessments**

- (1) Once an amended \*excess non-concessional contributions tax assessment for a person for a \*financial year is made, it is taken to be an *excess non-concessional contributions tax assessment* for the person for the year.
- (2) If the Commissioner amends a person’s \*excess non-concessional contributions tax assessment, the Commissioner must give the

person notice in writing of the amendment as soon as practicable after making the amendment.

- (3) The notice may be included in a notice of any other assessment under this Act.

**56 Section 292-315**

Before “contributions” (wherever occurring), insert “non-concessional”.

**57 Paragraph 292-320(1)(a)**

After “\*excess”, insert “non-concessional”.

**58 Sections 292-325 and 292-330**

After “\*excess”, insert “non-concessional”.

**59 Section 292-380**

After “Excess”, insert “non-concessional”.

**60 Section 292-385 (heading)**

After “excess”, insert “non-concessional”.

**61 Section 292-385**

Before “contributions” (wherever occurring), insert “non-concessional”.

**62 Sections 292-390 and 292-395**

Before “contributions” (wherever occurring), insert “non-concessional”.

**63 Section 292-405**

Repeal the section, substitute:

**292-405 Release authority**

- (1) As soon as practicable after making an \*excess non-concessional contributions tax assessment for a person, the Commissioner must give the person a release authority in respect of the amount of \*excess non-concessional contributions tax the person is liable to pay in accordance with the assessment.
- (2) A release authority must:

- (a) state the amount of \*excess non-concessional contributions tax that the person is liable to pay as a result of the assessment; and
- (b) be dated; and
- (c) contain any other information that the Commissioner considers relevant.

**64 Subsection 292-410(1) (note)**

After “Excess”, insert “non-concessional”.

**65 Subsection 292-415(1)**

Omit “\*excess concessional contributions tax or \*excess non-concessional contributions tax (whichever is applicable)”, substitute “\*excess non-concessional contributions tax”.

**66 Subsection 292-415(3)**

Omit “\*excess concessional contributions tax or”.

**67 Sections 292-420 and 292-425**

Repeal the sections.

**68 Subsection 292-465(1)**

Repeal the subsection, substitute:

- (1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division, all or part of your \*non-concessional contributions for a \*financial year is to be:
  - (a) disregarded; or
  - (b) allocated instead for the purposes of another financial year specified in the determination.

**69 Paragraph 292-465(2)(b)**

After “\*excess”, insert “non-concessional”.

**70 Paragraph 292-465(9)(a)**

After “\*excess”, insert “non-concessional”.

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**71 Sections 292-467 to 292-469**

Repeal the sections.

**72 Subsection 304-15(3)**

After “\*excess”, insert “non-concessional”.

**73 Section 960-265 (table item 10)**

After “\*Excess”, insert “non-concessional”.

**74 Subsection 995-1(1) (definition of *excess concessional contributions tax*)**

Repeal the definition.

**75 Subsection 995-1(1) (definition of *excess contributions tax*)**

Repeal the definition.

**76 Subsection 995-1(1) (definition of *excess contributions tax assessment*)**

Repeal the definition.

**77 Subsection 995-1(1)**

Insert:

*excess non-concessional contributions tax assessment* has the meaning given by sections 292-230 and 292-310.

**78 Subsection 995-1(1) (definition of *original excess contributions tax assessment day*)**

Repeal the definition.

**79 Subsection 995-1(1)**

Insert:

*original excess non-concessional contributions tax assessment day* has the meaning given by section 292-305.

***Income Tax (Transitional Provisions) Act 1997***

**80 Division 292 (heading)**

After “Excess”, insert “non-concessional”.

***Taxation Administration Act 1953***

**81 Subsection 8AAB(4) (table item 15, column 3)**

After “excess”, insert “non-concessional”.

**82 Subsection 250-10(2) in Schedule 1 (table item 38A)**

Repeal the item.

**83 Section 280-102A in Schedule 1 (heading)**

Omit “excess contributions tax”, substitute “excess non-concessional contributions tax”.

**84 Section 280-102A in Schedule 1**

Before “contributions” (wherever occurring), insert “non-concessional”.

***Taxation (Interest on Overpayments and Early Payments)  
Act 1983***

**85 Subsection 3(1) (paragraph (ca) of the definition of  
*decision to which this Act applies*)**

Omit “other than a decision to give effect to a determination under section 292-467 of the *Income Tax Assessment Act 1997*”.

**86 Subsection 3(1) (paragraph (c) of the definition of *income  
tax crediting amount*)**

Omit “(other than a tax offset that arises under paragraph 292-467(2)(b) of the *Income Tax Assessment Act 1997*)”.

**Part 5—Repeal of the Superannuation (Excess  
Concessional Contributions Tax) Act 2007**

*Superannuation (Excess Concessional Contributions Tax)  
Act 2007*

**87 The whole of the Act**

Repeal the Act.

## Part 6—Contingent amendments

### *Income Tax Assessment Act 1997*

#### **88 Section 10-5 (table item headed “superannuation”)**

Omit:  
refunded excess concessional contributions ..... 292-467(2)(a)

#### **89 Section 11-55 (table item headed “superannuation”)**

Omit:  
release authorities, payments from..... 303-20  
304-15

substitute:  
release authorities, payments from ..... 303-15  
303-20  
304-15

#### **90 Section 291-20 (note)**

After “Note”, insert “1”.

#### **91 At the end of section 291-20**

Add:  
Note 2: For transitional rules for older Australians, see section 291-20 of the  
*Income Tax (Transitional Provisions) Act 1997*.

#### **92 Paragraph 291-25(2)(b)**

After “subsection 290-170(5) (about successor funds)”, insert “or  
subsection 290-170(6) (about MySuper products)”.

#### **93 Section 293-10**

Omit “that have been taxed under Division 292 (or refunded under  
section 292-467)”.

#### **94 Subsection 293-30(5)**

Omit “292-25(3)”, substitute “291-25(3)”.

**95 Section 293-35**

Repeal the section.

**96 Section 293-110**

Repeal the section.

**97 Subsection 312-10(1) (note 2)**

Omit “292-25”, substitute “291-25”.

***Income Tax (Transitional Provisions) Act 1997***

**98 After Subdivision 291-A**

Insert:

**Subdivision 291-B—Excess concessional contributions**

**Table of sections**

291-20 Concessional contributions cap for older Australians—\$35,000

**291-20 Concessional contributions cap for older Australians—  
\$35,000**

- (1) Despite section 291-20 of the *Income Tax Assessment Act 1997*, your **concessional contributions cap** is \$35,000:
- (a) for the 2013-2014 financial year—if you are 59 years or over on 30 June 2013; or
  - (b) for the 2014-2015 financial year or a later financial year—if you are 49 years or over on the last day of the previous financial year.

Note: This amount is not indexed.

- (2) This section does not apply to a financial year for which the concessional contributions cap worked out under section 291-20 of the *Income Tax Assessment Act 1997* is \$35,000 or more.
- (3) This section does not apply for the purposes of subsection 292-85(2) of that Act.

**99 Section 292-20**

Repeal the section.

***Superannuation Laws Amendment (MySuper Capital Gains  
Tax Relief and Other Measures) Act 2013***

**100 Item 19 of Schedule 1 (heading)**

Omit “292-25(2)(b)”, substitute “291-25(2)(b)”.

Note: The amendment to be made by item 19 commences on 2 July 2019.

***Taxation Administration Act 1953***

**101 Section 135-85 in Schedule 1**

Repeal the section, substitute:

**135-85 Release amount**

The amount is the least of the following amounts:

- (a) the amount stated in the release authority, as issued by the Commissioner;
- (b) if the individual or Commissioner requests the \*superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
- (c) the sum of the \*maximum available release amounts for each \*superannuation interest (other than a \*defined benefit interest) held by the superannuation provider for the individual in \*superannuation plans.

Note: For the *maximum available release amount*, see section 96-30.

**102 Section 135-95 in Schedule 1**

Omit “paragraph 135-85(1)(c)”, substitute “paragraph 135-85(c)”.

**103 Subsection 250-10(2) in Schedule 1 (table item 37AB,  
column headed “Topic”)**

After “excess”, insert “non-concessional”.

**104 Subsection 250-10(2) in Schedule 1 (after table item 37AC)**

Insert:

37AD shortfall interest charge 5-10 *Income Tax Assessment Act 1997*  
on excess concessional  
contributions charge

**105 Subsection 250-10(2) in Schedule 1 (table item 38BA)**

Repeal the item.

**106 Section 280-1 in Schedule 1**

After “excess”, insert “non-concessional”.

**107 Section 280-50 in Schedule 1**

After “\*excess”, insert “non-concessional”.

**108 Paragraph 280-105(1)(a) in Schedule 1**

After “\*excess”, insert “non-concessional”.

**109 Section 280-170 in Schedule 1**

After “\*excess”, insert “non-concessional”.

## **Part 7—Application, transitional and saving provisions**

### **Division 1—Application and transitional provisions**

#### **110 Application**

- (1) Subject to this Part, the amendments made by this Schedule apply:
  - (a) so far as they affect assessments relating to an income year—  
to assessments for the 2013-14 income year and later income years; and
  - (b) so far as they affect assessments relating to a financial year—  
to assessments for the 2013-2014 financial year and later financial years; and
  - (c) otherwise—to acts done or omitted to be done, or states of affairs existing, or periods ending, on or after the start of the first income year starting on or after 1 July 2013.
- (2) Subitem (1) does not apply to item 1 of this Schedule.

### ***Income Tax (Transitional Provisions) Act 1997***

#### **111 After Division 290**

Insert:

### **Division 291—Excess concessional contributions**

#### **Table of Subdivisions**

- |       |   |
|-------|---|
| 291-A | Application of Division 291 of the Income Tax Assessment Act 1997 |
| 291-C | Modifications for defined benefit interests                       |

### **Subdivision 291-A—Application of Division 291 of the Income Tax Assessment Act 1997**

#### **Table of sections**

- |        |  |
|--------|--|
| 291-10 | Application of Division 291 of the <i>Income Tax Assessment Act 1997</i> |
|--------|--|
-

## **291-10 Application of Division 291 of the *Income Tax Assessment Act 1997***

Division 291 of the *Income Tax Assessment Act 1997* applies to the 2013-14 income year and later income years.

### **Subdivision 291-C—Modifications for defined benefit interests**

#### **Table of sections**

291-170 Transitional rules for notional taxed contributions

#### **291-170 Transitional rules for notional taxed contributions**

- (1) This section applies despite section 291-170 of the *Income Tax Assessment Act 1997*.

*Certain interests held on 5 September 2006*

- (2) Despite subsection 291-170(1) of the *Income Tax Assessment Act 1997*, your **notional taxed contributions** for the financial year in respect of a defined benefit interest are equal to your concessional contributions cap for the financial year if:
- (a) Subdivision 291-C of that Act applies in relation to you because you have a defined benefit interest in a financial year; and
  - (b) disregarding this subsection and subsection (4), the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
  - (c) either:
    - (i) you held the defined benefit interest in a superannuation fund on 5 September 2006; or
    - (ii) all the requirements in subsection (3) are satisfied; and
  - (d) the conditions (if any) specified in the regulations are satisfied.
- (3) For the purposes of subparagraph (2)(c)(ii), the requirements are as follows:
- (a) you held a defined benefit interest (the **original interest**) in a superannuation fund (the **original fund**) on 5 September 2006;

- (b) the defined benefit interest mentioned in paragraph (2)(a) (the **current interest**) is in a different superannuation fund (the **current fund**);
- (c) the entire value of the original interest:
  - (i) was transferred directly to the current interest after 5 September 2006; or
  - (ii) was transferred to another superannuation interest after 5 September 2006, and was later transferred to the current interest (whether directly or through a series of transfers between superannuation interests);
- (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;
- (e) either:
  - (i) the notional taxed contributions mentioned in paragraph (2)(b) do not exceed what they would have been if the transfer mentioned in paragraph (c) had not taken place; or
  - (ii) the conditions (if any) specified in the regulations are satisfied;
- (f) the conditions (if any) specified in the regulations are satisfied.

*Certain interests held on 12 May 2009*

- (4) Despite subsection 291-170(1) of the *Income Tax Assessment Act 1997*, your **notional taxed contributions** for the financial year in respect of the defined benefit interest are equal to your concessional contributions cap for the financial year if:
  - (a) Subdivision 291-C of that Act applies in relation to you because you have a defined benefit interest in a financial year; and
  - (b) disregarding this subsection, the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
  - (c) either:
    - (i) you held the defined benefit interest in a superannuation fund on 12 May 2009; or
    - (ii) all the requirements in subsection (5) are satisfied; and

- (d) the conditions (if any) specified in the regulations are satisfied; and
  - (e) the financial year is the 2009-2010 financial year or a later financial year.
- (5) For the purposes of subparagraph (4)(c)(ii), the requirements are as follows:
- (a) you held a defined benefit interest (the *original interest*) in a superannuation fund (the *original fund*) on 12 May 2009;
  - (b) the defined benefit interest mentioned in paragraph (4)(a) (the *current interest*) is in a different superannuation fund (the *current fund*);
  - (c) the entire value of the original interest:
    - (i) was transferred directly to the current interest after 12 May 2009; or
    - (ii) was transferred to another superannuation interest after 12 May 2009, and was later transferred to the current interest (whether directly or through a series of transfers between superannuation interests);
  - (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;
  - (e) either:
    - (i) the notional taxed contributions mentioned in paragraph (4)(b) do not exceed what they would have been if the transfer mentioned in paragraph (c) had not taken place; or
    - (ii) the conditions (if any) specified in the regulations are satisfied;
  - (f) the conditions (if any) specified in the regulations are satisfied.

## **Division 2—Saving provisions**

### **112 Making and amending assessments, and doing other things etc., in relation to past matters**

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

### **113 Saving of provisions about effect of assessments**

If a provision or part of a provision that is repealed or amended by this Schedule deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

### **114 Saving of provisions about general interest charge and interest**

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
  - (i) general interest charge or shortfall interest charge; or
  - (ii) an amount of interest worked out under subsection 292-425(2) of the *Income Tax Assessment Act 1997*; and
- (b) in a particular case, the period in respect of which the charge or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

### **115 Saving of regulations—allocated amounts**

- (1) This item applies to a regulation if:
  - (a) the regulation was made for the purposes of subsection 292-25(3) of the *Income Tax Assessment Act 1997*; and

- (b) the regulation was in force immediately before the commencement of this item.
- (2) The regulation has effect, after the commencement of this item, as if it had been made under subsection 291-25(3) of the *Income Tax Assessment Act 1997* as amended by this Act.

#### **116 Saving of regulations—notional taxed contributions**

- (1) This item applies to a regulation if:
  - (a) the regulation was made for the purposes of subsection 292-170(1) of the *Income Tax Assessment Act 1997*; and
  - (b) the regulation was in force immediately before the commencement of this item.
- (2) The regulation has effect, after the commencement of this item, as if it had been made under subsection 291-170(1) of the *Income Tax Assessment Act 1997* as amended by this Act.

#### **117 Saving of regulations—transitional rules for notional taxed contributions**

- (1) This item applies to a regulation if:
  - (a) the regulation was made for the purposes of a provision of section 292-170 of the *Income Tax Assessment Act 1997* mentioned in column 1 of an item of the table in subitem (3); and
  - (b) the regulation was in force immediately before the commencement of this item.
- (2) The regulation has effect, after the commencement of this item, as if it had been made under the provision of section 291-170 of the *Income Tax (Transitional Provisions) Act 1997* mentioned in column 2 of that item of the table, as inserted by this Act.
- (3) This is the table mentioned in subitems (1) and (2):

**Schedule 1** Fairer taxation of excess concessional contributions  
**Part 7** Application, transitional and saving provisions

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**Saving of regulations—notional taxed contributions**

<b>Item</b>	<b>Column 1 Provision of the <i>Income Tax Assessment Act 1997</i> under which the existing regulation was made</b>	<b>Column 2 Provision of the <i>Income Tax (Transitional Provisions) Act 1997</i> under which the regulation is taken, after the commencement of this item, to have been made</b>
1	Paragraph 292-170(6)(d)	Paragraph 291-170(2)(d)
2	Subparagraph 292-170(7)(e)(ii)	Subparagraph 291-170(3)(e)(ii)
3	Paragraph 292-170(7)(f)	Paragraph 292-170(3)(f)
4	Paragraph 292-170(8)(d)	Paragraph 292-170(4)(d)
5	Subparagraph 292-170(9)(e)(ii)	Subparagraph 291-170(5)(e)(ii)
6	Paragraph 292-170(9)(f)	Paragraph 292-170(5)(f)

**118 Saving of determination about discretion to disregard contributions**

*Determination relating to concessional contributions*

- (1) This item applies to a determination if:
- (a) the determination was made under section 292-465 of the *Income Tax Assessment Act 1997* in relation to concessional contributions for a financial year; and
  - (b) the determination was in force immediately before the commencement of this item.
- (2) The determination has effect, after the commencement of this item, as if it had been made under section 291-465 of that Act as amended by this Act.

*Determination relating to non-concessional contributions*

- (3) This item applies to a determination if:
- (a) the determination was made under section 292-465 of the *Income Tax Assessment Act 1997* in relation to non-concessional contributions for a financial year; and
  - (b) the determination was in force immediately before the commencement of this item.

- (4) The determination has effect, after the commencement of this item, as if it had been made under section 292-465 of that Act as amended by this Act.

**119 Part does not limit operation of the *Acts Interpretation Act 1901***

This Part does not limit the operation of the *Acts Interpretation Act 1901*.

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[*Minister's second reading speech made in—  
House of Representatives on 19 June 2013  
Senate on 24 June 2013*]

(172/13)

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