



Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016

No. 81, 2016

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016

No. 81, 2016

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

[Assented to 29 November 2016]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
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 November 2016
2. Schedules 1, 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2017
3. Schedule 4	2 July 2017.	2 July 2017
4. Schedules 5 to 9	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2017
5. Schedule 10, Part 1	1 July 2018.	1 July 2018
6. Schedule 10, Parts 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2017
7. Schedule 10, Part 4	1 July 2018.	1 July 2018
8. Schedule 10, Part 5	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2017
9. Schedule 11	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2017
Note:	This table relates only to the provisions of this Act as originally enacted.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.	

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- (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.

3 Schedules

Legislation 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—Transfer balance cap

Part 1—Transfer balance cap

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (gaa) of Schedule 1

Insert:

(gab) decisions of the Commissioner of Taxation under Subdivision 136-A in Schedule 1 to the *Taxation Administration Act 1953*;

Income Tax Assessment Act 1997

2 After section 26-98

Insert:

26-99 Excess transfer balance tax cannot be deducted

You cannot deduct under this Act an amount of *excess transfer balance tax that you pay.

3 At the end of section 102-20

Add:

Note 7: This section does not apply in relation to the capital gain mentioned in paragraph 294-120(5)(b) of the *Income Tax (Transitional Provisions) Act 1997*.

4 After Division 293

Insert:

Division 294—Transfer balance cap

Table of Subdivisions

	Guide to Division 294
294-A	Object of this Division

- 294-B Transfer balance account
- 294-C Transfer balance debits
- 294-D Modifications for certain defined benefit income streams
- 294-E Modifications for death benefits dependants who are children
- 294-F Excess transfer balance tax

Guide to Division 294

294-1 What this Division is about

There is a cap on the total amount you can transfer into the retirement phase of superannuation (where earnings are exempt from taxation).

Credits are added to a transfer balance account when you transfer amounts.

If the balance in your account exceeds the cap, you will be required to remove the excess from the retirement phase, and you will be liable to pay excess transfer balance tax.

Note: Division 136 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about excess transfer balance determinations and commutation authorities.

Subdivision 294-A—Object of this Division

Table of sections

Operative provisions

- 294-5 Object of this Division

Operative provisions

294-5 Object of this Division

The object of this Division is to limit the total amount of an individual's *superannuation income streams that receive an earnings tax exemption.

Subdivision 294-B—Transfer balance account

Guide to Subdivision 294-B

294-10 What this Subdivision is about

This Subdivision creates a transfer balance account for you, and credits it, if you have a superannuation income stream in the retirement phase.

It also provides for a transfer balance cap and identifies when you have excess transfer balance.

Table of sections

Operative provisions

294-15	When you have a transfer balance account
294-20	Meaning of retirement phase recipient
294-25	Transfer balance credits
294-30	Excess transfer balance
294-35	Your transfer balance cap
294-40	Proportionally indexed transfer balance cap
294-45	Transfer balance account ends
294-50	Assume pension rules and commutation authorities complied with

Operative provisions

294-15 When you have a transfer balance account

- (1) You have a **transfer balance account** if you are, or have at any time been, the *retirement phase recipient of a *superannuation income stream.
- (2) You start to have the *transfer balance account on the later of:
 - (a) 1 July 2017; and
 - (b) the day you first start to be a *retirement phase recipient of a *superannuation income stream.

294-20 Meaning of retirement phase recipient

- (1) You are the *retirement phase recipient* of a *superannuation income stream at a time if:
 - (a) the superannuation income stream is in the *retirement phase at that time; and
 - (b) a *superannuation income stream benefit from the superannuation income stream is payable to you at that time.
- (2) You are also the *retirement phase recipient* of a *superannuation income stream at a time if:
 - (a) the superannuation income stream is in the *retirement phase at that time; and
 - (b) the superannuation income stream is a *deferred superannuation income stream; and
 - (c) a *superannuation income stream benefit from the superannuation income stream will be payable to you after that time.

294-25 Transfer balance credits

- (1) The following table sets out when a credit arises in your *transfer balance account and the amount of the credit. The credit is called a *transfer balance credit*.

Credits in the transfer balance account			
Item	If:	A credit of:	Arises:
1	just before 1 July 2017, you are the *retirement phase recipient of a *superannuation income stream	the *value, just before 1 July 2017, of the *superannuation interest that supports the superannuation income stream	on the later of: (a) 1 July 2017; and (b) if you are a reversionary beneficiary—the last day of the period of 12 months beginning on the day a *superannuation income stream benefit first becomes payable

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

Credits in the transfer balance account

Item	If:	A credit of:	Arises:
			from the income stream
2	on a day (the <i>starting day</i>) on or after 1 July 2017, you start to be the *retirement phase recipient of a *superannuation income stream	the *value on the starting day of the *superannuation interest that supports the superannuation income stream	(a) on the starting day, unless paragraph (b) applies; or (b) if you are a reversionary beneficiary—at the end of the period of 12 months beginning on the starting day
3	you have *excess transfer balance at the end of a day	your *excess transfer balance earnings for that day	at the start of the next day

Note 1: The amount of the transfer balance credit is modified for certain capped defined benefit income streams: see Subdivision 294-D.

Note 2: For the meaning of *excess transfer balance earnings*, see section 294-235.

Note 3: If a payment split applies to payments from the superannuation income stream, a debit arises under section 294-90.

No crediting of earnings if determination issued

- (2) Despite item 3 of the table in subsection (1), no credit arises in your *transfer balance account under that item because of *excess transfer balance at the end of a day if the day is in the period:
- (a) starting on the day the Commissioner makes an *excess transfer balance determination in respect of you; and
 - (b) ending on:
 - (i) unless subparagraph (ii) applies—the first day on which the sum of all *transfer balance debits arising in your *transfer balance account since the determination was issued equals or exceeds the *crystallised reduction amount; or

- (ii) if a *transfer balance credit arises in your transfer balance account before the day mentioned in subparagraph (i)—the day on which that credit arises.

Note: For provisions about excess transfer balance determinations, see Division 136 in Schedule 1 to the *Taxation Administration Act 1953*.

294-30 Excess transfer balance

- (1) You have **excess transfer balance** at a particular time if, at that time, the *transfer balance in your *transfer balance account exceeds your *transfer balance cap at that time. The amount of the **excess transfer balance** is the amount of the excess.

Note: There is a modification for certain capped defined benefit income streams: see Subdivision 294-D.

- (2) The **transfer balance** in your *transfer balance account at a time equals:
- (a) the sum of the *transfer balance credits in the account at that time; less
 - (b) the sum of the *transfer balance debits (if any) in the account at that time.

Note 1: For **transfer balance debits**, see Subdivision 294-C.

Note 2: There is no consequence for having a negative transfer balance.

294-35 Your transfer balance cap

- (1) Your **transfer balance cap** for the *financial year in which you first start to have a *transfer balance account is equal to the *general transfer balance cap for that financial year.

Note: The amount of the transfer balance cap is modified for child recipients: see Subdivision 294-E.

- (2) Your **transfer balance cap** for a later *financial year is equal to your transfer balance cap for the previous year, subject to section 294-40 (which is about proportional indexation).

- (3) The **general transfer balance cap** is:
- (a) for the 2017-2018 *financial year—\$1,600,000; or

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- (b) for the 2018-2019 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.

294-40 Proportionally indexed transfer balance cap

- (1) This section applies to increase your *transfer balance cap* for a *financial year (other than the financial year in which you first start to have a *transfer balance account) if:
- (a) the *general transfer balance cap is increased as a result of indexation for the financial year; and
 - (b) at no time before the start of that financial year has the *transfer balance in your transfer balance account at the end of a day exceeded your transfer balance cap.
- (2) Your *transfer balance cap* is increased for the *financial year by the amount worked out using the following formula:

Unused cap percentage × Indexation increase

where:

indexation increase means the amount by which the *general transfer balance cap for the *financial year increased as a result of indexation.

unused cap percentage is worked out by:

- (a) identifying the highest *transfer balance in your *transfer balance account at the end of any day up to the end of the previous *financial year; and
- (b) identifying the day on which the transfer balance account had that transfer balance at the end of the day, or, if your transfer balance account had that transfer balance at the end of more than one day, the earliest of those days; and
- (c) expressing the transfer balance identified in paragraph (a) as a percentage (rounded down to the nearest whole number) of your *transfer balance cap on the day identified in paragraph (b); and

- (d) subtracting the result of paragraph (c) from 100%.
- (3) However, if the highest *transfer balance mentioned in paragraph (a) of the definition of ***unused cap percentage*** in subsection (2) is less than nil, that unused cap percentage is taken to be 100%.

294-45 Transfer balance account ends

The *transfer balance account ceases when the *retirement phase recipient dies.

294-50 Assume pension rules and commutation authorities complied with

- (1) For the purposes of working out a matter mentioned in subsection (2) at a time:
 - (a) assume that an income stream will properly comply with any rules or standards under which it is, or is purported to be, provided; and
 - (b) disregard subsection 307-80(4).
- (2) The matters are:
 - (a) whether you are the *retirement phase recipient of a *superannuation income stream; and
 - (b) whether a *transfer balance credit arises in your *transfer balance account.

Subdivision 294-C—Transfer balance debits

Guide to Subdivision 294-C

294-75 What this Subdivision is about

A debit arises in your transfer balance account when superannuation income streams that were previously credited (because they receive the earnings tax exemption) are reduced (other than by draw-downs or investment losses) or lose the earnings tax exemption.

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

A debit also arises in your transfer balance account when you make a contribution relating to a structured settlement or personal injury, or where certain events occur that result in you having reduced superannuation.

Table of sections

Operative provisions

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- 294-85 Certain events that result in reduced superannuation
- 294-90 Payment splits
- 294-95 Payment splits—no double debiting

Operative provisions

294-80 Transfer balance debits

- (1) The following table sets out when a debit arises in your *transfer balance account and the amount of the debit. The debit is called a *transfer balance debit*.

Debits in the transfer balance account			
Item	If:	A debit of:	Arises:
1	you receive a *superannuation lump sum because a *superannuation income stream of which you are a *retirement phase recipient is commuted, in full or in part	the amount of the superannuation lump sum	at the time you receive the superannuation lump sum
2	a *structured settlement contribution is made in respect of you	the amount of the contribution	at the later of: (a) the time the contribution is made; and (b) the start of the day you first start to have a *transfer balance account

Debits in the transfer balance account			
Item	If:	A debit of:	Arises:
3	a *transfer balance debit arises under section 294-85 because of an event that results in reduced superannuation	the amount of the debit specified in section 294-85	at the time provided by section 294-85
4	a *transfer balance debit arises under section 294-90 because of a payment split	the amount of the debit specified in section 294-90	at the time provided by section 294-90
5	a *superannuation income stream of which you are a *retirement phase recipient stops being in the *retirement phase under subsection 307-80(4)	the *value of the *superannuation interest that supports the superannuation income stream at the end of the period within which the commutation authority mentioned in that subsection was required to be complied with	at the end of the period within which the commutation authority mentioned in that subsection was required to be complied with
6	an income stream of which you were a *retirement phase recipient stops being a *superannuation income stream that is in the *retirement phase at a time (the <i>stop time</i>), but items 1 and 5 do not apply	the *value of the *superannuation interest that supports the income stream at the end of the income year of the *superannuation income stream provider in which the stop time occurs	at the end of the income year of the superannuation income stream provider in which the stop time occurs
7	the Commissioner gives you a notice under section 136-70 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (about non-commutable excess transfer balance)	the amount of the *excess transfer balance stated in the notice	at the time the Commissioner issues the notice

Structured settlement contributions

- (2) Each of the following is a **structured settlement contribution** in respect of you:
- (a) a contribution to a *complying superannuation plan in respect of you that is covered under section 292-95 (about structured settlements or orders for personal injuries);
 - (b) a contribution to a complying superannuation plan in respect of you that would be covered under section 292-95 if:
 - (i) the section applied to contributions made before 10 May 2006; and
 - (ii) paragraphs 292-95(1)(b) and (d) were disregarded.

294-85 Certain events that result in reduced superannuation

- (1) A *transfer balance debit arises in your *transfer balance account if:
- (a) subsection (2) or (5) provides that the debit arises; and
 - (b) you notify the Commissioner in the *approved form that the debit has arisen.

Fraud or dishonesty

- (2) A debit arises if:
- (a) a loss is suffered by a *superannuation income stream provider; and
 - (b) as a result, the *value of the *superannuation interest that supports a *superannuation income stream of which you are the *retirement phase recipient is reduced; and
 - (c) the loss is a result of fraud or dishonesty; and
 - (d) an individual has been convicted of an offence involving that fraud or dishonesty.
- (3) The amount of the debit equals the amount by which the *value of the *superannuation interest is reduced as a result of the loss.
- (4) The debit arises at the time of the loss.

Payments under section 139ZQ of the Bankruptcy Act 1966

- (5) A debit arises if:
-

- (a) an amount is paid in compliance with a notice given under section 139ZQ of the *Bankruptcy Act 1966*; and
 - (b) as a result, the *value of a *superannuation interest that supports a *superannuation income stream of which you are the *retirement phase recipient is reduced.
- (6) The amount of the debit is the amount paid to the trustee in bankruptcy.
- (7) The debit arises at the time of the payment.

294-90 Payment splits

- (1) A *transfer balance debit arises in your *transfer balance account if:
- (a) subsection (2) provides that the debit arises; and
 - (b) the Commissioner is notified in the *approved form that the debit has arisen.

Payment splits

- (2) A debit arises if:
- (a) a *superannuation interest is subject to a *payment split but remains an interest of the *member spouse; and
 - (b) the superannuation interest supports a *superannuation income stream that is in the *retirement phase; and
 - (c) as a result of the payment split, a proportion of all *superannuation income stream benefits from the income stream is to be paid to a *non-member spouse; and
 - (d) as a result, the member spouse and the non-member spouse are both *retirement phase recipients of the superannuation income stream.
- (3) The amount of the debit is:
- (a) if you are the *member spouse—the proportion mentioned in paragraph (2)(c); and
 - (b) if you are the *non-member spouse—the remaining proportion;
- of the *value, on the day the debit arises, of the *superannuation interest that supports the *superannuation income stream affected by the *payment split.

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Part 1 Transfer balance cap

- (4) The debit arises at the later of:
- (a) the operative time (within the meaning of Part VIIIB of the *Family Law Act 1975*) for the *payment split; and
 - (b) at the start of the day you first start to have a *transfer balance account.

294-95 Payment splits—no double debiting

If a *transfer balance debit, worked out by reference to a particular proportion, arises in your *transfer balance account because a *superannuation interest is subject to a *payment split, each of the following debits arising in your account at a later time in respect of the same interest is to be reduced by the same proportion:

- (a) a debit that arises under item 1 of the table in subsection 294-80(1) (about commutations), but only if the commuted income stream is a *capped defined benefit income stream;
- (b) a debit that arises under item 3 of that table (about events that result in reduced superannuation);
- (c) a debit that arises under item 5 or 6 of that table (about income streams that stop being in the retirement phase).

Subdivision 294-D—Modifications for certain defined benefit income streams

Guide to Subdivision 294-D

294-120 What this Subdivision is about

Certain defined benefit lifetime pensions that are subject to commutation restrictions cannot result in excess transfer balance (instead, Subdivision 303-A applies to the superannuation income stream benefits).

Certain commutation-restricted income streams started before 1 July 2017 are covered by the same modification.

Table of sections

Operative provisions

- 294-125 When this Subdivision applies
- 294-130 Meaning of capped defined benefit income stream
- 294-135 Transfer balance credit—special rule for capped defined benefit income streams
- 294-140 Excess transfer balance—special rule for capped defined benefit income streams
- 294-145 Transfer balance debits—special rules for capped defined benefit income streams

Operative provisions

294-125 When this Subdivision applies

This Subdivision applies to you if you are the *retirement phase recipient of a *capped defined benefit income stream.

294-130 Meaning of capped defined benefit income stream

- (1) A *superannuation income stream is a *capped defined benefit income stream* if it is:
 - (a) covered by an item of the following table; and
 - (b) if it is covered by any of items 2 to 7 of that table—it is in the *retirement phase just before 1 July 2017.

Capped defined benefit income streams

Item	Topic	A superannuation income stream is covered if:
1	Lifetime pension	it is a pension for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> (the SIS Act) that is provided under rules that meet the standards of subregulation 1.06(2) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (the SIS Regulations)
2	Lifetime annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(2) of the SIS Regulations
3	Life expectancy pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(7) of the SIS Regulations
4	Life expectancy	it is an annuity for the purposes of the SIS Act that is

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Capped defined benefit income streams

Item	Topic	A superannuation income stream is covered if:
	annuity	provided under a contract that meets the standards of subregulation 1.05(9) of the SIS Regulations
5	Market linked pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(8) of the SIS Regulations
6	Market linked annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(10) of the SIS Regulations
7	Market linked pension (RSA)	it is a pension for the purposes of the <i>Retirement Savings Accounts Act 1997</i> that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i>

- (2) A *superannuation income stream is also a ***capped defined benefit income stream*** if the income stream is prescribed by the regulations for the purposes of this subsection.

294-135 Transfer balance credit—special rule for capped defined benefit income streams

- (1) Section 294-25 applies in relation to a *capped defined benefit income stream as if a reference in that section to the *value of a *superannuation interest were a reference to the *special value of the superannuation interest.

Meaning of special value—lifetime products

- (2) The ***special value***, at a particular time, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream covered by item 1 or 2 of the table in subsection 294-130(1), is the amount worked out using the formula:

Annual entitlement × 16

where:

annual entitlement is worked out by:

- (a) dividing the amount of the first *superannuation income stream benefit you are entitled to receive from the income stream just after that time by the number of whole days to which that benefit relates; and
- (b) multiplying the result by 365.

Meaning of special value—life expectancy and market linked products

- (3) The **special value**, at a particular time, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1), is the amount worked out using the formula:

Annual entitlement × Remaining term

where:

annual entitlement has the same meaning as in subsection (2) of this section.

remaining term means the number of years remaining at that time in the period throughout which *superannuation income stream benefits are payable under the income stream, rounded up to the next whole number.

Regulations

- (4) The regulations may specify a method for determining the **special value** of a *superannuation interest that supports a *superannuation income stream prescribed by regulations made for the purposes of subsection 294-130(2).

294-140 Excess transfer balance—special rule for capped defined benefit income streams

- (1) Despite section 294-30, you have **excess transfer balance** at a particular time if, at that time, the *transfer balance in your *transfer balance account:
 - (a) exceeds your *transfer balance cap at that time; and

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- (b) exceeds your capped defined benefit balance from subsection (3) of this section at that time.
- (2) The amount of the *excess transfer balance* is the lesser of the 2 excesses.

Note: For modifications of the tax treatment of benefits paid from capped defined benefit income streams, see Subdivision 303-A.

Your capped defined benefit balance

- (3) You have an amount under this subsection (a *capped defined benefit balance*) at a time equal to:
- (a) the sum of the *transfer balance credits in your *transfer balance account at that time in respect of *capped defined benefit income streams; less
- (b) the sum of the *transfer balance debits (if any) in your transfer balance account at that time in respect of capped defined benefit income streams.

294-145 Transfer balance debits—special rules for capped defined benefit income streams

Debit for commutation

- (1) Item 1 of the table in subsection 294-80(1) applies in relation to a *capped defined benefit income stream as if the reference in column 2 of that item to the amount of the *superannuation lump sum were a reference to:
- (a) for a commutation in full—the *debit value, just before the superannuation lump sum is paid, of the *superannuation interest that supports the capped defined benefit income stream; or
- (b) for a commutation in part—the debit value mentioned in paragraph (a), multiplied by the fraction:

$$1 - \frac{\text{SV just after commutation}}{\text{SV just before commutation}}$$

where:

SV just after commutation means the *special value, just after the *superannuation lump sum is paid, of the *superannuation interest that supports the *capped defined benefit income stream.

SV just before commutation means the *special value, just before the *superannuation lump sum is paid, of the *superannuation interest that supports the *capped defined benefit income stream.

Debit for events that result in reduced superannuation

- (2) Item 3 of the table in subsection 294-80(1) (about events that result in reduced superannuation) applies in relation to a *capped defined benefit income stream as if the amount of the debit provided for in section 294-85 was the *debit value, just before the loss or payment reduces the *value of the *superannuation interest that supports the capped defined benefit income stream, multiplied by the amount worked out using the following formula:

$$1 - \frac{\text{SV just after event}}{\text{SV just before event}}$$

where:

SV just after event means the *special value, worked out just after the loss or payment reduces the *value of the *superannuation interest that supports the *capped defined benefit income stream.

SV just before event means the *special value, worked out just before the loss or payment reduces the *value of the *superannuation interest that supports the *capped defined benefit income stream.

Debit for payment split

- (3) Item 4 of the table in subsection 294-80(1) (about a debit for a payment split) applies in relation to a *capped defined benefit income stream as if the reference in section 294-90 to the *value of the *superannuation interest were a reference to the *debit value of the superannuation interest.

Debits for loss of earnings exemption

- (4) Items 5 and 6 of the table in subsection 294-80(1) apply in relation to an income stream that is, or was, a *capped defined benefit income stream as if the reference in the item to the *value of a *superannuation interest were a reference to the *debit value of the superannuation interest.

Meaning of debit value

- (5) The **debit value**, at a particular time, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream covered by item 1 or 2 of the table in subsection 294-130(1), is:
- (a) the amount of the *transfer balance credit that arose in your *transfer balance account in respect of the income stream; less
 - (b) the amount of any *transfer balance debits (apart from debits arising under item 4 of the table in subsection 294-80(1)) that have arisen in your transfer balance account in respect of the income stream before that time.
- (6) The **debit value**, at a particular time, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1) is the *special value of the interest at that time.

Regulations

- (7) The regulations may specify a method for determining the **debit value** of a *superannuation interest that supports a *superannuation income stream prescribed by regulations made for the purposes of subsection 294-130(2).

Subdivision 294-E—Modifications for death benefits dependants who are children

Guide to Subdivision 294-E

294-170 What this Subdivision is about

If you are a death benefits dependant, and a child, you are not required to use your retirement transfer balance cap to receive a death benefits income stream.

However, there is a cap on the total amount of your death benefits income streams that receives the earnings tax exemption.

This cap is based on the deceased's superannuation interests in the retirement phase, or, if the deceased did not have any superannuation interests in the retirement phase, on the transfer balance cap.

Table of sections

Operative provisions

294-175	When this Subdivision applies
294-180	Transfer balance account ends
294-185	Transfer balance cap—special rule for child recipient
294-190	Cap increment—child recipient just before 1 July 2017
294-195	Cap increment—child recipient on or after 1 July 2017, deceased had no transfer balance account
294-200	Cap increment—child recipient on or after 1 July 2017, deceased had transfer balance account

Operative provisions

294-175 When this Subdivision applies

- (1) This Subdivision applies to you if you are a *child recipient of a *superannuation income stream.
- (2) You are a *child recipient* of a *superannuation income stream if:

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- (a) because of the death of a person, you are a *retirement phase recipient of the superannuation income stream; and
- (b) you are a *child, and a *death benefits dependant, of the deceased; and
- (c) you are covered by paragraph 6.21(2A)(b) of the *Superannuation Industry (Supervision) Regulations 1994* or paragraph 4.24(3A)(b) of the *Retirement Savings Accounts Regulations 1997* (which are about children who are under age 18, or under age 25 and financially dependent or who have a disability).

294-180 Transfer balance account ends

- (1) Despite sections 294-15 and 294-45, your *transfer balance account ceases at a time if:
 - (a) just before that time, you were a *child recipient of one or more *superannuation income streams; and
 - (b) just after that time, you are no longer a child recipient of any superannuation income stream; and
 - (c) no *transfer balance credits arose in the transfer balance account in respect of a superannuation income stream of which you were a *retirement phase recipient, but not a child recipient.
- (2) If you again start to have a *transfer balance account at a later time, this Division applies in relation to that later transfer balance account as if it were the only transfer balance account you have had.

294-185 Transfer balance cap—special rule for child recipient

- (1) Despite section 294-35, your *transfer balance cap* on a day is the sum of the cap increments that have arisen under this Subdivision on and before that day.

Note: Your transfer balance cap is not worked out on a financial year basis and it is not indexed.
- (2) However, if there are one or more *superannuation income streams of which you are, on that day, a *retirement phase recipient but not

a *child recipient, your *transfer balance cap* on that day is the sum of:

- (a) the sum of the cap increments that have arisen under this Subdivision on and before that day; and
- (b) your transfer balance cap for the *financial year in which the day falls, worked out disregarding:
 - (i) any cap increments that arise under this Subdivision; and
 - (ii) any *transfer balance credits or *transfer balance debits that have arisen in your *transfer balance account in respect of superannuation income streams of which you are a child recipient.

Note: Paragraph (b) is the transfer balance cap you would have if you were not a child recipient of any income stream. Disregarding credits, debits and cap increments allows this cap to be indexed appropriately under section 294-40 (which is about proportional indexation).

294-190 Cap increment—child recipient just before 1 July 2017

- (1) A cap increment arises if, just before 1 July 2017, you are the *child recipient of a *superannuation income stream.
- (2) The amount of the cap increment is the *general transfer balance cap.
- (3) The cap increment arises on 1 July 2017.

294-195 Cap increment—child recipient on or after 1 July 2017, deceased had no transfer balance account

- (1) A cap increment arises if:
 - (a) on a day (the *starting day*) on or after 1 July 2017, you start to be the *child recipient of a *superannuation income stream; and
 - (b) the deceased did not have a *transfer balance account just before death.
- (2) The amount of the cap increment is:
 - (a) the *general transfer balance cap, unless paragraph (b) applies; or

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- (b) if you are *not* the only person to receive a *superannuation death benefit because of the death of the person—the proportion of the general transfer balance cap that corresponds to your share of the deceased's *superannuation interests.
- (3) The cap increment arises on the starting day.

294-200 Cap increment—child recipient on or after 1 July 2017, deceased had transfer balance account

- (1) A cap increment arises if:
 - (a) on a day (the *starting day*) on or after 1 July 2017, you start to be the *child recipient of a *superannuation income stream; and
 - (b) the deceased had a *transfer balance account just before death.

Income stream fully funded by deceased's retirement phase interests

- (2) If the *superannuation interest that supports the *superannuation income stream is wholly attributable to one or more superannuation interests of the deceased that were in the *retirement phase, the amount of the cap increment equals the amount of the *transfer balance credit that arises in your *transfer balance account in respect of the *superannuation income stream.

Income stream fully funded by deceased's accumulation phase interests

- (3) If the *superannuation interest that supports the *superannuation income stream is wholly attributable to one or more superannuation interests of the deceased that were *not* in the *retirement phase, the amount of the cap increment is nil.

Note: A superannuation income stream covered by this subsection will generally result in excess transfer balance. The exceptions are: where you have additional cap increments under section 294-190 or 294-195, or where you have a higher cap under subsection 294-185(2) because you also receive a non-death benefit income stream.

Income stream partly funded by deceased's accumulation interests

- (4) If the *superannuation interest that supports the *superannuation income stream is:
- (a) in part (the ***retirement phase part***) attributable to a superannuation interest of the deceased that was in the *retirement phase; and
 - (b) in part attributable to a superannuation interest of the deceased that was *not* in the retirement phase;
- the amount of the cap increment is so much of the *transfer balance credit that arises in your *transfer balance account in respect of the superannuation income stream as represents the retirement phase part.

Note: A superannuation income stream covered by this subsection will generally result in excess transfer balance. The exceptions are: where you have additional cap increments under section 294-190 or 294-195, or where you have a higher cap under subsection 294-185(2) because you also receive a non-death benefit income stream.

Reduced increment for excess transfer balance

- (5) Despite subsections (2) and (4), the cap increment is reduced if there was *excess transfer balance in the deceased's *transfer balance account just before death. The amount of the reduction is:
- (a) the proportion of the excess transfer balance that corresponds to your share of the deceased's *superannuation interests that were in the *retirement phase; less
 - (b) the amount of any *superannuation lump sum paid to you, because of the death of the person from a superannuation interest of the deceased that was in the retirement phase.

When cap increment arises

- (6) The cap increment arises:
- (a) on the starting day, unless paragraph (b) applies; or
 - (b) if you are a reversionary beneficiary—at the end of the period of 12 months beginning on the starting day.

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

Treatment of investment earnings after death

- (7) For the purposes of working out under this section the extent to which a *superannuation interest is attributable to another superannuation interest, if:
- (a) a superannuation interest of the deceased was in the *retirement phase; and
 - (b) on or after the death of the deceased, an amount of investment earnings is added to the superannuation interest; the superannuation interest is taken to include that amount of investment earnings, except to the extent that the amount of investment earnings includes an amount paid under a policy of insurance on the life of the deceased or an amount arising from self-insurance.

Subdivision 294-F—Excess transfer balance tax

Guide to Subdivision 294-F

294-225 What this Subdivision is about

This Subdivision neutralises the earnings tax exemption on retirement phase income streams that result in excess transfer balance.

Table of sections

Operative provisions

294-230	Excess transfer balance tax
294-235	Your excess transfer balance earnings
294-240	When tax is payable—original assessments
294-245	When tax is payable—amended assessments
294-250	General interest charge

Operative provisions

294-230 Excess transfer balance tax

- (1) If there is an *excess transfer balance period for your *transfer balance account, you are liable to pay *excess transfer balance tax imposed by the *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016* for the period.

Note: The amount of the tax is set out in the *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016*.

- (2) An **excess transfer balance period** for a *transfer balance account is a continuous period of one or more days during which, at the end of each day, there is *excess transfer balance in the account.
- (3) Your *excess transfer balance tax is worked out by reference to the sum of:
 - (a) your *excess transfer balance earnings for each day in the *excess transfer balance period; and
 - (b) for each day in the excess transfer balance period that is also a day in the period mentioned in subsection 294-25(2) (the **determination period**)—the amount worked out by multiplying the rate mentioned in subsection 294-235(2) for the day by the sum of your excess transfer balance earnings for each previous day in the determination period.

294-235 Your excess transfer balance earnings*

- (1) Your **excess transfer balance earnings** for a day is worked out by multiplying the rate mentioned in subsection (2) for that day by the amount of your *excess transfer balance at the end of that day.
- (2) The rate is the lower of:
 - (a) the rate worked out under subsection 8AAD(1) of the *Taxation Administration Act 1953* for the day; and
 - (b) a rate determined under subsection (3) for the day.
- (3) The Minister may, by legislative instrument, determine a rate for a day.

294-240 When tax is payable—original assessments

Your *assessed excess transfer balance tax is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the *excess transfer balance tax.

Note: For assessments of excess transfer balance tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

294-245 When tax is payable—amended assessments

If the Commissioner amends your assessment, any extra *assessed excess transfer balance tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

294-250 General interest charge

If an amount of *assessed excess transfer balance tax 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 assessed excess transfer balance tax;
 - (ii) general interest charge on any of the assessed excess transfer balance tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

5 Paragraph 306-10(a)

Omit “member”.

6 Subsections 307-5(3), (3A) and (3B)

Repeal the subsections.

Superannuation Industry (Supervision) Act 1993

7 Subparagraph 38A(ab)(ii)

Repeal the subparagraph, substitute:

- (ii) Division 390;
- (iii) subsection 136-80(1); or

Superannuation (Resolution of Complaints) Act 1993

8 Paragraph 15CA(1)(c)

Repeal the paragraph, substitute:

- (c) section 390-5 in that Schedule; or
- (d) section 390-20 in that Schedule;

9 Paragraph 15CA(2)(c)

Repeal the paragraph, substitute:

- (c) section 390-5 in that Schedule; or
- (d) section 390-20 in that Schedule;

Taxation Administration Act 1953

10 Subsection 8AAB(4) (after table item 15A)

Insert:

15B	294-250	<i>Income Tax Assessment Act 1997</i>	payment of excess transfer balance tax
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11 Paragraph 14ZVA(b)

Omit “*Income Tax Assessment Act 1997*,”; substitute “*Income Tax Assessment Act 1997*; or”.

12 After paragraph 14ZVA(b)

Insert:

- (c) a determination under subsection 136-10(1) in Schedule 1 to this Act (about excess transfer balance);

Schedule 1 Transfer balance cap

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13 Part 3-20 in Schedule 1 (heading)

Repeal the heading, substitute:

Part 3-20—Superannuation

14 Division 133 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 133—Division 293 tax

15 At the end of Part 3-20 in Schedule 1

Add:

Division 136—Transfer balance cap

Table of Subdivisions

	Guide to Division 136
136-A	Excess transfer balance determinations
136-B	Commutation authorities

Guide to Division 136

136-1 What this Division is about

If you have excess transfer balance in your transfer balance account, the Commissioner may require you and your superannuation income stream provider to reduce the total amount of your superannuation income streams that are in the retirement phase.

Subdivision 136-A—Excess transfer balance determinations

Guide to Subdivision 136-A

136-5 What this Subdivision is about

If your transfer balance account exceeds the transfer balance cap, the excess must be reduced by commuting in full or in part your superannuation income streams that are in the retirement phase.

If you have more than one superannuation income stream, you may choose which one to commute.

Table of sections

Operative provisions

136-10	Excess transfer balance determination
136-15	Review
136-20	Electing to commute a different superannuation income stream
136-25	Notifying Commissioner of transfer balance debits

Operative provisions

136-10 Excess transfer balance determination

- (1) If you have *excess transfer balance in your *transfer balance account at the end of a day, the Commissioner may make a written determination stating the amount of that excess transfer balance.

Note: It is not necessary for the Commissioner to issue a determination under this subsection if the Commissioner becomes aware that you no longer have an excess transfer balance. You are still liable to pay excess transfer balance tax if no determination is issued: see Subdivision 294-F of the *Income Tax Assessment Act 1997*.

- (2) A determination under this section is an ***excess transfer balance determination***.
- (3) The amount of *excess transfer balance stated in an *excess transfer balance determination is a ***crystallised reduction amount***.

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- (4) The Commissioner may amend or revoke an *excess transfer balance determination at any time before a commutation authority relating to the determination is issued under section 136-55.
- (5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Determination to include default commutation notice

- (6) A determination made under subsection (1) must include a notice:
 - (a) stating that, if you do not make an election under section 136-20 within the period specified in that section, the Commissioner will issue one or more commutation authorities; and
 - (b) specifying:
 - (i) the *superannuation income stream provider or providers to whom a commutation authority will be issued; and
 - (ii) the *superannuation income stream or streams that the providers will be obliged to commute in full or in part; and
 - (iii) if more than one commutation authority will be issued—the amount to be stated in each commutation authority, or the method the Commissioner will use to work out the amount to be stated in each commutation authority.
- (7) A notice included with an *excess transfer balance determination in accordance with subsection (6) is a ***default commutation notice***.

136-15 Review

- (1) If you are dissatisfied with an *excess transfer balance determination made in relation to you, you may object against the determination in the manner set out in Part IVC.
- (2) However, for the purposes of Part IVC, the *default commutation notice does not form part of the taxation decision.

136-20 Electing to commute a different superannuation income stream

- (1) This section applies to you if:
 - (a) you receive an *excess transfer balance determination under section 136-10; and
 - (b) you are the *retirement phase recipient of 2 or more *superannuation income streams.
- (2) You may elect which of those *superannuation income streams is to be fully or partially commuted for the purpose of reducing the *transfer balance in your *transfer balance account by the *crystallised reduction amount.

Requirements for election

- (3) You make an election under subsection (2) by:
 - (a) identifying the *superannuation income stream or streams to be commuted in full or in part and the *superannuation income stream provider for each such stream; and
 - (b) if you identify more than one superannuation income stream—stating the amount to be commuted from each such income stream.
- (4) The election must:
 - (a) be in the *approved form; and
 - (b) be given to the Commissioner within:
 - (i) 60 days after the *excess transfer balance determination or amended excess transfer balance determination is issued; or
 - (ii) a further period allowed by the Commissioner.

Election is irrevocable

- (5) An election under this section is irrevocable.

136-25 Notifying Commissioner of transfer balance debits

- (1) This section applies to you if you have received an *excess transfer balance determination.

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Part 1 Transfer balance cap

- (2) You may notify the Commissioner in the *approved form of the amount of a *transfer balance debit that arises in your *transfer balance account if the debit arises in the period:
- (a) beginning when the determination is made; and
 - (b) ending at the earlier of:
 - (i) the time you made an election under section 136-20; and
 - (ii) the end of the period within which an election under section 136-20 may be made.

Subdivision 136-B—Commutation authorities

Guide to Subdivision 136-B

136-50 What this Subdivision is about

The Commissioner must issue a commutation authority to a superannuation income stream provider, unless you have notified the Commissioner that you have already reduced your excess transfer balance by the crystallised reduction amount.

A superannuation income stream provider will usually be required to commute the superannuation income stream stated in the authority.

Table of sections

Obligations of Commissioner

- 136-55 Issuing of commutation authorities
- 136-60 Varying and revoking a commutation authority
- 136-65 Issuing further commutation authorities
- 136-70 Notifying of non-commutable excess transfer balance

Obligations of superannuation income stream providers

- 136-80 Obligations on superannuation income stream providers
- 136-85 Notifying the Commissioner
- 136-90 Notifying you

Obligations of Commissioner

136-55 Issuing of commutation authorities

Commutation authority must be issued if there is a commutable amount

- (1) The Commissioner must issue a commutation authority under this section to one or more *superannuation income stream providers if:
 - (a) an *excess transfer balance determination has been issued to you; and
 - (b) the excess transfer balance determination has not been revoked; and
 - (c) the period mentioned in subsection 136-20(4) has ended; and
 - (d) an amount (the **commutable amount**) greater than nil remains after reducing the *crystallised reduction amount by the sum of any *transfer balance debits notified to the Commissioner under section 136-25.

Issuing in response to a valid election

- (2) If you have made a valid election under section 136-20, the Commissioner must issue a commutation authority under this section to each *superannuation income stream provider identified in your election.
- (3) If the total of the amounts stated in your election under section 136-20 falls short of the commutable amount, the Commissioner must also issue a commutation authority to one or more *superannuation income stream providers specified in the *default commutation notice.

Issuing if you do not make a valid election

- (4) If you have not made a valid election under section 136-20, the Commissioner must issue a commutation authority to each *superannuation income stream provider specified in the *default commutation notice.

Requirements for commutation authority

- (5) Each commutation authority must:
 - (a) specify the *superannuation income stream that the *superannuation income stream provider is to commute, in full or in part; and
 - (b) state the amount (the **reduction amount**) by which the superannuation income stream is to be reduced; and
 - (c) be dated; and
 - (d) contain any other information that the Commissioner considers relevant.
- (6) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the commutable amount.

136-60 Varying and revoking a commutation authority

The Commissioner may vary or revoke a commutation authority at any time before the Commissioner receives a notice under section 136-85 relating to the commutation authority.

136-65 Issuing further commutation authorities

- (1) The Commissioner may issue a commutation authority under this section to one or more *superannuation income stream providers under this section if:
 - (a) a commutation authority (the **original commutation authority**) was issued under section 136-55; and
 - (b) the *superannuation income stream provider to which the original commutation authority was issued:
 - (i) paid a *superannuation lump sum that fell short of the reduction amount stated in the original commutation authority; or
 - (ii) did not comply with the original commutation authority.
- (2) A commutation authority issued under this section must include the matters set out in subsection 136-55(5).

- (3) The Commissioner may issue a commutation authority under this section to any *superannuation income stream provider of a *superannuation income stream of which you are the *retirement phase recipient.
- (4) The total of all reduction amounts stated in commutation authorities issued under this section relating to an *excess transfer balance determination must not exceed the difference between:
 - (a) the commutable amount mentioned in subsection 136-55(1); and
 - (b) the sum of:
 - (i) any *superannuation lump sums notified to the Commissioner under section 136-85 in respect of the determination; and
 - (ii) any *transfer balance debits arising in your *transfer balance account under item 5 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997* because of any original commutation authority.

136-70 Notifying of non-commutable excess transfer balance

- (1) The Commissioner must notify you in writing if, at the end of a day after the Commissioner has issued an *excess transfer balance determination to you:
 - (a) the sum of all *transfer balance debits arising in your *transfer balance account since the determination was issued falls short of the *crystallised reduction amount; and
 - (b) you have *excess transfer balance in your transfer balance account; and
 - (c) either:
 - (i) the only *superannuation income streams of which you are a *retirement phase recipient are *capped defined benefit income streams; or
 - (ii) you are no longer a retirement phase recipient of any superannuation income stream.

Note: A debit arises in your transfer balance account when the Commissioner issues a notice under this section: see item 7 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997*.

- (2) A notice under subsection (1) must state the amount of the *excess transfer balance mentioned in paragraph (1)(b).

Obligations of superannuation income stream providers

136-80 Obligations on superannuation income stream providers

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must, within 60 days after the commutation authority is issued, pay by way of commutation of the specified *superannuation income stream, a *superannuation lump sum equal to the lesser of:
- (a) the reduction amount stated in the commutation authority; and
 - (b) the *maximum available release amount for the *superannuation interest that supports the specified superannuation income stream.

Exception for capped defined benefit income streams

- (2) Despite subsection (1), if the specified *superannuation income stream is a *capped defined benefit income stream, the *superannuation income stream provider may choose not to comply with the commutation authority.

Exception for deceased member

- (3) Despite subsection (1), if the *retirement phase recipient has died, the *superannuation income stream provider may choose not to comply with the commutation authority.

136-85 Notifying the Commissioner

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify the Commissioner of the amount of a *superannuation lump sum paid in accordance with the commutation authority.
- (2) If a *superannuation income stream provider chooses under subsection 136-80(2) or (3) not to comply with the commutation

authority, the provider must notify the Commissioner of that choice.

- (3) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

136-90 Notifying you

- (1) A *superannuation income stream provider issued with a commutation authority under this Subdivision must notify you if the superannuation income stream provider:

- (a) pays a *superannuation lump sum in accordance with the commutation authority; or
- (b) chooses under subsection 136-80(2) not to comply with the commutation authority.

- (2) A notice under this section must be in the *approved form and must be given within 60 days after the commutation authority is issued.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

16 At the end of subsection 155-5(2) in Schedule 1

Add:

- ; (h) an amount of *excess transfer balance tax payable for an *excess transfer balance period.

17 Subsection 155-15(1) in Schedule 1 (note)

Omit “Division 293 tax”, substitute “Division 293 tax or excess transfer balance tax”.

18 Subsection 155-30(3) in Schedule 1

Repeal the subsection, substitute:

- (3) This section does not apply to the following *assessable amounts:
- (a) the *Division 293 tax payable by you in relation to an income year in relation to your *taxable contributions for the income year;

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

(b) the *excess transfer balance tax payable by you for an *excess transfer balance period.

19 Subsection 250-10(2) in Schedule 1 (after table item 38BB)

Insert:

38BC	excess transfer balance tax	294-240 and 294-245	<i>Income Tax Assessment Act 1997</i>
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20 Paragraph 286-75(2AA)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) you are required to give a notice to an entity (other than the Commissioner) in the *approved form by a particular day under any of the following provisions:
- (i) section 96-42 (about releasing superannuation);
 - (ii) section 136-90 (about commutation authorities); and

21 Section 390-1 in Schedule 1

After:

Superannuation providers are also required to give information about roll-over superannuation benefits paid from superannuation plans.

insert:

Life insurance companies must give the Commissioner information about holders of certain life insurance policies.

22 Paragraph 390-15(1)(b) in Schedule 1

Repeal the paragraph, substitute:

- (b) may ask a *life insurance company that has given information in a statement under section 390-20 in relation to the individual to give the individual or the trustee the same information; and
- (c) may ask the superannuation provider or life insurance company to give the information in writing.

23 Subsections 390-15(2), (3) and (4) in Schedule 1

After “*superannuation provider”, insert “or *life insurance company”.

24 Subsection 390-15(4) in Schedule 1

Omit “provider considers”, substitute “provider or company considers”.

25 At the end of Subdivision 390-A in Schedule 1

Add:

390-20 Statements relating to holders of certain life insurance policies

- (1) A *life insurance company must give the Commissioner a statement in relation to an individual if:
 - (a) the individual held:
 - (i) an *exempt life insurance policy that provides for an *annuity that is a *superannuation income stream that is in the *retirement phase; or
 - (ii) a *life insurance policy covered by paragraph (b) of the definition of *complying superannuation life insurance policy*; and
 - (b) the individual held the policy at any time during the period specified in the determination under subsection (3).

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) The statement must:
 - (a) be in the *approved form; and
 - (b) be given to the Commissioner on a day specified in the determination under subsection (3).
- (3) The Commissioner may determine, by legislative instrument:
 - (a) the period mentioned in subsection (1); and
 - (b) the day on which a statement must be given to the Commissioner.
- (4) The determination may specify a period beginning before, or a day before, the commencement of either or both of the following:
 - (a) this section;

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- (b) the determination.
- (5) The *approved form may require the statement to contain information about the policy held by the individual.
- (6) The *approved form may require the statement to contain the *tax file number of:
 - (a) the *life insurance company; and
 - (b) the individual who holds the policy if:
 - (i) the individual has quoted the individual's tax file number to the life insurance company; or
 - (ii) a person has quoted the individual's tax file number to the life insurance company (and had authority to do so).

Part 2—Defined benefit income

Income Tax Assessment Act 1997

26 At the end of section 301-10

Add:

Note 3: If your superannuation benefit is a superannuation income stream benefit that is defined benefit income, see Subdivision 303-A.

27 At the end of section 301-90

Add:

Note: If your superannuation benefit is a superannuation income stream benefit that is defined benefit income, see Subdivision 303-A.

28 At the end of section 301-100

Add:

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

29 Section 302-65 (note)

Repeal the note, substitute:

Note 1: If your superannuation income stream benefit includes an element untaxed in the fund, see section 302-85.

Note 2: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

30 At the end of section 302-80

Add:

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

31 At the end of section 302-85

Add:

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

32 Division 303 (after the heading)

Insert:

Table of Subdivisions

	Guide to Division 303
303-A	Modifications for defined benefit income
303-B	Other special circumstances

Guide to Division 303

303-1 What this Division is about

Under Subdivision 303-A, the tax treatment of superannuation income stream benefits that are defined benefit income can be less favourable to you if that income exceeds your defined benefit income cap.

Subdivision 303-B sets out special circumstances in which superannuation benefits are neither assessable income nor exempt income.

Subdivision 303-A—Modifications for defined benefit income

Table of sections

	Operative provisions
303-2	Effect of exceeding defined benefit income cap on assessable income
303-3	Effect of exceeding defined benefit income cap on tax offsets
303-4	Meaning of <i>defined benefit income cap</i>

Operative provisions

303-2 Effect of exceeding defined benefit income cap on assessable income

- (1) Despite sections 301-10 and 302-65, if:

- (a) during a *financial year, you receive one or more *superannuation income stream benefits:
 - (i) that are *defined benefit income; and
 - (ii) to which either section 301-10 or 302-65 applies; and
 - (b) the sum of all of those benefits (other than any *elements untaxed in the fund of those benefits) exceeds your *defined benefit income cap for the financial year;
50% of that excess is assessable income.
- (2) **Defined benefit income** is a *superannuation income stream benefit that is paid from a *capped defined benefit income stream.

303-3 Effect of exceeding defined benefit income cap on tax offsets

Despite sections 301-100 and 302-85, if:

- (a) during a *financial year, you receive one or more *superannuation income stream benefits:
 - (i) that are *defined benefit income; and
 - (ii) in relation to which you are entitled, or apart from this section you would be entitled, to one or more *tax offsets under section 301-100 or 302-85; and
- (b) the sum of all of the superannuation income stream benefits you receive during the financial year:
 - (i) that are defined benefit income; and
 - (ii) to which section 301-10, 301-100, 302-65 or 302-85 applies;exceeds your *defined benefit income cap for the financial year;
the sum of those tax offsets is reduced (but not below zero) by an amount equal to 10% of that excess.

303-4 Meaning of *defined benefit income cap*

- (1) Your **defined benefit income cap** for a *financial year is the following amount (rounded up to the nearest dollar):

The *general transfer balance cap for the *financial year

16

Schedule 1 Transfer balance cap
Part 2 Defined benefit income

(2) Despite subsection (1) of this section, if a particular day in a *financial year is the first day in relation to which section 301-10, 301-100, 302-65 or 302-85:

(a) applies to you; or

(b) would apart from this Subdivision apply to you;

your *defined benefit income cap* for the financial year is the following amount (rounded up to the nearest dollar):

$$\frac{\text{The *general transfer balance cap for the *financial year}}{16} \times \frac{1 + \frac{\text{Number of days remaining in the *financial year after that day}}{\text{Number of days in the *financial year}}}{\text{Number of days in the *financial year}}$$

(3) Despite subsections (1) and (2) of this section, if:

(a) in a case where subsection (1) applies—during the *financial year, you receive any amounts of *defined benefit income to which none of sections 301-10, 301-100, 302-65 and 302-85 apply; or

(b) in a case where subsection (2) applies—during the financial year, you receive after the day mentioned in that subsection any amounts of defined benefit income to which none of sections 301-10, 301-100, 302-65 and 302-85 apply;

your *defined benefit income cap* for the financial year under subsection (1) or (2) (as the case requires) is reduced by the sum of those amounts.

Subdivision 303-B—Other special circumstances

Taxation Administration Act 1953

33 At the end of section 12-1 in Schedule 1

Add:

Capped defined benefit income stream

(4) This section does not apply in relation to a payment if the whole of the payment is a *superannuation income stream benefit that is paid from a *capped defined benefit income stream.

Note: For withholding amounts from a superannuation income stream, see section 12-80.

Part 3—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

34 After Division 293

Insert:

Division 294—Transfer balance cap

Table of Subdivisions

- 294-A Application of Division 294 of the *Income Tax Assessment Act 1997*
- 294-B CGT relief

Subdivision 294-A—Application of Division 294 of the Income Tax Assessment Act 1997

Table of sections

- 294-10 Application of Division 294 of the *Income Tax Assessment Act 1997*
- 294-30 Minor excess transfer balances disregarded if remedied in first 6 months

294-10 Application of Division 294 of the *Income Tax Assessment Act 1997*

Division 294 of the *Income Tax Assessment Act 1997* applies on and after 1 July 2017.

294-30 Minor excess transfer balances disregarded if remedied in first 6 months

Despite sections 294-30 and 294-140 of the *Income Tax Assessment Act 1997* (which are about when you have excess transfer balance), you do not have excess transfer balance in your transfer balance account on any day in the period of 6 months beginning on 1 July 2017 if:

- (a) the only transfer balance credits in the account in that period arose under item 1 of the table in subsection 294-25(1) of that

- Act (which is about superannuation income streams you have just before 1 July 2017); and
- (b) the sum of those transfer balance credits exceeds your transfer balance cap, but is less than or equal to \$1,700,000; and
 - (c) at the end of the period, the sum of all the transfer balance debits arising in your transfer balance account equals or exceeds the amount of the excess from paragraph (b).

Subdivision 294-B—CGT relief

Table of sections

294-100	Object
294-105	Interpretation
294-110	Segregated current pension assets
294-115	Superannuation funds using the proportionate method—deemed sale and purchase of CGT asset
294-120	Superannuation funds using the proportionate method—disregard initial capital gain but recognise deferred notional gain

294-100 Object

The object of this Subdivision is to provide temporary relief from certain capital gains that might arise as a result of individuals complying with the following legislative changes:

- (a) the introduction of a transfer balance cap (as a result of Schedule 1 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*);
- (b) the exclusion of transition to retirement income streams (and similar income streams) from being superannuation income streams in the retirement phase (as a result of Schedule 8 to that Act).

294-105 Interpretation

In this Subdivision:

pre-commencement period means the period:

- (a) starting on the start of the day on which the Bill that became the *Treasury Laws Amendment (Fair and Sustainable*

- Superannuation) Act 2016* was introduced into the House of Representatives; and
(b) ending just before 1 July 2017.

294-110 Segregated current pension assets

- (1) This section applies if:
- (a) at the start of the pre-commencement period, a CGT asset of a fund is a segregated current pension asset of the fund; and
 - (b) at a time (the *cessation time*) in the pre-commencement period, the asset ceases to be a segregated current pension asset of the fund; and
 - (c) the fund held the CGT asset throughout the pre-commencement period (disregarding subsection (3)); and
 - (d) the fund is a complying superannuation fund throughout the period:
 - (i) starting at the start of the pre-commencement period; and
 - (ii) ending at the cessation time; and
 - (e) the trustee of the fund makes a choice for the purposes of this paragraph in respect of the asset in accordance with subsection (2).
- (2) A choice made for the purposes of paragraph (1)(e):
- (a) is to be in the approved form; and
 - (b) can only be made on or before the day by which the trustee of the fund is required to lodge the fund's income tax return for the 2016-17 income year; and
 - (c) cannot be revoked.
- (3) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, the fund is taken:
- (a) to have sold, immediately before the cessation time, the asset for a consideration equal to its market value; and
 - (b) to have purchased the asset again at the cessation time for a consideration equal to its market value.

**294-115 Superannuation funds using the proportionate method—
deemed sale and purchase of CGT asset**

Application

- (1) This section applies in relation to a CGT asset of a fund if:
 - (a) the fund is a complying superannuation fund throughout the pre-commencement period; and
 - (b) the proportion mentioned in subsection 295-390(3) of the *Income Tax Assessment Act 1997* in respect of the fund for the 2016-17 income year is greater than nil; and
 - (c) the fund held the asset throughout the pre-commencement period; and
 - (d) throughout the pre-commencement period, the asset:
 - (i) was not a segregated current pension asset of the fund; and
 - (ii) was not a segregated non-current asset of the fund; and
 - (e) the trustee of the fund makes a choice for the purposes of this paragraph in respect of the asset in accordance with subsection (2).
- (2) A choice made for the purposes of paragraph (1)(e):
 - (a) is to be in the approved form; and
 - (b) can only be made on or before the day by which the trustee of the fund is required to lodge the fund's income tax return for the 2016-17 income year; and
 - (c) cannot be revoked.

Deemed sale and purchase

- (3) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, the fund is taken:
 - (a) to have sold, immediately before 1 July 2017, the asset for a consideration equal to its market value; and
 - (b) to have purchased the asset again just after that sale for a consideration equal to its market value.

**294-120 Superannuation funds using the proportionate method—
disregard initial capital gain but recognise deferred
notional gain**

Application

- (1) This section applies in relation to a CGT asset of a complying superannuation fund if:
 - (a) section 294-115 applies in relation to the CGT asset; and
 - (b) as a result of paragraph 294-115(3)(a), the fund makes a capital gain in respect of the asset (disregarding this section); and
 - (c) the trustee of the fund makes a choice for the purposes of this paragraph in respect of the asset in accordance with subsection (2).
- (2) A choice made for the purposes of paragraph (1)(c):
 - (a) is to be in the approved form; and
 - (b) can only be made on or before the day by which the trustee of the fund is required to lodge the fund's income tax return for the 2016-17 income year; and
 - (c) cannot be revoked.

Disregard initial capital gain

- (3) Disregard the capital gain mentioned in paragraph (1)(b).

Recognition of deferred notional gain

- (4) The **deferred notional gain** is the 2016-17 non-exempt proportion of the amount of the fund's net capital gain for the 2016-17 income year determined on the assumptions that:
 - (a) subsection (3) of this section does not apply; and
 - (b) the fund made no capital gains in that income year other than the gain mentioned in paragraph (1)(b); and
 - (c) the fund made no capital losses in that income year; and
 - (d) the fund had no previously unapplied net capital losses from earlier income years.

- (5) For the purposes of Division 102 of the *Income Tax Assessment Act 1997*, if a realisation event happens to the asset in an income year that starts on or after 1 July 2017:
- (a) treat the fund as having made a capital gain in that income year equal to the deferred notional gain; and
 - (b) disregard section 102-20 of that Act in respect of that capital gain; and
 - (c) treat that capital gain as not being a discount capital gain.
- (6) Subsection 295-390(1) of the *Income Tax Assessment Act 1997* does not apply to the amount by which a net capital gain is increased (or comes into existence) as a result of subsection (5).
- (7) In this section:
- 2016-17 non-exempt proportion** means 1 minus the proportion mentioned in subsection 295-390(3) of the *Income Tax Assessment Act 1997* in respect of the fund for the 2016-17 income year.
- deferred notional gain** has the meaning given by subsection (4).

35 After section 307-127

Insert:

307-230 Total superannuation balance—modification for transfer balance just before 1 July 2017

- (1) This section applies for the purposes of working out the amount of your total superannuation balance just before 1 July 2017.
- (2) The transfer balance mentioned in paragraph 307-230(1)(b) of the *Income Tax Assessment Act 1997* just before 1 July 2017 is taken to be equal to:
- (a) the sum of the transfer balance credits (if any) in your transfer balance account just after the start of 1 July 2017; less
 - (b) the sum of the transfer balance debits (if any) arising in your transfer balance account on 1 July 2017 under item 4 of the table in subsection 294-80(1) of that Act (about payment splits).

36 Application of amendments

(1) The amendments made by Part 1 (apart from items 4, 21, 22, 23, 24 and 25) apply on and after 1 July 2017.

Note: The application of the amendment made by item 4 is provided for in Division 294 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) The amendments made by items 21, 22, 23, 24 and 25 apply in relation to exempt life insurance policies, and life insurance policies, held on and after 30 June 2017.

(3) The amendments made by Part 2 apply in relation to the financial year starting on 1 July 2017 and later financial years.

Schedule 2—Concessional superannuation contributions

Part 1—Excess concessional contributions

Income Tax Assessment Act 1997

1 Subsection 291-20(2)

Repeal the subsection, substitute:

- (2) Your *concessional contributions cap* is:
- (a) for the 2017-2018 financial year—\$25,000; or
 - (b) for the 2018-2019 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.

2 Paragraph 291-25(2)(c)

Repeal the paragraph, substitute:

- (c) it is *not* an amount mentioned in subsection 295-200(2); and
- (d) it is *not* an amount mentioned in item 2 of the table in subsection 295-190(1).

3 Subsection 291-25(4)

Repeal the subsection, substitute:

- (4) For the purposes of paragraph (2)(b), disregard:
- (a) table item 5.3 in section 50-25 (about income tax exemption for constitutionally protected funds); and
 - (b) Subdivision 295-D (about excluded contributions).

4 Section 291-160

Omit “(1)”.

5 Subsection 291-160(2)

Repeal the subsection.

6 Section 291-165

Before “Despite”, insert “(1)”.

7 After paragraph 291-165(b)

Insert:

; and (c) the amount (if any) by which your *defined benefit contributions for the financial year in respect of the defined benefit interest or interests exceed those notional taxed contributions.

Note: Section 291-370 prevents some contributions from causing your concessional contributions for a financial year to exceed the concessional contributions cap.

- (2) In working out your *defined benefit contributions for the *financial year for the purposes of paragraph (1)(c):
- (a) if Subdivision 293-E applies to you for the income year corresponding to the financial year—disregard subsection 293-150(3); and
 - (b) if Subdivision 293-F applies to you—disregard subsection 293-195(2).

Note: Section 291-370 prevents some contributions from causing your concessional contributions for a financial year to exceed the concessional contributions cap.

8 After Subdivision 291-C

Insert:

Subdivision 291-CA—Contributions that do not result in excess contributions

Guide to Subdivision 291-CA

291-365 What this Subdivision is about

Some contributions and other amounts are treated as always being within your concessional contributions cap, and therefore cannot be excess concessional contributions.

Table of sections

Operative provisions

291-370 Contributions that do not result in excess contributions

Operative provisions

291-370 Contributions that do not result in excess contributions

- (1) In working out your *concessional contributions for a *financial year, treat the sum of the following as an amount equal to your *concessional contributions cap under subsection 291-20(2) for the financial year:
 - (a) contributions made in respect of you for the financial year to a *constitutionally protected fund that would (disregarding this section) be concessional contributions;
 - (b) if any of your *notional taxed contributions for the financial year:
 - (i) are worked out under section 291-170 of the *Income Tax (Transitional Provisions) Act 1997*; or
 - (ii) are not worked out under that section, but only because those notional taxed contributions did not meet the requirements of paragraph 291-170(2)(b) or (4)(b) of that Act;the amount of those notional taxed contributions;
 - (c) if your *defined benefit contributions for the financial year (other than contributions and amounts covered by

paragraph (a)) exceed your notional taxed contributions for the financial year—the amount of that excess;
if that sum would otherwise exceed your concessional contributions cap under subsection 291-20(2) for the financial year.

Note: This subsection does *not* take into account any increase in your concessional contributions cap under subsection 291-20(4).

- (2) For the purposes of paragraph (1)(a), treat any amounts covered by subsection 291-25(3) or paragraph 291-165(1)(b) or (c) for the *financial year that relate to a *superannuation interest of yours in the fund as if they were contributions made in respect of you for the financial year to the fund.
- (3) This section has effect despite sections 291-25 and 291-165 of this Act and section 291-170 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax (Transitional Provisions) Act 1997

9 Subdivision 291-B

Repeal the Subdivision.

10 At the end of subsection 291-170(2)

Add:

Note: In some cases, section 291-370 of the *Income Tax Assessment Act 1997* has the effect of replacing this subsection with a similar rule covering a broader class of contributions and amounts.

11 At the end of subsection 291-170(4)

Add:

Note: In some cases, section 291-370 of the *Income Tax Assessment Act 1997* has the effect of replacing this subsection with a similar rule covering a broader class of contributions and amounts.

12 At the end of section 291-170

Add:

Schedule 2 Concessional superannuation contributions

Part 1 Excess concessional contributions

Constitutionally protected funds

- (6) This section does not apply in relation to a defined benefit interest in a constitutionally protected fund.

13 Application of amendments

The amendments made by this Part apply in relation to the financial year starting on 1 July 2017 and later financial years.

Part 2—Division 293 tax

Income Tax Assessment Act 1997

14 Section 293-1

Omit “very high income”, substitute “high income”.

15 Section 293-1

Omit “\$300,000”, substitute “\$250,000”.

16 Sections 293-5 and 293-10

Omit “very high income”, substitute “high income”.

17 Section 293-10

Omit “\$300,000”, substitute “\$250,000”.

18 Subsections 293-20(1), 293-155(1) and 293-200(1)

Omit “\$300,000”, substitute “\$250,000”.

Taxation Administration Act 1953

19 Subsection 133-15(1) in Schedule 1 (note)

Omit “\$300,000”, substitute “\$250,000”.

20 Application of amendments

The amendments made by this Part apply in relation to the 2017-18 income year and later income years.

Part 3—Superannuation guarantee charge

Superannuation Guarantee (Administration) Act 1992

21 At the end of section 15

Add:

- (5) Despite subsections (3) and (4), the maximum contribution base for a quarter in the 2017-18 year or any later year is the amount worked out using the following formula, if that amount is less than the amount worked out under those subsections:

$$\text{Concessional contributions cap} \times \frac{100}{\text{Charge percentage}} \times \frac{1}{4}$$

where:

charge percentage is the number specified in subsection 19(2) for the quarter.

concessional contributions cap is the concessional contributions cap, within the meaning of the *Income Tax Assessment Act 1997*, for the financial year in which the quarter occurs.

- (6) Amounts calculated under subsection (5) must be rounded down to the nearest 10 dollar multiple.

Schedule 3—Non-concessional contributions

Income Tax Assessment Act 1997

1 Before subsection 292-85(1)

Insert:

Your excess non-concessional contributions

2 Subsections 292-85(2) to (4)

Repeal the subsections, substitute:

Your non-concessional contributions cap—general rule

- (2) Your ***non-concessional contributions cap*** for a *financial year is:
- (a) unless paragraph (b) applies—the amount (the ***general non-concessional contributions cap*** for the year) that is 4 times your *concessional contributions cap under subsection 291-20(2) for the year; or
 - (b) if, immediately before the start of the year, your *total superannuation balance equals or exceeds the *general transfer balance cap for the year—nil.

Note: This subsection does *not* take into account any increase in your concessional contributions cap under subsection 291-20(4).

When you can bring forward your non-concessional contributions cap

- (3) Despite subsection (2), work out your ***non-concessional contributions cap*** for a *financial year (the ***first year***) under subsection (5), and your ***non-concessional contributions caps*** for the following 2 financial years (the ***second year*** and ***third year***) under subsections (6) and (7), if:
- (a) your *non-concessional contributions for the first year exceed the general non-concessional contributions cap for that year; and
 - (b) paragraph (2)(b) does not apply to you in relation to the first year; and

- (c) you are under 65 years at any time in the first year; and
 - (d) a previous operation of subsection (6) or (7) does not determine your non-concessional contributions cap for the first year; and
 - (e) the difference (the *first year cap space*) between the *general transfer balance cap for the first year and your *total superannuation balance immediately before the start of the first year exceeds the general non-concessional contributions cap for the first year.
- (4) However, do not work out your *non-concessional contributions cap for the third year under subsection (7) if the first year cap space does not exceed an amount equal to twice the general non-concessional contributions cap for the first year.

Note: If this subsection applies, your non-concessional contributions cap for the third year will be worked out under subsection (2) (unless the third year becomes a new first year under a further application of subsection (3)).

First year of bring forward

- (5) Your *non-concessional contributions cap* for the first year is an amount equal to:
- (a) if the first year cap space does not exceed an amount equal to twice the general non-concessional contributions cap for the first year—twice the general non-concessional contributions cap for the first year; or
 - (b) otherwise—3 times the general non-concessional contributions cap for the first year.

Second year of bring forward

- (6) Your *non-concessional contributions cap* for the second year is:
- (a) if:
 - (i) your *total superannuation balance immediately before the start of the second year is less than the *general transfer balance cap for the second year; and
 - (ii) your *non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));

- that shortfall; or
 (b) otherwise—nil.

Third year of bring forward

(7) Your ***non-concessional contributions cap*** for the third year is:

- (a) if:
- (i) your *total superannuation balance immediately before the start of the third year is less than the *general transfer balance cap for the third year; and
 - (ii) your *non-concessional contributions for the second year fall short of your cap for the second year (worked out under subsection (6));

that shortfall; or

- (b) if:
- (i) your total superannuation balance immediately before the start of the third year is less than the general transfer balance cap for the third year; and
 - (ii) your cap for the second year is nil; and
 - (iii) your non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));

that shortfall; or

- (c) otherwise—nil.

3 Paragraph 292-95(1)(b)

After “within 90 days”, insert “, or such longer period as the Commissioner allows,”.

4 At the end of section 292-95

Add:

- (6) If:
- (a) you requested the Commissioner to allow a longer period under paragraph (1)(b); and
 - (b) you are dissatisfied with:
 - (i) a decision under that paragraph allowing a longer period; or

(ii) a decision the Commissioner makes not to allow a longer period;
you may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(7) To avoid doubt:

(a) subject to subsection 14ZVC(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a decision, relating to all or part of your 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 97-35 in Schedule 1 to the *Taxation Administration Act 1953* against an *excess non-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 decision under paragraph (1)(b) of 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.

5 Subsection 292-465(9)

Repeal the subsection, substitute:

Review

(9) 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*.

(10) To avoid doubt:

(a) subject to subsection 14ZVC(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 *non-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 97-35 in Schedule 1 to the *Taxation Administration Act 1953* against an *excess non-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.

Income Tax (Transitional Provisions) Act 1997

6 After section 292-80C

Insert:

292-85 Non-concessional contributions cap for a financial year

- (1) For the purposes of working out your non-concessional contributions cap for the 2017-2018 financial year, if:
- (a) your non-concessional contributions cap for the 2015-2016 financial year was worked out under subsection 292-85(4) of the *Income Tax Assessment Act 1997*; and
 - (b) that year was a first year within the meaning of subsection 292-85(3) of that Act;
- subsection 292-85(7) of that Act as amended by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* applies after the commencement of this section as if:
- (c) the amount worked out under subsection 292-85(5) of that Act as so amended were \$460,000; and
 - (d) subsection 292-85(6) of that Act as so amended had been applied (taking into account paragraph (c) of this subsection) for the purposes of working out your non-concessional contributions cap for the 2016-2017 financial year.

- (2) For the purposes of working out your non-concessional contributions caps for the 2017-2018 financial year and the 2018-2019 financial year, if:
- (a) your non-concessional contributions cap for the 2016-2017 financial year was worked out under subsection 292-85(4) of the *Income Tax Assessment Act 1997*; and
 - (b) that year was a first year within the meaning of subsection 292-85(3) of that Act;
- subsections 292-85(6) and (7) of that Act as amended by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* apply after the commencement of this section as if the amount worked out under subsection 292-85(5) of that Act as so amended were \$380,000.
- (3) To avoid doubt, this section does not affect your non-concessional contributions cap for any financial year that ended before 1 July 2017.

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

7 After paragraph 6(1)(d)

Insert:

- (da) the person's non-concessional contributions for the financial year corresponding to the income year do not exceed the person's non-concessional contributions cap for the financial year; and
- (db) immediately before the start of that financial year, the person's total superannuation balance is less than the general transfer balance cap for that financial year; and

8 Section 56

Insert:

general transfer balance cap has the same meaning as in the *Income Tax Assessment Act 1997*.

non-concessional contributions has the same meaning as in the *Income Tax Assessment Act 1997*.

non-concessional contributions cap has the same meaning as in the *Income Tax Assessment Act 1997*.

total superannuation balance has the same meaning as in the *Income Tax Assessment Act 1997*.

9 Application of amendments

The amendments made by this Schedule apply in relation to working out your non-concessional contributions cap for the financial year starting on 1 July 2017 and later financial years.

Schedule 4—Low income superannuation tax offset

Part 1—Low income superannuation tax offset

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

1 Subsection 5(2)

After:

- Part 2 (sections 6 to 12) tells you who are the people in respect of whom a Government co-contribution is payable. It also tells you how much the co-contribution is.

insert:

- Part 2A (sections 12B to 12G) tells you who are the people entitled to a low income superannuation tax offset. It also tells you how much the low income superannuation tax offset is.

2 After Part 2

Insert:

Part 2A—Low income superannuation tax offset

12B Reference to Government co-contribution includes reference to low income superannuation tax offset

- (1) A law of the Commonwealth applies in relation to a low income superannuation tax offset in the same way as it applies in relation to a Government co-contribution.
- (2) Subsection (1) does not apply to:
 - (a) the following provisions:
 - (i) Part 2 of this Act (other than section 12);

- (ii) this Part;
 - (iii) section 23 of this Act;
 - (iv) section 54 of this Act; and
 - (b) any other law of the Commonwealth, to the extent that the other law relates to a provision mentioned in paragraph (a) of this subsection.
- (3) Paragraph 14(1)(a) (Commissioner to have regard to income tax return) does not apply in deciding whether to make a determination under section 13 that a low income superannuation tax offset is payable under subsection 12C(2) in respect of a person for an income year.
- (4) Subsections 24(3) and (4) have an operation in respect of low income superannuation tax offsets that is separate to their operation in respect of Government co-contributions.

12C Person entitled to low income superannuation tax offset

- (1) A low income superannuation tax offset is payable under this subsection in respect of a person for an income year of the person if:
- (a) the person's concessional contributions for the financial year that corresponds to the income year are for a financial year starting on or after 1 July 2017; and
 - (b) the person's adjusted taxable income for the income year (worked out in accordance with Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* (disregarding clauses 3 and 3A of that Schedule)) does not exceed \$37,000; and
 - (c) the requirement in paragraph 6(1)(b) is satisfied in respect of the person in relation to the income year; and
 - (d) the requirement in paragraph 6(1)(f) is satisfied in respect of the person in relation to the income year.
- (2) A low income superannuation tax offset is payable under this subsection in respect of a person for an income year of the person if:
- (a) the person's concessional contributions for the financial year that corresponds to the income year are for a financial year starting on or after 1 July 2017; and

Schedule 4 Low income superannuation tax offset

Part 1 Low income superannuation tax offset

- (b) 12 months after the end of the income year, the Commissioner reasonably believes there is insufficient information to decide whether to make a determination under section 13 that a low income superannuation tax offset is payable under subsection (1) in respect of the person for the income year; and
 - (c) the Commissioner estimates that:
 - (i) the person's adjusted taxable income for the income year (worked out in accordance with Schedule 3 to the *New Tax System (Family Assistance) Act 1999* (disregarding clauses 3 and 3A of that Schedule)) does not exceed \$37,000; and
 - (ii) 10% or more of the person's total income for the income year (disregarding subsections 8(2) and (3)) is attributable to the person engaging in activities covered under subsection 6(2); and
 - (d) the requirement in paragraph 6(1)(f) is satisfied in respect of the person in relation to the income year.
- (3) For the purposes of paragraph (1)(c), disregard the words "in which the person makes the contribution" in paragraph 6(2)(a).
 - (4) For the purposes of subparagraph (2)(c)(i), treat the person as having total deductions of \$300 for the income year unless the Commissioner has information to the contrary.
 - (5) For the purposes of subparagraph (2)(c)(ii), disregard the words "in the income year in which the person makes the contribution" in paragraph 6(2)(a).

12E Amount of low income superannuation tax offset

- (1) This section applies if a low income superannuation tax offset is payable under subsection 12C(1) or (2) in respect of a person for an income year.
- (2) The amount of the person's low income superannuation tax offset for the income year is:
 - (a) unless paragraph (b) or (c) applies—15% of the total of the person's concessional contributions for the financial year that corresponds to the income year; or

- (b) if the amount worked out under paragraph (a) exceeds \$500—\$500; or
 - (c) if the amount worked out under paragraph (a) is less than \$10—\$10.
- (3) For the purposes of paragraph (2)(a), disregard:
- (a) contributions or amounts covered by paragraph 291-370(1)(a) of the *Income Tax Assessment Act 1997* (about contributions or amounts in relation to constitutionally protected funds); and
 - (b) any other amounts covered by paragraph 291-165(1)(c) of that Act.
- (4) If, apart from this subsection:
- (a) there would be an underpaid amount as mentioned in section 19 in respect of the person's low income superannuation tax offset for the income year; and
 - (b) the underpaid amount would be less than \$10;
- decrease the amount of that low income superannuation tax offset by that underpaid amount.
- (5) If, apart from this subsection:
- (a) there would be an amount overpaid as mentioned in section 24 in respect of the person's low income superannuation tax offset for the income year; and
 - (b) the amount overpaid would be less than \$10;
- increase the amount of that low income superannuation tax offset by that amount overpaid.

12F Consequences if estimates no longer accurate

- (1) Treat a low income superannuation tax offset as never having been payable under subsection 12C(2) in respect of a person for an income year if:
- (a) the Commissioner obtains information after making the determination under section 13 that the tax offset was so payable; and
 - (b) the Commissioner decides that, had the Commissioner obtained that information before making the determination, the Commissioner would not have made the determination.

Schedule 4 Low income superannuation tax offset

Part 1 Low income superannuation tax offset

Note: The tax offset will be recoverable under section 24.

- (2) The Commissioner must give the person written notice of the Commissioner's decision under paragraph (1)(b).

12G Reports on this Part

- (1) After the end of each quarter the Commissioner must give the Minister a report, for presentation to the Parliament, on the working of this Part during the quarter. The report must include, for the quarter to which the report relates, the prescribed details about beneficiaries of, and amounts of, low income superannuation tax offsets.
- (2) After the end of each financial year the Commissioner must give the Minister a report, for presentation to the Parliament, that:
 - (a) is on the working of this Part during the financial year; and
 - (b) includes, for the financial year to which the report relates, the prescribed details about beneficiaries of, and amounts of, low income superannuation tax offsets.

3 Subsection 49(1)

After "Part 2," insert "2A,".

4 At the end of section 55

Add:

Note: The regulations may relate to the Government co-contribution and the low income superannuation tax offset (see section 12B).

5 Section 56

Insert:

concessional contributions has the same meaning as in the *Income Tax Assessment Act 1997*.

low income superannuation tax offset means a low income superannuation tax offset payable under this Act.

6 Application of amendments

- (1) The amendments made by this Schedule apply to the 2017-18 income year and later income years.
- (2) The following provisions of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* apply in relation to a low income superannuation contribution in the same way as they apply in relation to a low income superannuation tax offset:
 - (a) sections 24 and 25;
 - (b) any other provision of that Act to the extent that it relates to the provisions mentioned in paragraph (a).

Part 2—Other amendments

Minerals Resource Rent Tax Repeal and Other Measures Act 2014

7 Subitem 7(2) of Schedule 7

After “in relation to”, insert “low income superannuation contributions for”.

8 Item 8 of Schedule 7

Repeal the item.

Schedule 5—Deducting personal contributions

Income Tax Assessment Act 1997

1 Subsection 280-10(1)

Omit “if less than 10% of their total assessable income (plus reportable fringe benefits) for the income year is attributable to employment or similar activities”, substitute “to most complying superannuation funds”.

2 Subsection 280-10(2)

Omit “personal contributions made by individuals whose employment income is 10% or more of their total income, and contributions made by others in respect of them”, substitute “contributions made by others in respect of individuals”.

3 Subsection 290-150(2)

Omit “290-160 (if applicable),”.

4 Sections 290-155 and 290-160

Repeal the sections, substitute:

290-155 Complying superannuation fund condition

- (1) If the contribution is made to a *superannuation fund:
 - (a) the fund must be a *complying superannuation fund, for the income year of the fund in which you made the contribution, that is not:
 - (i) a *Commonwealth public sector superannuation scheme in which you have a *defined benefit interest; or
 - (ii) a superannuation fund that would not include the contribution in its assessable income under section 295-190; or
 - (iii) a superannuation fund of a kind prescribed by the regulations for the purposes of this subparagraph; and

- (b) the contribution must not be a contribution of a kind prescribed by the regulations that is made to a superannuation fund of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) In determining for the purposes of subparagraph (1)(a)(ii) whether section 295-190 would apply in relation to a contribution, disregard Subdivision 295-D.
- (3) The Commissioner may publish, in such manner as the Commissioner thinks fit, lists of:
 - (a) the *superannuation funds to which subparagraph (1)(a)(i), (ii) or (iii) applies for an income year; and
 - (b) the kinds of contributions to which paragraph (1)(b) applies for an income year, and the superannuation funds to which those contributions have been or would be made.

5 Paragraph 290-165(1)(b)

Repeal the paragraph, substitute:

- (b) attributable to activities, or circumstances, that result in you being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).

6 At the end of subsection 290-170(2)

Add:

- ; (e) if the contribution is made to a *superannuation fund—the condition in section 290-155 is not satisfied in relation to the fund and the contribution.

7 Application of amendments

The amendments made by this Schedule apply in relation to contributions made in the 2017-18 income year and later income years.

Schedule 6—Unused concessional cap carry forward

Income Tax Assessment Act 1997

1 Subsection 280-15(1)

Omit “This limit takes the form of a tax on excessive contributions, and neutralises the favourable tax treatment arising from the excessive contributions.”.

2 At the end of subsection 280-15(2)

Add “Unused cap can be carried forward for 5 years.”.

3 Section 291-1

After:

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

insert:

You can carry forward unused concessional contributions cap from the previous 5 financial years and use it to increase your cap in a later financial year (unless your total superannuation balance exceeds \$500,000).

4 At the end of section 291-20

Add:

Five year carry forward of unused concessional contributions cap

- (3) However, your ***concessional contributions cap*** for the *financial year is increased in accordance with subsection (4) if:
- (a) your *concessional contributions for the year would otherwise exceed your concessional contributions cap for the year; and

- (b) your *total superannuation balance just before the start of the financial year is less than \$500,000; and
 - (c) you have previously unapplied *unused concessional contributions cap for one or more of the previous 5 financial years.
- (4) Apply your unapplied *unused concessional contributions cap for each of the previous 5 *financial years to increase your *concessional contributions cap (but not by more than the excess from paragraph (3)(a)).
 - (5) For the purposes of increasing your *concessional contributions cap under subsection (4), apply amounts of *unused concessional contributions cap for previous *financial years in order from the earliest year to the most recent year.

Your unused concessional contributions cap

- (6) You have ***unused concessional contributions cap*** for a *financial year if the amount of your *concessional contributions for the year falls short of your *concessional contributions cap for the year. The amount of the unused concessional contributions cap is the amount of the shortfall.
- (7) However, you do not have ***unused concessional contributions cap*** for a *financial year earlier than the 2018-2019 financial year.

5 Application

The amendments made by this Schedule apply in relation to working out your concessional contributions cap for the 2019-2020 financial year and later financial years.

Schedule 7—Tax offsets for spouse contributions

Income Tax Assessment Act 1997

1 Paragraph 290-230(2)(c)

Omit “\$13,800”, substitute “\$40,000”.

2 After subsection 290-230(4)

Insert:

- (4A) You are *not* entitled to the *tax offset for an income year if:
- (a) your *spouse’s *non-concessional contributions for the *financial year corresponding to the income year exceed your spouse’s *non-concessional contributions cap for the financial year; or
 - (b) immediately before the start of the financial year, your spouse’s *total superannuation balance equals or exceeds the *general transfer balance cap for the financial year.

3 Paragraph 290-235(1)(a)

Omit “\$10,800”, substitute “\$37,000”.

4 Application of amendments

The amendments made by this Schedule apply in relation to contributions made in the 2017-18 income year and later income years.

Schedule 8—Innovative income streams and integrity

Part 1—Amendments

Income Tax Assessment Act 1997

1 Paragraph 295-385(3)(a)

Omit “*superannuation income stream benefits that are payable by the fund at that time”, substitute “*RP superannuation income stream benefits of the fund at that time”.

2 Paragraph 295-385(4)(a)

Omit “that are payable by the fund at that time”, substitute “that are *RP superannuation income stream benefits of the fund at that time”.

3 Subsection 295-385(5)

Omit “*superannuation income stream benefits payable by the fund”, substitute “*RP superannuation income stream benefits of the fund”.

4 At the end of section 295-385

Add:

- (7) Also, *disregarded small fund assets are not segregated current pension assets.

5 After section 295-385

Insert:

295-387 Disregarded small fund assets

- (1) The assets of a *complying superannuation fund are ***disregarded small fund assets*** at all times in an income year if the fund is covered by subsection (2) for the income year.
- (2) A *complying superannuation fund is covered by this subsection for an income year if:
- (a) any of these requirements are satisfied:

- (i) the fund is a *self managed superannuation fund at a time during the income year;
- (ii) there are less than 5 *members of the fund at a time during the income year; and
- (b) at a time during the income year, there is at least one *superannuation interest in the fund that is in the *retirement phase; and
- (c) just before the start of the income year:
 - (i) a person has a *total superannuation balance that exceeds \$1.6 million; and
 - (ii) the person is the *retirement phase recipient of a *superannuation income stream (whether or not the fund is the *superannuation income stream provider for the superannuation income stream); and
- (d) at a time during the income year, the person has a superannuation interest in the fund (whether or not the superannuation interest is the superannuation interest mentioned in paragraph (b)).

6 Subsection 295-390(3) (definition of *average value of current pension liabilities*)

Omit “*superannuation income stream benefits that are payable by the fund in that year”, substitute “*RP superannuation income stream benefits of the fund at any time in that year”.

7 Subsection 295-390(7)

Omit “*superannuation income stream benefits payable at those times”, substitute “*RP superannuation income stream benefits of the fund at those times”.

8 Subsection 295-395(2)

Omit “*superannuation income stream benefits payable by the fund at that time”, substitute “*RP superannuation income stream benefits of the fund at that time”.

9 At the end of section 295-395

Add:

Schedule 8 Innovative income streams and integrity
Part 1 Amendments

- (3) However, *disregarded small fund assets are not segregated non-current assets.

10 Section 295-405

Repeal the section, substitute:

295-405 Other exempt income

The *ordinary income or *statutory income of an entity is exempt from income tax as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

Exempt income		
Item	For this entity:	This is exempt:
1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
2	*RSA provider	Amount credited to the *RSA where a *superannuation income stream covered by section 295-407 was paid from the RSA for all of the period in the income year that the RSA existed
3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a *superannuation income stream covered by section 295-407 was paid from the RSA for part of the period in the income year that the RSA existed

295-407 Covered superannuation income streams—RSAs

A *superannuation income stream is covered by this section if:

- (a) it is a pension (within the meaning of the *Retirement Savings Accounts Act 1997*); and
- (b) it is in the *retirement phase.

11 Paragraph 295-410(a)

Omit “pension (within the meaning of the *Retirement Savings Accounts Act 1997*)”, substitute “pension covered by section 295-407”.

12 Section 307-65

Before “A” insert “(1)”.

13 At the end of section 307-65

Add:

- (2) Treat a lump sum payment arising from a partial commutation of a *superannuation income stream as a *superannuation lump sum* for the purposes of this Act (other than Subdivision 295-F).

14 Paragraph 307-125(3)(c)

Repeal the paragraph, substitute:

- (c) despite paragraphs (a) and (b), if the superannuation benefit arises from the commutation of a superannuation income stream:
- (i) if subparagraph (ii) does not apply—when the relevant superannuation income stream commenced; or
 - (ii) if the superannuation income stream is a *deferred superannuation income stream that had not commenced before the time the commutation happened—just before the time the commutation happened;

15 Paragraph 320-137(3)(d)

After “*annuity”, insert “covered by subsection (3A)”.

16 Paragraph 320-137(3)(e)

After “an annuity”, insert “covered by subsection (3A)”.

17 Paragraph 320-137(3)(e) (formula)

After “*annuity”, insert “covered by subsection (3A)”.

18 After subsection 320-137(3)

Insert:

- (3A) An *annuity is covered by this subsection if it is a *superannuation income stream that is in the *retirement phase.

19 Subsection 320-185(4)

Omit “and subsection 320-180(3)”, substitute “and subsections 320-180(3) and 320-250(1A)”.

20 Paragraph 320-246(1)(a)

Omit “that are currently payable by the fund”, substitute “that are currently *RP superannuation income stream benefits of the fund”.

21 Subparagraph 320-246(1)(b)(i)

Omit “that are currently payable by complying superannuation funds”, substitute “that are currently *RP superannuation income stream benefits of complying superannuation funds”.

22 Subparagraph 320-246(1)(e)(ii)

After “is a *superannuation income stream”, insert “that is in the *retirement phase”.

23 After paragraph 320-246(1)(e)

Insert:

- (ea) that provides for an *annuity that:
 - (i) is *not* an *immediate annuity; and
 - (ii) is a superannuation income stream that is in the retirement phase; or

24 Paragraph 320-247(1)(a)

Omit “that are currently payable by a *complying superannuation fund”, substitute “that are currently *RP superannuation income stream benefits of a *complying superannuation fund”.

25 Paragraph 320-247(2)(a)

Omit “that are currently payable by complying superannuation funds”, substitute “that are currently *RP superannuation income stream benefits of *complying superannuation funds”.

26 Before subsection 320-250(1)

Insert:

(1A) If:

- (a) a *life insurance policy issued by a *life insurance company becomes a policy referred to in subsection 320-190(1); and
- (b) immediately before the policy became a policy referred to in subsection 320-190(1), the policy was an *exempt life insurance policy;

the company can transfer from its *segregated exempt assets, to a *complying superannuation asset pool, assets of any kind whose total *transfer value does not exceed the company's liabilities in respect of the policy.

27 Paragraph 320-255(1)(a)

Omit “320-250(1) or (2)”, substitute “320-250(1A), (1) or (2)”.

Part 2—Application

28 Application of amendments

The amendments made by this Schedule apply in relation to the 2017-18 income year and later income years.

Schedule 9—Anti-detriment provisions

Part 1—Amendments

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “superannuation and related business”)

Omit:

detriment payments 295-485

2 Group heading (before section 295-485)

Repeal the heading.

3 Sections 295-485 and 320-107

Repeal the sections.

Income Tax (Transitional Provisions) Act 1997

4 Sections 295-485A and 295-485

Repeal the sections.

Part 2—Application

5 Application

The amendments made by this Schedule apply in relation to a lump sum that is:

- (a) paid because of the death of a person that occurred on or after 1 July 2017; or
- (b) paid on or after 1 July 2019.

Note: For paragraph (b), it does not matter when the person, in relation to whom the lump sum is payable, died.

Schedule 10—Administrative streamlining

Part 1—Release authority harmonisation

Division 1—Main amendments

Taxation Administration Act 1953

1 Before Division 133 in Schedule 1

Insert:

Division 131—Releasing money from superannuation

Table of Subdivisions

131-A Releasing money from superannuation

Subdivision 131-A—Releasing money from superannuation

Guide to Subdivision 131-A

131-1 What this Subdivision is about

You may request the Commissioner to require the release of an amount from your superannuation interests if you are given:

- (a) an excess concessional contributions determination or excess non-concessional contributions determination; or
- (b) a notice of assessment of an amount of Division 293 tax.

The Commissioner may also require the release of an amount from your superannuation interests in related circumstances.

Superannuation providers must usually pay the amount required to be released. However, for defined benefit superannuation interests the provider may choose whether or not to pay.

Released amounts are paid 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

Requesting a release authority

- 131-5 Requesting the release of amounts from superannuation interests
- 131-10 Restrictions on the total amount you can request to be released

Issuing a release authority to superannuation provider

- 131-15 Issuing release authorities
- 131-20 Amount to be stated in a release authority
- 131-25 Contents of a release authority
- 131-30 Varying and revoking a release authority

Complying with a release authority

- 131-35 Obligations of superannuation providers
- 131-40 Voluntary compliance with a release authority relating to defined benefit interests
- 131-45 Meaning of maximum available release amount
- 131-50 Notifying Commissioner
- 131-55 Notifying you
- 131-60 Compensation for acquisition of property

Consequences of releasing amounts

- 131-65 Entitlement to credits
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- 131-75 Income tax treatment of amounts released—proportioning rule does not apply

Requesting a release authority

131-5 Requesting the release of amounts from superannuation interests

- (1) You may make a request under this section for a *financial year if you are given any of the following:

- (a) an *excess concessional contributions determination for the financial year;
 - (b) an *excess non-concessional contributions determination for the financial year;
 - (c) a notice of assessment of an amount of *Division 293 tax payable for the income year that corresponds to the financial year.
- (2) You make the request by:
- (a) notifying the Commissioner of the total amount to be released; and
 - (b) identifying your *superannuation interest or interests from which that total 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.
- (3) The request must:
- (a) ensure that the total amount to be released for the determination or assessment complies with section 131-10; and
 - (b) be in the *approved form; and
 - (c) be given to the Commissioner within:
 - (i) 60 days after the Commissioner issues the determination or notice referred to in subsection (1); or
 - (ii) a further period allowed by the Commissioner.

Unsuccessful requests—making a further request

- (4) If:
- (a) you make a valid request under this section; and
 - (b) the Commissioner gives you a notice under subsection 131-55(1) stating an amount (the ***unreleased amount***) that a *superannuation provider did not pay in relation to a release authority issued for that request;
- you may make a further request to release the unreleased amount from another of your *superannuation interests.
- (5) The further request must comply with subsection (2) and paragraphs (3)(a) and (b), and must be given to the Commissioner within:
-

- (a) 60 days after the Commissioner issues the notice mentioned in paragraph (4)(b); or
- (b) a further period allowed by the Commissioner.

Request is irrevocable

- (6) A request under this section is irrevocable.

131-10 Restrictions on the total amount you can request to be released

- (1) The total amount you can request to be released complies with this section if that amount:
 - (a) if item 1 or 3 of the following table applies—does not exceed the relevant amount referred to in that item; or
 - (b) if item 2 of the following table applies—is nil or equals the relevant amount referred to in that item.

Amount you can request to be released		
Item	If the request relates to this kind of determination or assessment (see subsection 131-5(1)):	The relevant amount is:
1	an *excess concessional contributions determination	85% of the contributions stated in that determination
2	an *excess non-concessional contributions determination	the *total release amount stated in that determination
3	an assessment of an amount of *Division 293 tax	that amount of Division 293 tax

- (2) However, for an amended determination or assessment, reduce the relevant amount referred to in the above table by any amount released under this Subdivision for an earlier determination or assessment of that kind that you are given for the *financial year or corresponding income year.
- (3) An amendment of a determination or assessment does not affect the validity of a request you make under section 131-5 before you are given the amended determination or the notice of the amended assessment.

Issuing a release authority to superannuation provider

131-15 Issuing release authorities

Issuing in response to a valid request

- (1) If you make a valid request under section 131-5, the Commissioner must issue a release authority to each *superannuation provider that holds a *superannuation interest identified in the request.

Issuing if you do not make a valid request in response to an excess non-concessional contributions determination etc.

- (2) If:
- (a) on a particular day, the Commissioner issues you with:
 - (i) an *excess non-concessional contributions determination for a *financial year; or
 - (ii) a notice to which paragraph 131-5(4)(b) applies for such a determination; and
 - (b) within 60 days after that day, you do not make a valid request under section 131-5 for that determination;
- the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you are liable to pay excess non-concessional contributions tax

- (3) If you are given a notice of an *excess non-concessional contributions tax assessment for a *financial year, the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you have an unpaid amount of assessed Division 293 tax that is not deferred to a debt account

- (4) If:

- (a) for an income year, you are given a notice of assessment of an amount of *Division 293 tax that is not *deferred to a debt account for a *superannuation interest; and
 - (b) on the 60th day after the day the Commissioner issues that notice, the sum of the following falls short of that amount of tax:
 - (i) any payments of that tax for the income year that you have already made;
 - (ii) any amounts that have already been released under this Subdivision for that assessment;
- the Commissioner may issue a release authority to one or more *superannuation providers that hold superannuation interests for you.

131-20 Amount to be stated in a release authority

- (1) The amount to be released from one or more *superannuation interests under a release authority issued under section 131-15 must be:
 - (a) for a release authority issued under subsection 131-15(1)—the amount stated in the request; or
 - (b) otherwise—worked out so that the total amount stated for all release authorities for the applicable determination or assessment does not exceed:
 - (i) for a release authority issued under subsection 131-15(2)—the *total release amount stated in the determination referred to in that subsection; or
 - (ii) for a release authority issued under subsection 131-15(3) or (4)—the amount of tax stated in the assessment referred to in that subsection.
- (2) For the purposes of paragraph (1)(b), disregard an amount stated in another release authority to the extent that a notice given under subsection 131-50(2) states that the amount will not be paid.

131-25 Contents of a release authority

Each release authority issued under section 131-15 must:

- (a) be issued to a single *superannuation provider; and

- (b) state the amount to be released from each *superannuation interest under the release authority; and
- (c) be dated; and
- (d) contain any other information that the Commissioner considers relevant.

131-30 Varying and revoking a release authority

The Commissioner may vary or revoke a release authority issued under section 131-15 at any time before the Commissioner is given a notice under section 131-50 relating to the release authority.

Complying with a release authority

131-35 Obligations of superannuation providers

- (1) A *superannuation provider issued with a release authority under section 131-15 must, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), 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 you in *superannuation plans.

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 131-75.

Exception—defined benefit 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 a *defined benefit interest.

131-40 Voluntary compliance with a release authority relating to defined benefit interests

- (1) A *superannuation provider issued with a release authority under section 131-15 may, within 10 *business days after the release authority is issued (or a further period allowed by the Commissioner), 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 *defined benefit interest held by the superannuation provider for you in *superannuation plans.
- (2) For the purposes of paragraph (1)(a), reduce the amount mentioned in that paragraph by any amount the provider pays under section 131-35 in relation to the release authority.

131-45 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.

131-50 Notifying Commissioner

- (1) A *superannuation provider issued with a release authority under section 131-15 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 131-15; and
 - (b) is not required to pay an amount under section 131-35, 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 in the *approved form within the period applying under subsection 131-35(1) or 131-40(1) for the release authority.

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

131-55 Notifying you

- (1) The Commissioner must notify you if, in relation to a release authority issued under section 131-15 in relation to you, the Commissioner:
 - (a) is given a notice from a *superannuation provider under section 131-50; or
 - (b) does not receive a payment from a superannuation provider of the full amount stated in the release authority within the time mentioned in subsection 131-35(1) or 131-40(1).
- (2) A notice under subsection (1) must:
 - (a) be in writing; and
 - (b) identify the *superannuation provider; and
 - (c) state how much of the amount stated in the release authority was not paid within the applicable time.

131-60 Compensation for acquisition of property

- (1) If the operation of section 131-35 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) the Federal Court of Australia; or
 - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Consequences of releasing amounts

131-65 Entitlement to credits

- (1) If a *superannuation provider pays an amount in relation to a release authority issued under section 131-15 in relation to you, you are entitled to a credit equal to that amount.

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

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

Exception for voluntary payments of Division 293 tax debt account

- (3) However, if the amount paid in relation to the release authority relates to an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest:
 - (a) subsection (1) does not apply in relation to the payment; and
 - (b) treat the payment as if it were a voluntary payment under section 133-70 in relation to that debt account.

131-70 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 131-65; 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.

131-75 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: The income tax treatment of released amounts is also affected by Subdivision 292-B, and section 303-15, of that Act.

Division 2—Other amendments

Income Tax Assessment Act 1997

2 Section 10-5 (table item headed “superannuation”)

Omit “304-15(4)”.

3 Section 11-55 (table item headed “superannuation”)

Omit “303-17”.

4 Section 11-55 (table item headed “superannuation”)

Omit “304-15”.

5 Subsections 280-15(3) and (4)

Repeal the subsections, substitute:

- (3) If non-concessional contributions exceed an indexed cap, the individual can request the release of either:
 - (a) nothing; or
 - (b) an amount equal to the sum of that excess and 85% of the associated earnings on that excess;from the individual’s superannuation interests. Whether or not such a request is made, an amount relating to those associated earnings

may be included in the individual's assessable income and may give rise to a tax offset.

- (4) In the absence of such a request, the Commissioner may require the relevant superannuation fund to release the amount described in paragraph (3)(b).

Note: This can be done under subsection 131-15(2) in Schedule 1 to the *Taxation Administration Act 1953*.

- (5) The individual is taxed:

- (a) on any shortfall between the amount released as described in subsection (3) or (4) and the excess referred to in subsection (3); or
(b) on that excess, if the individual requested that nothing be released from the individual's superannuation interests.

- (6) The Commissioner may require the release of an amount equal to this tax liability from the individual's superannuation interests.

Note: This can be done under subsection 131-15(3) in Schedule 1 to the *Taxation Administration Act 1953*.

6 Section 291-15 (note 3)

Repeal the note, substitute:

Note 3: You can request the release of excess concessional contributions from superannuation: see Division 131 in that Schedule.

7 Section 292-1

Repeal the section, substitute:

292-1 What this Division is about

This Division limits the superannuation contributions made in a financial year that receive concessional tax treatment.

You become liable for tax if:

- (a) your non-concessional contributions exceed an indexed cap; and
(b) a corresponding amount is not released from your superannuation interests.

An amount may be included in your assessable income, and you may become entitled to a tax offset, if your non-concessional contributions exceed that indexed cap.

8 Section 292-15

Repeal the section, substitute:

292-15 What this Subdivision is about

An amount is included in your assessable income, and you are entitled to a tax offset, if:

- (a) your non-concessional contributions exceed an indexed cap; and
- (b) you are not liable to pay excess non-concessional contributions tax for the financial year on the full amount of the excess.

This amount included in your assessable income relates to:

- (a) your associated earnings on those excess contributions; and
- (b) any amounts that have been released from your superannuation interests.

9 Section 292-20

Repeal the section, substitute:

292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions

Your assessable income for an income year includes an amount, and you are entitled to a *tax offset for the income year, if:

- (a) you receive one or more *excess non-concessional contributions determinations for a *financial year that corresponds to the income year; and
- (b) you are not liable to pay *excess non-concessional contributions tax for the financial year on the full amount of the excess stated in the most recent of those determinations.

10 Paragraph 292-25(2)(a)

Omit “to you”.

11 Subsection 292-25(2) (notes 1 and 2)

Repeal the notes, substitute:

Note 1: The release authorities are issued under Division 131, or former Division 96, in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Any amounts paid in response to the release authorities are non-assessable non-exempt income (see section 303-15 or former sections 303-15 and 303-17).

12 Paragraph 292-85(1)(b)

Repeal the paragraph, substitute:

(b) the excess amount stated in the most recent of those determinations exceeds the sum of any amounts paid in response to release authorities issued in relation to those determinations; and

13 At the end of subsection 292-85(1)

Add:

Note: The release authorities are issued under Division 131, or former Division 96, in Schedule 1 to the *Taxation Administration Act 1953*.

14 Paragraph 292-85(1A)(a)

Omit “to you”.

15 Paragraph 292-90(1A)(a)

Omit “election under section 96-5”, substitute “request under section 131-5”.

16 Paragraph 292-90(1A)(b)

Omit “96-10”, substitute “131-15”.

17 Paragraph 292-90(1A)(b)

Omit “election”, substitute “request”.

18 Sections 292-405, 292-410 and 292-415

Repeal the sections.

19 Paragraphs 292-467(1)(b) and (c)

Repeal the paragraphs, substitute:

- (c) the sum of any amounts paid in response to release authorities issued in relation to those determinations is less than the excess amount stated in the most recent of those determinations; and

20 Subsection 292-467(1) (note 1)

Omit “to you”, substitute “in response to release authorities issued under Division 131, or former Division 96, in Schedule 1 to the *Taxation Administration Act 1953*”.

21 Subsection 293-70(2) (note 2)

Omit “135”, substitute “131”.

22 Sections 303-15 and 303-17

Repeal the sections, substitute:

303-15 Payments from release authorities—general

A *superannuation benefit that you receive (or are taken to receive) is not assessable income and is not *exempt income if it is paid in response to a release authority issued under section 131-15 in Schedule 1 to the *Taxation Administration Act 1953* in relation to you.

Note: In some cases, a related amount may still be included in your assessable income (see Subdivision 292-B and section 304-20).

23 Section 303-20 (heading)

Repeal the heading, substitute:

303-20 Payments from release authorities—paying debt account discharge liability for a superannuation interest

24 Section 304-15

Repeal the section.

25 Section 304-20 (heading)

Repeal the heading, substitute:

**304-20 Excess payments from release authorities—paying debt
account discharge liability for a superannuation interest**

**26 Subsection 995-1(1) (definition of *maximum available
release amount*)**

Omit “96-30”, substitute “131-45”.

27 Subsection 995-1(1) (definition of *total release amount*)

Repeal the definition, substitute:

total release amount, in relation to an *excess non-concessional contributions determination, has the meaning given by paragraph 97-25(1)(c) in Schedule 1 to the *Taxation Administration Act 1953*.

Income Tax (Transitional Provisions) Act 1997

28 Subsection 292-80C(1) (note 4)

Repeal the note.

Taxation Administration Act 1953

29 Paragraph 95-5(b) in Schedule 1

Omit “96”, substitute “131”.

30 Division 96 in Schedule 1

Repeal the Division.

31 Section 135-1 in Schedule 1

Omit “amounts relating to the Division 293 tax”, substitute “your debt account discharge liability”.

32 Section 135-5 in Schedule 1

Omit “assessed Division 293 tax that is due and payable, make voluntary payments in reduction of a debt account, or pay”.

33 Subsection 135-10(1) in Schedule 1 (table items 1 and 2)

Repeal the items.

34 Section 135-35 in Schedule 1

Omit:

<p>The Commissioner may give the release authority to a superannuation provider if you fail to pay assessed Division 293 tax that is due and payable within 120 days after the release authority being issued.</p>
--

35 Section 135-45 in Schedule 1

Repeal the section.

36 Subsection 135-75(3) in Schedule 1 (not including the notes)

Repeal the subsection.

37 Section 135-85 in Schedule 1 (note)

Omit “96-30”, substitute “131-45”.

38 Subsection 135-90(1) in Schedule 1

Omit “(1)”.

39 Subsections 135-90(2) and (3) in Schedule 1

Repeal the subsections.

40 Subsection 250-10(2) in Schedule 1 (table item 135R)

Omit “96-20”, substitute “131-35”.

41 Paragraph 286-75(2AA)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) you are required under section 136-90 (about commutation authorities) to give a notice to an entity (other than the Commissioner) in the *approved form by a particular day; and

42 Section 288-90 in Schedule 1

Repeal the section.

43 Subsection 288-95(1) in Schedule 1

Repeal the subsection.

44 Subsection 288-95(3) in Schedule 1

Omit “96-20 (about release authority for excess superannuation contributions)”, substitute “131-35 (about release authorities for superannuation)”.

45 Subsection 288-95(4) in Schedule 1

Omit “Division 293 tax”, substitute “debt account discharge liabilities”.

46 Subsection 288-100(1) in Schedule 1

Repeal the subsection, substitute:

- (1) A person is liable for an administrative penalty of 20 penalty units if:
- (a) the person gives one or more *superannuation providers a release authority in accordance with section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; and
 - (b) the total of the amounts paid by the superannuation provider or providers to the person and the Commissioner as a result of being given the release authority exceeds the amount required to be paid in respect of the release authority under section 292-80C of that Act.

47 Subparagraph 390-65(1)(a)(i) in Schedule 1

Repeal the subparagraph.

Taxation (Interest on Overpayments and Early Payments)
Act 1983

**48 Subsection 3(1) (subparagraph (a)(ii) of the definition of
income tax crediting amount)**

Omit “96-50”, substitute “131-65”.

Division 3—Application of amendments

49 Main case

- (1) The amendments made by this Part apply in relation to:
- (a) excess concessional contributions determinations issued on or after 1 July 2018 (whether for financial years commencing before, on or after 1 July 2018); and
 - (b) excess non-concessional contributions determinations issued on or after 1 July 2018 (whether for financial years commencing before, on or after 1 July 2018); and
 - (c) notices of excess non-concessional contributions tax assessments issued on or after 1 July 2018 (whether for financial years commencing before, on or after 1 July 2018); and
 - (d) notices of assessments of amounts of Division 293 tax issued on or after 1 July 2018 (whether for income years commencing before, on or after 1 July 2018).
- (2) Those amendments so apply as if:
- (a) the reference to this Subdivision in subsection 131-10(2) in Schedule 1 to the *Taxation Administration Act 1953* included a reference to each of the following:
 - (i) Division 96 in that Schedule (as in force on 30 June 2018);
 - (ii) Division 135 in that Schedule (as in force on 30 June 2018);
 - (iii) section 292-415 of the *Income Tax Assessment Act 1997* (as in force on 30 June 2018); and
 - (b) the reference to this Subdivision in subsection 131-15(4) in that Schedule included a reference to Division 135 in that Schedule (as in force on 30 June 2018).
-

Schedule 10 Administrative streamlining
Part 1 Release authority harmonisation

Note: For an amended determination or assessment, the reference to all release authorities in paragraph 131-20(1)(b) in that Schedule includes any of the following issued for an earlier determination or assessment of that kind given to the relevant individual for the relevant financial year or income year:

- (a) release authorities issued under section 131-15 in that Schedule;
- (b) release authorities issued under former section 292-405 of the *Income Tax Assessment Act 1997*, former Division 96 in that Schedule or former item 1 or 2 of the table in subsection 135-10(1) in that Schedule, as applicable.

50 Elections not yet acted on

- (1) This item applies to you if:
 - (a) you make a valid election under section 96-5 or 96-7 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) in response to the election, the Commissioner does not issue a release authority under section 96-10 or 96-12 in that Schedule before 1 July 2018.
- (2) The amendments made by this Part apply as if:
 - (a) the election were a valid request made under section 131-5 in that Schedule; and
 - (b) the reference to this Subdivision in subsection 131-10(2) in that Schedule included a reference to Division 96 in that Schedule (as in force on 30 June 2018).

51 Requests made after 1 July 2018 within a period that started before that day

- (1) This item applies to you if:
 - (a) you could have made a valid election under section 96-5 or 96-7 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) you did not give the election to the Commissioner before 1 July 2018; and
 - (c) as on 30 June 2018, the period for giving the election to the Commissioner under that section was to end after that day.
- (2) The amendments made by this Part apply as if:

- (a) section 131-5 in that Schedule permitted you to make a request that is the same in substance as the election you could have made; and
- (b) the period under that section for giving the request to the Commissioner were 60 days starting on the same day that the period referred to in paragraph (1)(c) of this item started; and
- (c) the reference to this Subdivision in subsection 131-10(2) in that Schedule included a reference to Division 96 in that Schedule (as in force on 30 June 2018).

52 Release authorities for ENCC tax issued to individuals before 1 July 2018 but not to superannuation providers before that day

- (1) This item applies to you if:
 - (a) the Commissioner issues you with a release authority under section 292-405 of the *Income Tax Assessment Act 1997* in relation to an excess non-concessional contributions tax assessment; and
 - (b) under subsection 292-410(4) of that Act, the Commissioner could have given the release authority to one or more superannuation providers before 1 July 2018; and
 - (c) the Commissioner did not do so.
- (2) This item also applies to you if:
 - (a) the Commissioner issues you with a release authority under section 292-405 of the *Income Tax Assessment Act 1997* in relation to an excess non-concessional contributions tax assessment; and
 - (b) by the end of 30 June 2018, the Commissioner had not given the release authority to any superannuation provider; and
 - (c) apart from subitem (3) of this item, the conditions in subsection 292-410(3) of that Act are satisfied for that release authority after 30 June 2018.
- (3) The amendments made by this Part apply as if:
 - (a) subsection 131-15(3) in Schedule 1 to the *Taxation Administration Act 1953* permitted the Commissioner to issue a release authority, relating to the excess non-concessional

contributions tax assessment, to one or more superannuation providers; and

- (b) subsection 131-20(2) in that Schedule also disregarded any amounts that:
 - (i) were stated in any other release authorities issued under section 292-405 of the *Income Tax Assessment Act 1997* (as in force on 30 June 2018) for that assessment and given to a superannuation provider; but
 - (ii) were not paid by the superannuation provider.

53 Release authorities issued to individuals before 1 July 2018 but assessed Division 293 tax is still payable on or after that day

- (1) This item applies to you if:
 - (a) the Commissioner issues you with a release authority under item 1 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* in relation to an amount of assessed Division 293 tax; and
 - (b) under subsection 135-45(1) in that Schedule, the Commissioner could have given the release authority to one or more superannuation providers before 1 July 2018; and
 - (c) the Commissioner did not do so.
- (2) This item also applies to you if:
 - (a) the Commissioner issues you with a release authority under item 1 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* in relation to an amount of assessed Division 293 tax; and
 - (b) as on 30 June 2018, the 120-day period referred to in subsection 135-45(1) in that Schedule for the release authority is to end after that day; and
 - (c) apart from subitem (3) of this item, paragraphs 135-45(1)(a) and (b) in that Schedule are satisfied for that release authority at the end of that 120-day period.
- (3) The amendments made by this Part apply as if:
 - (a) subsection 131-15(4) in that Schedule permitted the Commissioner to issue a release authority, relating to the

- assessment of the amount of Division 293 tax, to one or more superannuation providers; and
- (b) the reference to this Subdivision in subsection 131-15(4) in that Schedule included a reference to Division 135 in that Schedule (as in force on 30 June 2018); and
 - (c) subsection 131-20(2) in that Schedule also disregarded any amounts that:
 - (i) were stated in any other release authorities issued under Division 135 in that Schedule (as in force on 30 June 2018) for that assessment and given to a superannuation provider; but
 - (ii) were not paid by the superannuation provider.

54 Notice on or after 1 July 2018 of amounts not paid for release authorities issued before that day

- (1) This item applies to you if:
 - (a) a release authority is issued under Division 96 in Schedule 1 to the *Taxation Administration Act 1953* in relation to you before 1 July 2018; and
 - (b) the Commissioner gives you a notice under section 96-40 in that Schedule on or after 1 July 2018 stating an amount (the ***unreleased amount***) that a superannuation provider did not pay in relation to the release authority.
- (2) The amendments made by this Part apply as if:
 - (a) subsection 131-5(4) in that Schedule permitted you to make a request to release the unreleased amount from another of your superannuation interests; and
 - (b) the notice mentioned in paragraph (1)(b) of this item were a notice mentioned in paragraph 131-5(4)(b) in that Schedule; and
 - (c) the reference to this Subdivision in subsection 131-10(2) in that Schedule included a reference to Division 96 in that Schedule (as in force on 30 June 2018).

Part 2—End benefit caps

Taxation Administration Act 1953

55 Subsection 133-10(3) in Schedule 1

Repeal the subsection (not including the note), substitute:

- (3) However, the Commissioner must not make a determination under this section in relation to a *superannuation interest if, at the time the determination is to be made, the *end benefit for the superannuation interest has become payable.

56 Subsection 133-120(1) in Schedule 1

Repeal the subsection, substitute:

- (1) The *debt account discharge liability* for a *superannuation interest for which the Commissioner keeps a debt account is the amount by which the debt account is in debit at the time the *end benefit for the superannuation interest becomes payable.
- (1A) However, if the end benefit cap for the *superannuation interest stated in a notice given to the Commissioner under subsection (2) of this section or section 133-140 is less than the amount mentioned in subsection (1) of this section, the *debt account discharge liability* for the superannuation interest is an amount equal to the end benefit cap.

57 Subsection 133-125(1) in Schedule 1

Repeal the subsection, substitute:

- (1) The Commissioner must give you a notice under this section if the *end benefit becomes payable from a *superannuation interest for which the Commissioner keeps a debt account.

58 Subparagraph 133-125(2)(c)(i) in Schedule 1

Omit “paragraph 133-120(1)(a)”, substitute “subsection 133-120(1)”.

59 Subparagraph 133-125(2)(c)(ii) in Schedule 1

Omit “paragraph 133-120(1)(b)”, substitute “subsection 133-120(1A)”.

60 Section 133-135 in Schedule 1

Repeal the section, substitute:

133-135 Superannuation provider may request debt account status

- (1) If:
 - (a) a *superannuation provider has been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for a *superannuation interest; and
 - (b) the superannuation provider receives a request to pay the *end benefit from the superannuation interest or the end benefit becomes payable from the superannuation interest; the superannuation provider may, in the *approved form, request the Commissioner to advise as to the status of the debt account.
- (2) If the Commissioner receives a request, the Commissioner must advise the *superannuation provider as soon as practicable whether or not the debt account is in debit.

61 Paragraph 133-140(1)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) unless subsection (1A) applies—the amount of the end benefit cap mentioned in subsection 133-120(2) for the superannuation interest; and

62 After subsection 133-140(1) in Schedule 1

Insert:

- (1A) The notice does not need to state the amount of the end benefit cap if:
 - (a) the *superannuation provider has already given the Commissioner notice of the end benefit cap under subsection 133-120(2); or
 - (b) before the end of the period mentioned in subsection (2), the Commissioner has advised the superannuation provider under subsection 133-135(2) that the debt account is not in debit.

63 Subsection 133-145(1) in Schedule 1

Omit “133-135 or”.

64 Application

The amendments made by this Part apply in relation to superannuation interests from which the end benefit becomes payable on or after 1 July 2017.

Part 3—Combining notices

Division 1—Main amendments

Taxation Administration Act 1953

65 At the end of Part 5-100 in Schedule 1

Add:

Division 990—Miscellaneous

Table of Subdivisions

990-A Combining notices

Subdivision 990-A—Combining notices

Table of sections

990-5 Commissioner may combine notices

990-5 Commissioner may combine notices

- (1) For the purposes of a *taxation law under which the Commissioner must or may give you a document (however described), that document may be included in or with any other document (however described) that the Commissioner gives you under a taxation law.
- (2) This section is enacted for the avoidance of doubt.

Division 2—Other amendments

Income Tax Assessment Act 1936

66 Subsection 45D(1)

Omit the second sentence.

67 Subsection 102AAM(13)

Repeal the subsection.

68 Subsection 159GZZZZH(3)

Repeal the subsection.

69 Subsection 177EA(6)

Omit the second sentence.

70 Subsection 177EB(7)

Omit the second sentence.

71 Subsection 177F(2D)

Repeal the subsection.

Income Tax Assessment Act 1997

72 Subsection 204-50(4)

Repeal the subsection.

73 Subsection 214-60(3)

Repeal the subsection.

74 Subsection 214-140(1)

Omit “(1)”.

75 Subsection 214-140(2)

Repeal the subsection.

76 Subsection 275-615(3)

Omit the second sentence.

77 Subsection 291-465(6)

Repeal the subsection.

78 Subsections 292-230(3), 292-310(3), 292-465(8), 292-467(3) and 295-625(1)

Repeal the subsections.

79 Subsection 295-625(2) (heading)

Repeal the heading.

80 Subsections 815-30(8), 815-35(8) and 815-145(6)

Repeal the subsections.

Income Tax (Transitional Provisions) Act 1997

81 Subsection 214-25(3)

Repeal the subsection.

82 Subsection 214-80(1)

Omit “(1)”.

83 Subsection 214-80(2)

Repeal the subsection.

Petroleum Resource Rent Tax Assessment Act 1987

84 Subsection 98C(2)

Repeal the subsection.

Superannuation Guarantee (Administration) Act 1992

85 Subsection 62(2)

Repeal the subsection.

Taxation Administration Act 1953

86 Subsection 8AAF(3)

Repeal the subsection.

87 Subsection 45-320(6) in Schedule 1

Repeal the subsection.

88 Subsection 45-473(1) in Schedule 1

Omit “(1)”.

89 Subsection 45-473(2) in Schedule 1

Repeal the subsection.

90 Subsections 97-5(4) and 97-25(4) in Schedule 1

Repeal the subsections.

91 Subsection 133-30(2) in Schedule 1

Repeal the subsection.

92 Subsection 280-110(2) in Schedule 1

Repeal the subsection.

Division 3—Application of amendments

93 Application of amendments

The amendments made by this Part apply to documents (however described) that the Commissioner gives on or after 1 July 2017 under taxation laws.

Part 4—Early release of benefits

Superannuation Act 1976

94 Subsection 3(1) (subparagraphs (b)(i) and (iii) of the definition of *benefit*)

After “under”, insert “former”.

95 Subsection 79A(1)

Insert:

available early release authority amount, in relation to a person at a particular time, means the amount worked out by:

- (a) starting with the person’s early release authority amount at that time; and
- (b) subtracting from the result of paragraph (a) the person’s early release deduction amount at that time; and
- (c) adding to the result of paragraph (b) the lesser of:
 - (i) the amount referred to in paragraph (a) of the definition of *early release amount*; and
 - (ii) the modified early release deduction amount in relation to the person at the time.

Note 1: The result of paragraph (b) may be less than nil.

Note 2: Subparagraph (c)(i) is affected by subsection (2).

early release authority amount, in relation to a person at a particular time, means the sum of the amounts referred to in paragraphs (b) to (e) of the definition of *early release amount*.

Note: This definition is affected by subsection (2).

96 Subsection 79A(1) (definition of *early release lump sum*)

Repeal the definition, substitute:

early release lump sum means a lump sum paid under section 79B.

97 Subsection 79A(1)

Insert:

modified early release deduction amount, in relation to a person at a particular time, means the total of the following:

- (a) the amount of each early release lump sum previously paid to or for the benefit of the person under subsection 79B(1);
- (b) interest on the amount of each such early release lump sum for the period beginning at the time the early release lump sum is paid and ending at the particular time.

98 Subsection 79A(2)

Omit “For the purposes of the definition of ***early release amount***, work out the sum of the amounts referred to in that definition”, substitute “For the purposes of a provision mentioned in subsection (3), work out an amount referred to in the definition of ***early release amount***”.

99 Section 79A (note)

After “early release amount”, insert “and early release authority amount”.

100 At the end of section 79A

Add:

- (3) For the purposes of subsection (2), the provisions are as follows:
 - (a) the definition of ***early release amount***,
 - (b) the definition of ***early release authority amount***,
 - (c) the definition of ***available early release authority amount***.

101 Subsection 79B(1)

Omit “(the ***early release lump sum***)”.

102 Subsection 79B(1) (note)

Repeal the note.

103 After subsection 79B(1)

Insert:

- (1A) A lump sum may be paid in compliance with a release authority issued to CSC under section 131-15 in Schedule 1 to the *Taxation Administration Act 1953* for the benefit of the following persons:

- (a) an eligible employee;
- (b) a deferred benefit member;
- (c) a person who has made an election under section 110T (postponement of benefits).

104 At the end of section 79B

Add:

Note: The components that make up the person's early release amount and early release authority amount are not reduced when a lump sum is paid under this section. However, when a benefit to which the person is entitled under this Act becomes payable to the person, the amount of the benefit is reduced to reflect any previous lump sums paid to or for the benefit of the person (see section 79D).

105 Subsection 79C(1)

Omit "exceed the person's available early release amount at that time", substitute:

exceed:

- (a) for a lump sum paid under subsection 79B(1)—the person's available early release amount at that time; and
- (b) for a lump sum paid under subsection 79B(1A)—the person's available early release authority amount at that time.

106 Subparagraph 110SN(2)(a)(i)

After "CSC under", insert "former".

107 Subparagraph 110SN(2)(a)(iii)

After "under", insert "former".

108 Subsection 110SN(2) (note)

Omit "or transitional", substitute "mentioned in subparagraph (2)(a)(i) or (iii) or a transitional".

109 Subparagraph 130D(3)(a)(i)

After "CSC under", insert "former".

110 Subparagraph 130D(3)(a)(iii)

After "under", insert "former".

111 Subsection 130D(3) (note)

Omit “or transitional”, substitute “mentioned in subparagraph (3)(a)(i) or (iii) or a transitional”.

Part 5—Objective of the superannuation system

Legislation Act 2003

112 After paragraph 15J(2)(f)

Insert:

- (fa) if the instrument is a regulation relating to superannuation (other than a regulation to which section 7 of the *Superannuation (Objective) Act 2016* does not apply)—
contain a statement of compatibility prepared under subsection 7(1) of that Act; and

Schedule 11—Dictionary

Income Tax Assessment Act 1997

1 At the end of Subdivision 307-B

Add:

307-75 Meaning of *retirement phase superannuation income stream benefit*

- (1) A *superannuation income stream benefit is a ***retirement phase superannuation income stream benefit*** (or ***RP superannuation income stream benefit***) of a *superannuation fund at a time if it is payable by the fund at that time from a *superannuation income stream that is in the *retirement phase at that time.
- (2) A *superannuation income stream benefit is also a ***retirement phase superannuation income stream benefit*** (or ***RP superannuation income stream benefit***) of a *superannuation fund at a time if it is payable by the fund after that time from a *superannuation income stream that:
 - (a) is a *deferred superannuation income stream; and
 - (b) is in the *retirement phase at that time.

307-80 When a superannuation income stream is in the *retirement phase*

- (1) A *superannuation income stream is in the ***retirement phase*** at a time if a *superannuation income stream benefit is payable from it at that time.
- (2) A *superannuation income stream is also in the ***retirement phase*** at a time if:
 - (a) it is a *deferred superannuation income stream; and
 - (b) a *superannuation income stream benefit will be payable from it to a person after that time; and
 - (c) the person has satisfied (whether at or before that time) a condition of release specified in any of the following items of

the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*:

- (i) 101 (retirement);
 - (ii) 102A (terminal medical condition);
 - (iii) 103 (permanent incapacity);
 - (iv) 106 (attaining age 65).
- (3) However, a *superannuation income stream is not in the **retirement phase** if it is any of the following:
- (a) a transition to retirement income stream (within the meaning of Part 6 of the *Superannuation Industry (Supervision) Regulations 1994*);
 - (b) a non-commutable allocated annuity (within the meaning of those regulations);
 - (c) a non-commutable allocated pension (within the meaning of those regulations);
 - (d) a transition to retirement income pension (within the meaning of Part 4 of the *Retirement Savings Accounts Regulations 1997*);
 - (e) a non-commutable allocated pension (within the meaning of those regulations).
- (4) A *superannuation income stream is also not in the **retirement phase** in an income year if:
- (a) the superannuation income stream is specified in a commutation authority issued by the Commissioner under Subdivision 136-B in Schedule 1 to the *Taxation Administration Act 1953* to a *superannuation income stream provider; and
 - (b) the superannuation income stream provider is required by section 136-80 in that Schedule to pay a *superannuation lump sum but fails to do so within the 60-day period mentioned in that section; and
 - (c) the income year is the income year in which the 60-day period ended, or a later income year.

2 Section 307-205

Before “The”, insert “(1)”.

3 At the end of section 307-205

Add:

- (2) The *accumulation phase value* of an individual's *superannuation interest, at a particular time when the interest is not in the *retirement phase, is:
 - (a) if the regulations specify that value or a method for determining that value—that value; or
 - (b) otherwise—the total amount of the *superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time.

4 At the end of Subdivision 307-D

Add:

307-230 Total superannuation balance

- (1) Your *total superannuation balance*, at a particular time, is the sum of the following:
 - (a) if you have one or more *superannuation interests that are not in the *retirement phase—the *accumulation phase values, at that time, of each such interest;
 - (b) if you have a *transfer balance account—the *transfer balance of the account at that time (but not less than nil);
 - (c) the amount of each *roll-over superannuation benefit:
 - (i) paid at or before that time; and
 - (ii) received by the *complying superannuation plan, or the entity from which the *superannuation annuity is being purchased, after that time; and
 - (iii) not reflected in the value in paragraph (a) or the balance in paragraph (b).

Modification for structured settlement contributions

- (2) However, if a *structured settlement contribution is made at or before a time in respect of you, your *total superannuation balance* at that time is modified by:

-
- (a) if you do not have a *transfer balance account—reducing the sum worked out under subsection (1) by the sum of any such structured settlement contributions; and
 - (b) if you have a transfer balance account:
 - (i) first, working out the *transfer balance mentioned in paragraph (1)(b) disregarding the operation of item 2 of the table in subsection 294-80(1); and
 - (ii) then, reducing the sum worked out under subsection (1) (having regard to subparagraph (i) of this paragraph) by the sum of any such structured settlement contributions.

Modification for account-based income streams

- (3) For the purposes of working out the *transfer balance mentioned in paragraph (1)(b):
 - (a) if a *transfer balance credit has arisen, at or before that time, in your *transfer balance account in respect of a *superannuation income stream covered by subsection (4)—disregard the operation of the following provisions in relation to the superannuation income stream:
 - (i) items 1 and 2 of the table in subsection 294-25(1);
 - (ii) items 1, 3, 4, 5 and 6 of the table in subsection 294-80(1); and
 - (b) if, at that time, you have a *superannuation interest that supports a superannuation income stream covered by subsection (4) of this section—increase the amount of that balance by the total amount of the *superannuation benefits that would become payable if:
 - (i) you had the right to cause the superannuation interest to cease at that time; and
 - (ii) you voluntarily caused the superannuation interest to cease at that time.
- (4) This subsection covers a *superannuation income stream that is any of the following:
 - (a) an *allocated annuity;
 - (b) an *allocated pension;
 - (c) an allocated pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);

- (d) an *account-based annuity;
- (e) an account-based pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
- (f) an account based pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);
- (g) a market linked annuity (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
- (h) a market linked pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
- (i) a market linked pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*).

5 Section 960-265 (after table item 10)

Insert:

10A *General transfer balance cap

section 294-35

6 Section 960-285

Repeal the section, substitute:

960-285 Indexation—superannuation and employment termination

- (1) This section applies in relation to the amounts listed at items 8 to 12 in section 960-265.

Indexing amounts

- (2) You index the amount by:
 - (a) first, multiplying its base amount mentioned in subsection (3) by its *indexation factor mentioned in subsection (5); and
 - (b) next, rounding the result in paragraph (a) down to the nearest multiple of its *rounding amount.

Example 1: An amount of \$140,000 is to be indexed, with a rounding amount of \$5,000. If the indexation factor increases this to an indexed amount of \$143,000, the indexed amount is rounded back down to \$140,000.

Example 2: An amount of \$140,000 is to be indexed, with a rounding amount of \$5,000. If the indexation factor increases this to an indexed amount of \$146,000, the indexed amount is rounded down to \$145,000.

-
- (3) The amount (the **base amount**) for an amount to which this section applies is:
- (a) unless paragraph (b) applies—the amount for the 2007-2008 income year or *financial year; or
 - (b) if the amount is mentioned in item 9 or 10A in section 960-265—the amount for the 2017-2018 financial year.

- (4) You do not index the amount if the *indexation factor is 1 or less.

Indexation factor

- (5) For indexing an amount, its **indexation factor** is:

*Index number mentioned in subsection (7) for the *quarter
ending on 31 December just before the start of
the relevant income year or *financial year

*Index number mentioned in subsection (7) for the base quarter

where:

base quarter means:

- (a) unless paragraph (b) applies—the quarter ending on 31 December 2006; or
 - (b) if the amount is mentioned in item 9 or 10A in section 960-265—the quarter ending on 31 December 2016.
- (6) You work out the *indexation factor mentioned in subsection (5) to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Index number and rounding amount

- (7) For indexing an amount to which this section applies:
- (a) the **index number** for a *quarter is set out in column 2 of the relevant item in the following table; and
 - (b) the **rounding amount** is set out in column 3 of that item.

Concepts for indexing rounded caps			
Item	Column 1 Item in section 960-265	Column 2 Index number	Column 3 Rounding amount
1	Items 8, 10, 11 and 12	the *index number mentioned in subsection 960-280(4) (which is about average weekly ordinary time earnings)	\$5,000
2	Item 9 (concessional contributions cap)	the *index number mentioned in subsection 960-280(4) (which is about average weekly ordinary time earnings)	\$2,500
3	Item 10A (general transfer balance cap)	the *index number mentioned in subsection 960-280(1) (which is about the CPI)	\$100,000

7 Subsection 995-1(1)

Insert:

account-based annuity has the meaning given by the *Superannuation Industry (Supervision) Regulations 1994*.

accumulation phase value of a *superannuation interest has the meaning given by subsection 307-205(2).

assessed excess transfer balance tax means *excess transfer balance tax, as assessed under Schedule 1 to the *Taxation Administration Act 1953*.

capped defined benefit income stream has the meaning given by section 294-130.

child recipient of a *superannuation income stream has the meaning given by section 294-175.

Commonwealth public sector superannuation scheme has the same meaning as in the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

8 Subsection 995-1(1) (after subparagraph (b)(i) of the definition of *complying superannuation life insurance policy*)

Insert:

- (ia) provides for an *immediate annuity, if the annuity is a *superannuation income stream that is *not* in the *retirement phase; or

9 Subsection 995-1(1)

Insert:

crystallised reduction amount has the meaning given by section 136-10 in Schedule 1 to the *Taxation Administration Act 1953*.

debit value, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream, has the meaning given by section 294-145.

default commutation notice has the meaning given by section 136-10 in Schedule 1 to the *Taxation Administration Act 1953*.

deferred superannuation income stream has the meaning given by the *Superannuation Industry (Supervision) Regulations 1994*.

defined benefit income has the meaning given by section 303-2.

defined benefit income cap has the meaning given by section 303-4.

disregarded small fund assets has the meaning given by section 295-387.

excess transfer balance has the meaning given by section 294-30 and modified by section 294-140.

excess transfer balance determination has the meaning given by section 136-10 in Schedule 1 to the *Taxation Administration Act 1953*.

excess transfer balance earnings has the meaning given by section 294-235.

excess transfer balance period has the meaning given by section 294-230.

excess transfer balance tax means tax imposed by the *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016*.

general transfer balance cap has the meaning given by section 294-35.

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

retirement phase:

- (a) section 307-80 sets out when a *superannuation income stream is in the **retirement phase**; and
- (b) a *superannuation interest is in the **retirement phase** at a time if it supports a superannuation income stream that is in the retirement phase at that time.

retirement phase recipient of a *superannuation income stream has the meaning given by section 294-20.

retirement phase superannuation income stream benefit (or **RP superannuation income stream benefit**) has the meaning given by section 307-75.

rounding amount has the meaning given by section 960-285.

special value, of a *superannuation interest that supports an income stream that is, or was at any time, a *capped defined benefit income stream, has the meaning given by section 294-135.

structured settlement contribution has the meaning given by section 294-80.

superannuation income stream provider for a *superannuation income stream means:

- (a) for a superannuation income stream provided by a *superannuation fund—the trustee of the fund; or

-
- (b) for a superannuation income stream that is a pension for the purposes of the *Retirement Savings Accounts Act 1997*—the *RSA provider; or
 - (c) for a superannuation income stream provided by an *approved deposit fund—the trustee of the fund; or
 - (d) for a superannuation income stream provided by a *life insurance company—the life insurance company.

total superannuation balance has the meaning given by section 307-230.

transfer balance has the meaning given by section 294-30.

transfer balance account means an account that arises under section 294-15.

transfer balance cap has the meaning given by section 294-35 and modified by section 294-185.

transfer balance credit has the meaning given by section 294-25.

transfer balance debit has the meaning given by section 294-80.

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

10 Subsection 995-1(1) (paragraph (d) of the definition of value)

Omit “section 307-205”, substitute “subsection 307-205(1)”.

11 Application

A term that is defined in this Schedule applies in a provision of an Act, regulation or instrument in the same way as that provision applies.

[Minister’s second reading speech made in—
House of Representatives on 9 November 2016
Senate on 23 November 2016]

(174/16)
