# Treasury Laws Amendment (2017 Measures No. 2) Act 2017

# No. 55, 2017

## An Act to amend the law relating to taxation, superannuation, personal insolvency and corporate insolvency, and for related purposes

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

# Contents


1 Short title ..... 1
2 Commencement ..... 2
3 Schedules ..... 3

**Schedule 1—Amendments relating to superannuation reform package** 4

Part 1—Amendments 4

*Income Tax Assessment Act 1997* 4

*Income Tax (Transitional Provisions) Act 1997* 8

*Legislation Act 2003* 12

*Superannuation Guarantee (Administration) Act 1992* 12

*Taxation Administration Act 1953* 12

*Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* 13

Part 2—Application provisions 14

*Income Tax (Transitional Provisions) Act 1997* 14

**Schedule 2—Amendments relating to insolvency** 16

*Bankruptcy Act 1966* 16

*Corporations Act 2001* 17





Authorised Version C2017A00055

# Treasury Laws Amendment (2017 Measures No. 2) Act 2017

**No. 55, 2017**

## An Act to amend the law relating to taxation, superannuation, personal insolvency and corporate insolvency, and for related purposes

[*Assented to 22 June 2017*]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017*.



Authorised Version C2017A00055

## 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. | 22 June 2017 |
| 2. Schedule 1, items 1 to 19 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 July 2017 |
| 3. Schedule 1, item 20 | The day this Act receives the Royal Assent. | 22 June 2017 |
| 4. Schedule 1, item 21 | The later of:<br>(a) the start of the day this Act receives the Royal Assent; and<br>(b) immediately after the commencement of the *Superannuation (Objective) Act 2017*.<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 5. Schedule 1, items 22 to 24 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 July 2017 |
| 6. Schedule 1, items 25 to 28 | Immediately after the commencement of Schedule 1 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*. | 1 January 2017 |
| 7. Schedule 1, Part 2 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 July 2017 |



Authorised Version C2017A00055

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| 8. Schedule 2 | The day this Act receives the Royal Assent. | 22 June 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.

(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.



Authorised Version C2017A00055

# Schedule 1—Amendments relating to superannuation reform package

## Part 1—Amendments

### *Income Tax Assessment Act 1997*

#### 1 Section 291-1

Before "exceeds", insert "equals or".

#### 2 Paragraph 291-370(1)(c)

Repeal the paragraph, substitute:

(c) if your *defined benefit contributions for the financial year (worked out excluding contributions and amounts covered by paragraph (a)) exceed your notional taxed contributions for the financial year (also worked out excluding contributions and amounts covered by paragraph (a))—the amount of that excess;

#### 3 Subsection 294-25(1) (at the end of the table)

Add:

| | | | |
|---|---|---|---|
| 4 | a *transfer balance credit arises under section 294-55 because of a repayment of a limited recourse borrowing arrangement | the amount of the credit specified in section 294-55 | at the time provided by section 294-55 |
| 5 | a *transfer balance credit arises under regulations made for the purposes of this item | the amount of the credit worked out in accordance with the regulations | at the time specified in the regulations |

#### 4 At the end of section 294-25 (after the note)

Add:



Authorised Version C2017A00055

*Regulations may provide for exceptions*

(3) The regulations may provide that an item of the table in subsection (1) does not apply to a class of *superannuation income streams specified in the regulations.

## 5 Section 294-50

Repeal the section, substitute:

### 294-50 Assumptions about income streams

(1) Subsections (2) and (3) apply for the purposes of working out the following matters at a time:
  (a) whether you have a *transfer balance account;
  (b) the *transfer balance in your transfer balance account.

(2) In working out whether there is a ***superannuation income stream*** at a time:
  (a) have regard only to facts and circumstances that exist at that time; and
  (b) assume a requirement will be met, to the extent (if any) that:
    (i) the requirement arises under a provision of the *taxation law or under any rules or standards under which a benefit is, or is purported to be, provided; and
    (ii) meeting the requirement is a condition for there to be a superannuation income stream at that time; and
    (iii) it is not possible to determine, having regard only to facts and circumstances that exist at that time, whether or not the requirement has been met.

(3) In working out whether a *superannuation income stream is in the ***retirement phase*** at a time, disregard the operation of subsection 307-80(4), if the time is before the end of the 60-day period mentioned in paragraph (c) of that subsection.

## 6 At the end of Subdivision 294-B

Add:



Authorised Version C2017A00055

### 294-55 Repayment of limited recourse borrowing arrangement

(1) A *transfer balance credit arises in your *transfer balance account if:

(a) a *superannuation provider makes a payment in respect of a *borrowing under an *arrangement that is covered by the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (which is about limited recourse borrowing arrangements); and

(b) as a result, there is an increase in the *value of a *superannuation interest that supports a *superannuation income stream of which you are the *retirement phase recipient; and

(c) the superannuation interest is in a *superannuation fund that is covered by subsection (4) at the time of the payment.

(2) The amount of the credit is the amount of the increase in *value.

(3) The credit arises at the time of the payment.

(4) A *complying superannuation fund is covered by this subsection at a time if any of the following requirements are satisfied:

(a) the fund is a *self managed superannuation fund at the time;

(b) there are less than 5 *members of the fund at the time.

## 7 Subsection 294-80(1) (table item 6)

Repeal the item, substitute:

| | | | |
|---|---|---|---|
| 6 | a *superannuation 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 ***stop time***), but items 1 and 5 do not apply | the *value of the *superannuation interest that supported the superannuation income stream just before the stop time | at the stop time |

## 8 Subsection 294-80(1) (at the end of the table)

Add:

| | | | |
|---|---|---|---|
| 8 | a *transfer balance debit | the amount of the debit | at the time specified in |



Authorised Version C2017A00055

| | | |
|---|---|---|
| arises under regulations made for the purposes of this item | worked out in accordance with the regulations | the regulations |

## 9 At the end of section 294-80

Add:

*Regulations may provide for exceptions*

(3) The regulations may provide that an item of the table in subsection (1) does not apply to a class of *superannuation income streams specified in the regulations.

## 10 Paragraph 303-4(2)(a)

After "to you", insert "in respect of an amount of *defined benefit income".

## 11 Paragraph 303-4(2)(b)

After "to you", insert "in respect of an amount of defined benefit income".

## 12 At the end of section 307-70

Add:

Note: For the purposes of the transfer balance cap, the meaning of ***superannuation income stream*** is affected by subsection 294-50(2).

## 13 Subsection 307-80(3)

Repeal the subsection, substitute:

(3) However, a *superannuation income stream from which a*superannuation income stream benefit is payable is not in the ***retirement phase*** at a time if:

(a) the superannuation income stream is any of the following:

(i) a transition to retirement income stream (within the meaning of Part 6 of the *Superannuation Industry (Supervision) Regulations 1994*);

(ii) a non-commutable allocated annuity (within the meaning of those regulations);

(iii) a non-commutable allocated pension (within the meaning of those regulations);



Authorised Version C2017A00055

(iv) a transition to retirement pension (within the meaning of Part 4 of the *Retirement Savings Accounts Regulations 1997*);

(v) a non-commutable allocated pension (within the meaning of those regulations); and

(b) at or before that time, the person to whom the benefit is payable:

(i) has not satisfied a condition of release specified in paragraph (2)(c); or

(ii) has satisfied a condition of release specified in subparagraph (2)(c)(i), (ii) or (iii), but has not notified the *superannuation income stream provider for the superannuation income stream of that fact.

## 14 At the end of section 307-80

Add:

Note: The operation of this subsection in relation to the part of the income year before the end of the 60-day period is modified for the purposes of the transfer balance cap: see section 294-50.

## 15 Subsection 995-1(1)

Insert:

***basic concessional contributions cap*** means the concessional contributions cap under subsection 291-20(2), disregarding any increase under subsection 291-20(3).

# *Income Tax (Transitional Provisions) Act 1997*

## 16 Subsections 291-170(2) and (4)

Omit "concessional contributions cap" (wherever occurring), substitute "basic concessional contributions cap".

## 17 At the end of Subdivision 294-A

Add:

### 294-80 Structured settlement contributions made before 1 July 2017—debit increased to match credits

(1) This section applies to you if:



Authorised Version C2017A00055

(a) on 1 July 2017, a transfer balance debit arose in your transfer balance account under item 2 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997*; and

(b) the sum of all the transfer balance credits that arise in your transfer balance account under item 1 of the table in subsection 294-25(1) of that Act exceeds the amount that would, apart from this section, be the amount of that debit.

(2) Despite column 2 of item 2 of the table in subsection 294-80(1) of the *Income Tax Assessment Act 1997*, the amount of the transfer balance debit is instead equal to the sum worked out under paragraph (1)(b) of this section.

## 18 Paragraph 294-110(1)(b)

Repeal the paragraph, substitute:

(b) either:

(i) at a time (the ***cessation time***) in the pre-commencement period, the asset ceases to be a segregated current pension asset of the fund; or

(ii) at the start of 1 July 2017 (also the ***cessation time***), the asset ceases to be a segregated current pension asset of the fund because it supports a superannuation income stream covered by subsection 307-80(3) of the *Income Tax Assessment Act 1997*; and

## 19 At the end of Subdivision 294-B

Add:

### 294-125 Pooled superannuation trust using proportionate or alternative exemption method—deemed sale and purchase of CGT asset

*Application*

(1) This section applies in relation to a CGT asset of a trust if:

(a) the trust is a pooled superannuation trust throughout the pre-commencement period; and

(b) either of the following is greater than nil:



Authorised Version C2017A00055

(i) the proportion mentioned in subsection 295-400(1) of the *Income Tax Assessment Act 1997* in respect of the trust for the 2016-17 income year;

(ii) if the trustee has made a choice under subsection 295-400(3) of that Act—the percentage mentioned in subsection 295-400(4) of that Act in respect of the trust for the 2016-17 income year; and

(c) the trust held the asset throughout the pre-commencement period; and

(d) the trustee of the trust 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)(d):

(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 trust is required to lodge the trust'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 trust 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.

### 294-130 Pooled superannuation trusts using proportionate or alternative exemption method—disregard initial capital gain but recognise deferred notional gain

*Application*

(1) This section applies in relation to a CGT asset of a pooled superannuation trust if:

(a) section 294-125 applies in relation to the CGT asset; and

(b) as a result of paragraph 294-125(3)(a), the trust makes a capital gain in respect of the asset (disregarding this section); and



Authorised Version C2017A00055

(c) the trustee of the trust 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 trust is required to lodge the trust'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 trust'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 trust made no capital gains in that income year other than the gain mentioned in paragraph (1)(b); and
(c) the trust made no capital losses in that income year; and
(d) the trust 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 trust 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) Section 295-400 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:



Authorised Version C2017A00055

***2016-17 non-exempt proportion*** means:

(a) unless paragraph (b) applies—1 minus the proportion mentioned in subsection 295-400(1) of the *Income Tax Assessment Act 1997*; or

(b) if the trustee has made a choice under subsection 295-400(3) of that Act—the percentage worked out by subtracting the percentage mentioned in subsection 295-400(4) of that Act in respect of the trust for the 2016-17 income year from 100%.

***deferred notional gain*** has the meaning given by subsection (4).

## *Legislation Act 2003*

### 20 Paragraph 15J(2)(fa)

Repeal the paragraph.

### 21 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 2017* does not apply)—contain a statement of compatibility prepared under subsection 7(1) of that Act; and

## *Superannuation Guarantee (Administration) Act 1992*

### 22 Subsection 15(5) (definition of *concessional contributions cap*)

Omit “the concessional”, substitute “the basic concessional”.

## *Taxation Administration Act 1953*

### 23 Paragraph 286-80(2)(a) in Schedule 1

After “subsection 286-75(1),”, insert “(2AA),”.

### 24 Section 298-10 in Schedule 1

Omit “The Commissioner may do so in any other notice he or she gives to the entity.”.



Authorised Version C2017A00055

## *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*

### 25 Item 9 of Schedule 3

Before "The amendments", insert "(1)".

### 26 Item 9 of Schedule 3

Before "this Schedule", insert "items 1, 2 and 6 of".

### 27 At the end of item 9 of Schedule 3

Add:

(2) The amendments made by items 3, 4, 7 and 8 of this Schedule apply in relation to the financial year starting on 1 July 2017 and later financial years.

(3) The amendment made by item 5 of this Schedule applies in relation to non-concessional contributions for the 2013-2014 financial year and later financial years.

### 28 Item 28 of Schedule 8

Repeal the item, substitute:

### 28 Application of amendments

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

(2) The amendments made by items 19, 26 and 27 of this Schedule also apply during the period:

(a) starting on the start of the day on which the Bill that became the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017* was introduced into the House of Representatives; and

(b) ending just before 1 July 2017.



Authorised Version C2017A00055

# Part 2—Application provisions

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

### 29 Section 294-10

Before "Division 294", insert "(1)".

### 30 At the end of section 294-10

Add:

(2) Subject to section 294-55, the amendments of Division 294 of the *Income Tax Assessment Act 1997* made by Schedule 1 to the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017* apply on and after 1 July 2017.

### 31 After section 294-30

Insert:

#### 294-55 Repayment of limited recourse borrowing arrangements

(1) Despite subsection 294-10(2), a transfer balance credit arises under item 4 of the table in subsection 294-25(1) of the *Income Tax Assessment Act 1997* only in relation to a borrowing that arises under a contract entered into on or after 1 July 2017.

(2) For the purposes of subsection (1), a borrowing (the ***new borrowing***) that arises under a contract entered into on or after 1 July 2017 is treated as if it arose under a contract entered into before 1 July 2017 if:

(a) the new borrowing is a refinancing of a borrowing (the ***old borrowing***) that was made under a contract:

(i) entered into before 1 July 2017; and

(ii) covered by the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (which is about limited recourse borrowing arrangements); and

(b) the new borrowing is secured by the same asset or assets as the old borrowing; and



Authorised Version C2017A00055

(c) the amount of the new borrowing at the time it is first made equals, or is less than, the outstanding balance on the old borrowing just before the refinancing.

## 32 Application of amendments

(1) The amendments made by items 1, 15, 16 and 22 of this Schedule apply in relation to working your concessional contributions cap for the 2019-2020 financial year and later financial years.

(2) The amendments made by items 2, 10 and 11 of this Schedule apply in relation to the financial year starting on 1 July 2017 and later financial years.

(3) The amendments made by items 13 and 14 of this Schedule to terms defined in Schedule 11 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* apply in a provision of an Act, regulation or instrument in the same way as that provision applies.

(4) The amendment made by item 23 of this Schedule applies in relation to a notice mentioned in subsection 286-75(2AA) in Schedule 1 to the *Taxation Administration Act 1953* that is required to be given on or after the commencement of section 1 of the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017*.



Authorised Version C2017A00055

# Schedule 2—Amendments relating to insolvency

## *Bankruptcy Act 1966*

### 1 Paragraphs 60-20(4)(a) to (c) of Schedule 2

Repeal the paragraphs, substitute:

(a) the trustee employs or engages a person to provide services in connection with the administration of the estate; and

(b) a related entity of the trustee directly or indirectly derives a profit or advantage as a result of that employment or engagement; and

(c) one of the following is satisfied:

(i) the trustee does not know, and could not reasonably be expected to know, that the related entity would derive that profit or advantage;

(ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;

(iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.

### 2 After subsection 60-20(4) of Schedule 2

Insert:

(4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the trustee directly or indirectly derives a profit or advantage:

(a) from remuneration paid to the trustee in accordance with section 60-5 of this Schedule; or

(b) from a profit or advantage covered by subsection (4).



Authorised Version C2017A00055

## *Corporations Act 2001*

### 3 Paragraph 411(9)(a)

Omit "section 425,", substitute "sections 422A, 422B and 425,".

### 4 Subparagraph 1274(2)(a)(iab)

Repeal the subparagraph.

### 5 Section 40-110 of Schedule 2

Omit "this section", substitute "this Subdivision".

### 6 Paragraphs 60-20(4)(a) to (c) of Schedule 2

Repeal the paragraphs, substitute:

(a) the external administrator employs or engages a person to provide services in connection with the external administration of the company; and

(b) a related entity of the external administrator directly or indirectly derives a profit or advantage as a result of that employment or engagement; and

(c) one of the following is satisfied:

(i) the external administrator does not know, and could not reasonably be expected to know, that the related entity would derive that profit or advantage;

(ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;

(iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.

### 7 After subsection 60-20(4) of Schedule 2

Insert:

(4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the external administrator directly or indirectly derives a profit or advantage:

(a) from remuneration paid to the external administrator in accordance with section 60-5 of this Schedule; or



Authorised Version C2017A00055

(b) from a profit or advantage covered by subsection (4).

## 8 Subsection 70-6(4) of Schedule 2

Omit “subsection (6)”, substitute “subsection (5)”.

[*Minister’s second reading speech made in—*
*House of Representatives on 25 May 2017*
*Senate on 15 June 2017*]

(96/17)



Authorised Version C2017A00055