



Taxation Laws Amendment (Superannuation) Act (No. 1) 2002

No. 15, 2002

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Taxation Laws Amendment (Superannuation) Act (No. 1) 2002

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

[Assented to 4 April 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment
(Superannuation) Act (No. 1) 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	4 April 2002
2. Schedule 1	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which the <i>Income Tax (Superannuation Payments Withholding Tax) Act 2002</i> receives the Royal Assent	4 April 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Taxation of departing Australia superannuation payments

Part 1—Income Tax Assessment Act 1936

1 Subsection 6(1) (definition of *withholding tax*)

After “section”, insert “27GA or”.

2 Subsection 27A(1)

Insert:

departing Australia superannuation payment means a payment that:

- (a) would be an ETP except for the operation of paragraph (qa) of the definition of *eligible termination payment*; and
- (b) is paid to a person who has departed Australia; and
- (c) is paid:
 - (i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are prescribed for the purposes of this definition; or
 - (ii) in accordance with section 67A of the *Small Superannuation Accounts Act 1995*; or
 - (iii) by an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*) and is made in accordance with rules of the fund that are substantially similar to the regulations referred to in subparagraph (i).

3 Subsection 27A(1) (after paragraph (q) of the definition of *eligible termination payment*)

Insert:

- (qa) a payment that is a departing Australia superannuation payment; or

4 After section 27G

Insert:

27GA Departing Australia superannuation payment

- (1) A person who receives a departing Australia superannuation payment is liable to pay income tax upon that payment at the rate declared by the Parliament in respect of departing Australia superannuation payments.

Note: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

- (2) Income tax payable by a person in accordance with this section is in addition to any other income tax payable by the person upon income other than departing Australia superannuation payments.
- (3) A departing Australia superannuation payment is not to be included in the assessable income of a person.
- (4) If an amount would be a departing Australia superannuation payment apart from the fact that the person has not received it, it becomes a departing Australia superannuation payment to the person as soon as it is applied or dealt with in any way on the person's behalf or as the person directs.

Part 2—Income Tax Assessment Act 1997

5 Subsection 995-1(1) (definition of *withholding tax*)

After “section”, insert “27GA or”.

Part 3—Taxation Administration Act 1953

6 Section 10-5 in Schedule 1 (after table item 22)

Insert:

22A	A departing Australia superannuation payment	12-305
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7 After Subdivision 12-F in Schedule 1

Insert:

Subdivision 12-FA—Departing Australia superannuation payments

Table of sections

12-305	Departing Australia superannuation payment
12-310	Limits on amount withheld under this Subdivision

12-305 Departing Australia superannuation payment

An entity must withhold an amount from a departing Australia superannuation payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) it pays to an entity.

12-310 Limits on amount withheld under this Subdivision

This Subdivision does not require an entity:

- (a) to withhold an amount from a departing Australia superannuation payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) if no *withholding tax is payable in respect of the departing Australia superannuation payment; or
- (b) to withhold from a departing Australia superannuation payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) more than the withholding tax payable in respect of the departing Australia superannuation payment (reduced by each amount already withheld from it under this Subdivision).

Note: Section 27GA of the *Income Tax Assessment Act 1936* deals with the withholding tax liability.

8 Subsection 15-10(2) in Schedule 1

After “12-F”, insert “, 12-FA”.

9 Paragraph 16-153(1)(a) in Schedule 1

After “or 12-285”, insert “, Subdivision 12-FA”.

10 Paragraph 16-153(1)(b) in Schedule 1

After “or 12-285”, insert “, Subdivision 12-FA”.

11 After section 16-165 in Schedule 1

Insert:

16-166 Payment summary for a departing Australia superannuation payment

Within 14 days after an entity (the *payer*) makes a departing Australia superannuation payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*), the payer must:

- (a) give a *payment summary that covers the payment to the recipient of the payment; and
- (b) give a copy of the summary to the Commissioner.

12 After paragraph 16-195(a) in Schedule 1

Insert:

- (aa) section 12-305 (about a departing Australia superannuation payment); or

13 Section 18-10 in Schedule 1

After “royalties),”, insert “Subdivision 12-FA (about departing Australia superannuation payments),”.

14 After section 18-40 in Schedule 1

Insert:

Entitlement to credit: departing Australia superannuation payment

18-42 Credit—departing Australia superannuation payment

Credit—amount withheld

- (1) If there is an *amount withheld from a *withholding payment that is covered by section 12-305 (departing Australia superannuation payment), the person liable to pay *withholding tax under section 27GA of the *Income Tax Assessment Act 1936* on the payment is entitled to a credit of an amount equal to the amount withheld.

Credit—penalty amount

- (2) If an entity has paid to the Commissioner a penalty amount under section 16-30 or 16-35 in relation to an *amount required to be withheld under section 12-305 (departing Australia superannuation payment), the person mentioned in subsection (1) is entitled to a credit equal to the penalty amount.

Remission

- (3) If the Commissioner remits the whole or a part of the amount of penalty under section 16-45 that has been paid to the Commissioner by the entity:
 - (a) any credit that relates to the amount is reduced by the amount that is remitted; and
 - (b) the Commissioner must pay to the entity an amount equal to the amount that is remitted.

Part 4—Income Tax Act 1986

15 Subsection 5(2)

After “section”, insert “27GA,”.

Part 5—Small Superannuation Accounts Act 1995

16 Section 14

After:

- | |
|---|
| (b) the individual is in employment, but the duties of the individual's employment are performed wholly or principally outside Australia. |
|---|

insert:

<i>Permanent departure from Australia</i>

- | |
|--|
| <ul style="list-style-type: none">• The balance of an individual's account may be withdrawn if:<ul style="list-style-type: none">(a) the individual was the holder of an eligible temporary residents visa that has expired or been cancelled; and(b) the individual has permanently departed from Australia. |
|--|

17 Paragraph 16(b)

Omit "or 67", substitute ", 67 or 67A".

18 At the end of section 16

Add:

Note 4: Section 67A deals with individuals who have permanently departed from Australia.

19 At the end of section 62

Add:

- | |
|---|
| <ul style="list-style-type: none">• The balance of an individual's account may be withdrawn if: |
|---|

- (a) the individual was the holder of an eligible temporary residents visa that has expired or been cancelled; and
- (b) the individual has permanently departed from Australia.

20 After section 67

Insert:

67A Withdrawal of account balance—permanent departure from Australia

Withdrawal request

- (1) This section applies to an individual's account if:
 - (a) the individual gives the Commissioner of Taxation a request (the ***withdrawal request***) for the withdrawal of the account balance; and
 - (b) the individual satisfies the Commissioner of Taxation that:
 - (i) the individual was the holder of an eligible temporary residents visa that has expired or been cancelled; and
 - (ii) the individual has permanently departed from Australia.

Form of withdrawal request

- (2) The withdrawal request must be:
 - (a) in writing; and
 - (b) in a form approved in writing by the Commissioner of Taxation.

Compliance with withdrawal request

- (3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

Reserve to be debited

- (4) The Reserve is debited for the purposes of making the payment.

Account to be debited

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

Definitions

- (6) In this section:

eligible temporary residents visa has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

Part 6—Application of amendments

21 Application

The amendments made by this Schedule apply to payments made on or after 1 July 2002.

*[Minister's second reading speech made in—
House of Representatives on 14 February 2002
Senate on 13 March 2002]*

(30/02)
