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This compilation is in 12 volumes

Volume 1: sections 1-1 to 36-55
Volume 2: sections 40-1 to 67-30
Volume 3: sections 70-1 to 121-35
Volume 4: sections 122-1 to 197-85
Volume 5: sections 200-1 to 253-15
Volume 6: sections 275-1 to 313-85
Volume 7: sections 315-1 to 420-70
Volume 8: sections 615-1 to 721-40
Volume 9: sections 723-1 to 880-205
Volume 10: sections 900-1 to 995-1
Volume 11: Endnotes 1 to 3
Volume 12: Endnote 4

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 14 October 2022 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 3—Specialist liability rules 1

Part 3-25—Particular kinds of trusts 1

Division 275—Australian managed investment trusts: general 1

Guide to Division 275 1

275-1 What this Division is about 1

Subdivision 275-A—Meaning of managed investment trust 2

Guide to Subdivision 275-A 2

275-5 What this Subdivision is about 2

Operative provisions 2

275-10 Meaning of *managed investment trust* 2
275-15 Trusts with wholesale membership 6
275-20 Widely-held requirements—ordinary case 7
275-25 Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4) 10
275-30 Closely-held restrictions 11
275-35 Licensing requirements for unregistered MIS 12
275-40 MIT participation interest 13
275-45 Meaning of *managed investment trust*—every member of trust is a managed investment trust etc. 14
275-50 Extended definition of *managed investment trust*—no fund payment made in relation to the income year 14
275-55 Extended definition of *managed investment trust*—temporary circumstances outside the control of the trustee 15

Subdivision 275-B—Choice for capital treatment of managed investment trust gains and losses 15

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses 16
275-105 Covered assets 19
275-110 MIT not to be trading trust 19
275-115 MIT CGT choices 20
275-120 Consequences of not making choice—revenue account treatment 21

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 275-C—Carried interests in managed investment trusts 22
275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction 22
Subdivision 275-L—Modification for non-arm's length income 24
Guide to Subdivision 275-L 24
275-600 What this Subdivision is about 24
Operative provisions 25
275-605 Trustee taxed on amount of non-arm's length income of managed investment trust 25
275-610 Non-arm's length income 26
275-615 Commissioner's determination in relation to amount of non-arm's length income 28
Division 276—Australian managed investment trusts: attribution managed investment trusts 30
Guide to Division 276 30
276-1 What this Division is about 30
Subdivision 276-A—What is an attribution managed investment trust? 31
Guide to Subdivision 276-A 31
276-5 What this Subdivision is about 31
Operative provisions 32
276-10 Meaning of *attribution managed investment trust* (or *AMIT*) 32
276-15 Clearly defined interests 33
276-20 Trust with classes of membership interests—each class treated as separate AMIT 33
Subdivision 276-B—Member's vested and indefeasible interest in share of income and capital of AMIT 34
Guide to Subdivision 276-B 34
276-50 What this Subdivision is about 34
Operative provisions 35
276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital 35

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 276-C—Taxation etc. of member components 35

Guide to Subdivision 276-C 35

276-75 What this Subdivision is about 35

Taxation etc. of member on determined member components 36

276-80 Member's assessable income or tax offsets for determined member components—general rules 36

276-85 Member's assessable income or tax offsets for determined member components—specific rules 38

276-90 Commissioner's determination as to status of member as qualified person 39

276-95 Relationship between section 276-80 and withholding rules 40

276-100 Relationship between section 276-80 and other charging provisions in this Act 41

Foreign resident members—taxation of trustee and corresponding tax offset for members 42

276-105 Trustee taxed on foreign resident's determined member components 42

276-110 Refundable tax offset for foreign resident member—member that is not a trustee 44

Special rule for interposed custodian 44

276-115 Custodian interposed between AMIT and member 44

Subdivision 276-D—Member components 45

Guide to Subdivision 276-D 45

276-200 What this Subdivision is about 45

Member-level concepts 46

276-205 Meaning of *determined member component* 46

276-210 Meaning of *member component* 48

Subdivision 276-E—Trust components 50

Guide to Subdivision 276-E 50

276-250 What this Subdivision is about 50

Trust-level concepts 50

276-255 Meaning of *determined trust component* 50

276-260 Meaning of *trust component* 51

276-265 Rules for working out trust components—general rules 52

276-270 Rules for working out trust components—allocation of deductions 52

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 276-F—Unders and overs 53

Guide to Subdivision 276-F 53

276-300 What this Subdivision is about 53

Adjustment of trust component for unders and overs etc. 54

276-305 Adjustment of trust component for unders and overs 54

276-310 Rounding adjustment deficit increases trust component 55

276-315 Rounding adjustment surplus decreases trust component 55

276-320 Meaning of *trust component deficit* 56

276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount 56

276-330 Meaning of *cross-character allocation amount* and *carry-forward trust component deficit* 57

276-335 Meaning of *FITO allocation amount* 58

276-340 Trust component character relating to tax offset—taxation of trust component deficit 59

Unders and overs 59

276-345 Meaning of *under* and *over* of a character 59

276-350 Limited discovery period for unders and overs 60

Subdivision 276-G—Shortfall and excess taxation 61

Guide to Subdivision 276-G 61

276-400 What this Subdivision is about 61

Ensuring determined trust components are properly taxed 62

276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income) 62

276-410 Trustee taxed on excess in determined member component (character relating to tax offset) 62

276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components 63

Ensuring unders and overs are properly taxed 64

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward 64

Authorised Version C2022C00307 registered 22/10/2022

276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward 65

Commissioner may remit tax under this Subdivision 67

276-430 Commissioner may remit tax under this Subdivision 67

Subdivision 276-H—AMMA statements 67

Guide to Subdivision 276-H 67

276-450 What this Subdivision is about 67

Operative provisions 67

276-455 Obligation to give an AMMA statement 67

276-460 *AMIT member annual statement* (or *AMMA statement*) 68

Subdivision 276-J—Debt-like trust instruments 69

Guide to Subdivision 276-J 69

276-500 What this Subdivision is about 69

Operative provisions 69

276-505 Meaning of *debt-like trust instrument* 69

276-510 Debt-like trust instruments treated as debt interests etc. 70

276-515 Distribution on debt-like trust instrument could be deductible in working out trust components 71

Subdivision 276-K—Ceasing to be an AMIT 71

Guide to Subdivision 276-K 71

276-800 What this Subdivision is about 71

Operative provisions 72

276-805 Application of Subdivision to former AMIT 72

276-810 Continue to work out trust components, unders, overs etc. 72

276-815 Effect of increase 72

276-820 Effect of decrease 73

Part 3-30—Superannuation 76

Division 280—Guide to the superannuation provisions 76

280-1 Effect of this Division 76

280-5 Overview 77

Contributions phase 77

280-10 Contributions phase—deductibility 77

Authorised Version C2022C00307 registered 22/10/2022

280-15 Contributions phase—limits on superannuation tax concessions ... 78
Investment phase 79
280-20 Investment phase ... 79
Benefits phase 79
280-25 Benefits phase—different types of superannuation benefit ... 79
280-30 Benefits phase—taxation varies with age of recipient and type of benefit ... 79
280-35 Benefits phase—roll-overs ... 80
The regulatory scheme outside this Act 80
280-40 Other relevant legislative schemes ... 80
Division 285—General concepts relating to superannuation 82
285-5 Transfers of property ... 82
Division 290—Contributions to superannuation funds 83
Guide to Division 290 83
290-1 What this Division is about ... 83
Subdivision 290-A—General rules 83
290-5 Non-application to roll-over superannuation benefits etc. ... 83
290-10 No deductions other than under this Division ... 84
Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions 84
Deducting employer contributions 85
290-60 Employer contributions deductible ... 85
290-65 Application to employees etc. ... 85
Conditions for deducting an employer contribution 86
290-70 Employment activity conditions ... 86
290-75 Complying fund conditions ... 86
290-80 Age related conditions ... 87
Other employment-connected deductions 89
290-85 Contributions for former employees etc. ... 89
290-90 Controlling interest deductions ... 92
290-95 Amounts offset against superannuation guarantee charge ... 93
Returned contributions 94
290-100 Returned contributions assessable ... 94

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 290-C—Deducting personal contributions 94
290-150 Personal contributions deductible....94
Conditions for deducting a personal contribution 95
290-155 Complying superannuation fund condition....95
290-165 Age-related conditions....96
290-167 Contribution must not be a downsizer contribution....97
290-168 Contribution must not be a re-contribution under the first home super saver scheme....98
290-169 Contribution must not be a COVID-19 re-contribution....98
290-170 Notice of intent to deduct conditions....98
290-175 Deduction limited by amount specified in notice....100
290-180 Notice may be varied but not revoked or withdrawn....100
Subdivision 290-D—Tax offsets for spouse contributions 101
290-230 Offset for spouse contribution....101
290-235 Limit on amount of tax offsets....103
290-240 Tax file number....103
Division 291—Excess concessional contributions 104
Guide to Division 291 104
291-1 What this Division is about....104
Subdivision 291-A—Object of this Division 105
291-5 Object of this Division....105
Subdivision 291-B—Excess concessional contributions 105
Guide to Subdivision 291-B 105
291-10 What this Subdivision is about....105
Operative provisions 106
291-15 Excess concessional contributions—assessable income, 15% tax offset....106
291-20 Your *excess concessional contributions* for a financial year....106
291-25 Your *concessional contributions* for a financial year....107
Subdivision 291-C—Modifications for defined benefit interests 109
Guide to Subdivision 291-C 109
291-155 What this Subdivision is about....109

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions 109
291-160 Application 109
291-165 Concessional contributions—special rules for defined benefit interests 109
291-170 *Notional taxed contributions* 110
291-175 *Defined benefit interest* 111
Subdivision 291-CA—Contributions that do not result in excess contributions 112
Guide to Subdivision 291-CA 112
291-365 What this Subdivision is about 112
Operative provisions 112
291-370 Contributions that do not result in excess contributions 112
Subdivision 291-D—Other provisions 113
Guide to Subdivision 291-D 113
291-460 What this Subdivision is about 113
Operative provisions 114
291-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year 114
Division 292—Excess non-concessional contributions 117
Guide to Division 292 117
292-1 What this Division is about 117
Subdivision 292-A—Object of this Division 118
292-5 Object of this Division 118
Subdivision 292-B—Assessable income and tax offset 118
292-15 What this Subdivision is about 118
292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions 119
292-25 Amount included in assessable income 119
292-30 Amount of the tax offset 120
Subdivision 292-C—Excess non-concessional contributions tax 120
292-75 What this Subdivision is about 120
Operative provisions 121
292-80 Liability for excess non-concessional contributions tax 121
292-85 Your *excess non-concessional contributions* for a financial year 121

Authorised Version C2022C00307 registered 22/10/2022

292-90 Your *non-concessional contributions* for a financial year 124
292-95 Contributions arising from structured settlements or orders for personal injuries 126
292-100 Contribution relating to some CGT small business concessions 129
292-102 Downsizer contributions 132
292-103 COVID-19 re-contributions 136
292-105 CGT cap amount 137

Subdivision 292-E—Excess non-concessional contributions tax assessments 138

Guide to Subdivision 292-E 138
292-225 What this Subdivision is about 138

Operative provisions 139
292-230 Commissioner must make an *excess non-concessional contributions tax assessment* 139
292-240 Validity of assessment 139
292-245 Objections 139

Subdivision 292-F—Amending excess non-concessional contributions tax assessments 140

Guide to Subdivision 292-F 140
292-300 What this Subdivision is about 140

Operative provisions 140
292-305 Amendments within 4 years of the original assessment 140
292-310 Amended assessments are treated as excess non-concessional contributions tax assessments 141
292-315 Later amendments—on request 141
292-320 Later amendments—fraud or evasion 141
292-325 Further amendment of an amended particular 142
292-330 Amendment on review etc. 142

Subdivision 292-G—Collection and recovery 143

Guide to Subdivision 292-G 143
292-380 What this Subdivision is about 143

Operative provisions 143
292-385 Due date for payment of excess non-concessional contributions tax 143
292-390 General interest charge 143

Authorised Version C2022C00307 registered 22/10/2022

292-395 Refunds of amounts overpaid 144

Subdivision 292-H—Other provisions 144

292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year 144

292-467 Direction that the value of superannuation interests is nil 146

Division 293—Sustaining the superannuation contribution concession 148

Guide to Division 293 148

293-1 What this Division is about 148

Subdivision 293-A—Object of this Division 149

Operative provisions 149

293-5 Object of this Division 149

Subdivision 293-B—Sustaining the superannuation contribution concession 149

Guide to Subdivision 293-B 149

293-10 What this Subdivision is about 149

Liability for tax 150

293-15 Liability for tax 150

293-20 Your *taxable contributions* 150

Low tax contributions 151

293-25 Your *low tax contributions* 151

293-30 Low tax contributed amounts 151

Subdivision 293-C—When tax is payable 153

Guide to Subdivision 293-C 153

293-60 What this Subdivision is about 153

Operative provisions 153

293-65 When tax is payable—original assessments 153

293-70 When tax is payable—amended assessments 154

293-75 General interest charge 154

Subdivision 293-D—Modifications for defined benefit interests 155

Guide to Subdivision 293-D 155

293-100 What this Subdivision is about 155

Operative provisions 155

293-105 *Low tax contributions*—modification for defined benefit interests 155

Authorised Version C2022C00307 registered 22/10/2022

293-115 *Defined benefit contributions* 156

Subdivision 293-E—Modifications for constitutionally protected State higher level office holders 158

Guide to Subdivision 293-E 158

293-140 What this Subdivision is about 158

Operative provisions 158

293-145 Who this Subdivision applies to 158

293-150 Low tax contributions—modification for CPFs 159

293-155 High income threshold—effect of modification 159

293-160 Salary packaged contributions 160

Subdivision 293-F—Modifications for Commonwealth justices 161

Guide to Subdivision 293-F 161

293-185 What this Subdivision is about 161

Operative provisions 161

293-190 Who this Subdivision applies to 161

293-195 *Defined benefit contributions*—modified treatment of contributions under the *Judges' Pensions Act 1968* 162

293-200 High income threshold—effect of modification 162

Subdivision 293-G—Modifications for temporary residents who depart Australia 163

Guide to Subdivision 293-G 163

293-225 What this Subdivision is about 163

Operative provisions 163

293-230 Who is entitled to a refund 163

293-235 Amount of the refund 164

293-240 Entitlement to refund stops all Division 293 tax liabilities 164

Division 294—Transfer balance cap 165

Guide to Division 294 165

294-1 What this Division is about 165

Subdivision 294-A—Object of this Division 166

Operative provisions 166

294-5 Object of this Division 166

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 294-B—Transfer balance account 166

Guide to Subdivision 294-B 166

294-10 What this Subdivision is about 166

Operative provisions 167

294-15 When you have a transfer balance account 167

294-20 Meaning of retirement phase recipient 167

294-25 Transfer balance credits 168

294-30 Excess transfer balance 170

294-35 Your transfer balance cap 170

294-40 Proportionally indexed transfer balance cap 171

294-45 Transfer balance account ends 172

294-50 Assumptions about income streams 172

294-55 Repayment of limited recourse borrowing arrangement 173

Subdivision 294-C—Transfer balance debits 173

Guide to Subdivision 294-C 173

294-75 What this Subdivision is about 173

Operative provisions 174

294-80 Transfer balance debits 174

294-85 Certain events that result in reduced superannuation 176

294-90 Payment splits 177

294-95 Payment splits—no double debiting 179

Subdivision 294-D—Modifications for certain defined benefit income streams 179

Guide to Subdivision 294-D 179

294-120 What this Subdivision is about 179

Operative provisions 180

294-125 When this Subdivision applies 180

294-130 Meaning of capped defined benefit income stream 180

294-135 Transfer balance credit—special rule for capped defined benefit income streams 181

294-140 Excess transfer balance—special rule for capped defined benefit income streams 183

294-145 Transfer balance debits—special rules for capped defined benefit income streams 183

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 294-E—Modifications for death benefits dependants who are children 188

Guide to Subdivision 294-E 188

294-170 What this Subdivision is about 188

Operative provisions 189

294-175 When this Subdivision applies 189

294-180 Transfer balance account ends 189

294-185 Transfer balance cap—special rule for child recipient 190

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

294-195 Cap increment—child recipient on or after 1 July 2017, deceased had no transfer balance account 191

294-200 Cap increment—child recipient on or after 1 July 2017, deceased had transfer balance account 191

Subdivision 294-F—Excess transfer balance tax 194

Guide to Subdivision 294-F 194

294-225 What this Subdivision is about 194

Operative provisions 194

294-230 Excess transfer balance tax 194

294-235 Your excess transfer balance earnings 195

294-240 When tax is payable—original assessments 195

294-245 When tax is payable—amended assessments 195

294-250 General interest charge 196

Division 295—Taxation of superannuation entities 197

Guide to Division 295 197

295-1 What this Division is about 197

Subdivision 295-A—Provisions of general operation 198

295-5 Entities to which Division applies 198

295-10 How to work out the tax payable by superannuation entities 199

295-15 Division does not impose a tax on property of a State 200

295-20 Exempting laws ineffective 201

295-25 Assessments on basis of anticipated SIS Act notice 201

295-30 Effect of revocation etc. of SIS Act notices 201

295-35 Acronyms used in tables 201

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-B—Modifications of provisions of this Act 202
295-85 CGT to be primary code for calculating gains or losses 202
295-90 CGT rules for pre-30 June 1988 assets 204
295-95 Deductions related to contributions 204
295-100 Deductions for investing in PSTs and life policies 206
295-105 Distributions to PST unitholders 206
Subdivision 295-C—Contributions included 207
Guide to Subdivision 295-C 207
295-155 What this Subdivision is about 207
Contributions and payments 208
295-160 Contributions and payments 208
295-165 Exception—spouse contributions 209
295-170 Exception—Government co-contributions and contributions for a child 209
295-173 Exception—trustee contributions 210
295-175 Exception—payments by a member spouse 210
295-180 Exception—choice to exclude certain contributions 210
295-185 Exception—temporary residents 211
Personal contributions and roll-over amounts 211
295-190 Personal contributions and roll-over amounts 211
295-195 Exclusion of personal contributions—contributions 213
295-197 Exclusion of personal contributions—successor funds 214
Transfers from foreign funds 215
295-200 Transfers from foreign superannuation funds 215
Application of tables to RSA providers 216
295-205 Application of tables to RSA providers 216
Former constitutionally protected funds 216
295-210 Former constitutionally protected funds 216
Subdivision 295-D—Contributions excluded 217
295-260 Transfer of liability to investment vehicle 217
295-265 Application of pre-1 July 88 funding credits 218
295-270 Anticipated funding credits 221

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-E—Other income amounts 222

Amounts included 222

295-320 Other amounts included in assessable income 222
295-325 Previously complying funds 223
295-330 Previously foreign funds 224

Amounts excluded 224

295-335 Amounts excluded from assessable income 224

Subdivision 295-F—Exempt income 225

295-385 Income from assets set aside to meet current pension liabilities 225
295-387 Disregarded small fund assets 227
295-390 Income from other assets used to meet current pension liabilities 228
295-395 Meaning of *segregated non-current assets* 230
295-400 Income of a PST attributable to current pension liabilities 231
295-405 Other exempt income 232
295-407 Covered superannuation income streams—RSAs 232
295-410 Amount credited to RSA 232

Subdivision 295-G—Deductions 233

Death or disability benefits 233

295-460 Benefits for which deductions are available 233
295-465 Complying funds—deductions for insurance premiums 234
295-470 Complying funds—deductions for future liability to pay benefits 237
295-475 RSA providers—deductions for insurance premiums 238
295-480 Meaning of *whole of life policy* and *endowment policy* 238

Other deductions 239

295-490 Other deductions 239

Certain amounts cannot be deducted 242

295-495 Amounts that cannot be deducted 242

Subdivision 295-H—Components of taxable income 242

295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs 243
295-550 Meaning of *non-arm's length income* 243

Authorised Version C2022C00307 registered 22/10/2022

295-555 Components of taxable income—RSA providers 245

Subdivision 295-I—No-TFN contributions 246

295-605 Liability for tax on no-TFN contributions income 247
295-610 No-TFN contributions income 247
295-615 Meaning of *quoted (for superannuation purposes)* 248
295-620 No reduction under Subdivision 295-D 248
295-625 Assessments 249

Subdivision 295-J—Tax offset for no-TFN contributions income (TFN quoted within 5 years) 250

295-675 Entitlement to a tax offset 250
295-680 Amount of the tax offset 252

Division 301—Superannuation member benefits paid from complying plans etc. 253

Guide to Division 301 253

301-1 What this Division is about 253

Subdivision 301-A—Application 253

301-5 Division applies to superannuation member benefits paid from complying plans etc. 253

Subdivision 301-B—Member benefits: general rules 254

Member benefits—recipient aged 60 or above 254

301-10 All superannuation benefits are tax free 254

Member benefits—recipient aged over preservation age and under 60 255

301-15 Tax free status of tax free component 255
301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder 255
301-25 Superannuation income stream—taxable component attracts 15% offset 256

Member benefits—recipient aged under preservation age 256

301-30 Tax free status of tax free component 256
301-35 Superannuation lump sum—taxable component taxed at 20% 257
301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit 257

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 301-C—Member benefits: elements untaxed in fund 257
301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision....258
Member benefits (element untaxed in fund)—recipient aged 60 or above 259
301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder....259
301-100 Superannuation income stream—element untaxed in fund attracts 10% offset....259
Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60 260
301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder....260
301-110 Superannuation income stream—element untaxed in fund is assessable income....261
Member benefits (element untaxed in fund)—recipient aged under preservation age 261
301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder....261
301-120 Superannuation income stream—element untaxed in fund is assessable income....261
Miscellaneous 262
301-125 Unclaimed money payments by the Commissioner....262
Subdivision 301-D—Departing Australia superannuation payments 262
301-170 *Departing Australia superannuation payments*....262
301-175 Treatment of departing Australia superannuation benefits....263
Subdivision 301-E—Superannuation lump sum member benefits less than $200 264
301-225 Superannuation lump sum member benefits less than $200 are tax free....264

Authorised Version C2022C00307 registered 22/10/2022

Division 302—Superannuation death benefits paid from complying plans etc. 266

Guide to Division 302 266

302-1 What this Division is about 266

Subdivision 302-A—Application 266

302-5 Division applies to superannuation death benefits paid from complying plans etc. 266

302-10 Superannuation death benefits paid to trustee of deceased estate 267

Subdivision 302-B—Death benefits to dependant 268

Lump sum death benefits to dependants are tax free 268

302-60 All of superannuation lump sum is tax free 268

Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above 269

302-65 Superannuation income stream benefits are tax free 269

Superannuation income stream—deceased died aged under 60 and dependant aged under 60 269

302-70 Superannuation income stream—tax free status of tax free component 269

302-75 Superannuation income stream—taxable component attracts 15% offset 269

Death benefits to dependant—elements untaxed in fund 270

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant 270

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset 270

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income 271

Subdivision 302-C—Death benefits to non-dependant 271

Superannuation lump sum 271

302-140 Superannuation lump sum—tax free status of tax free component 271

Authorised Version C2022C00307 registered 22/10/2022

302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30% 272

Subdivision 302-D—Definitions relating to dependants 272

302-195 Meaning of *death benefits dependant* 272

302-200 What is an *interdependency relationship*? 273

Division 303—Superannuation benefits paid in special circumstances 275

Guide to Division 303 275

303-1 What this Division is about 275

Subdivision 303-A—Modifications for defined benefit income 275

Operative provisions 276

303-2 Effect of exceeding defined benefit income cap on assessable income 276

303-3 Effect of exceeding defined benefit income cap on tax offsets 276

303-4 Meaning of *defined benefit income cap* 277

Subdivision 303-B—Other special circumstances 278

303-5 Commutation of income stream if you are under 25 etc. 278

303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition 278

303-15 Payments from release authorities—general 279

303-20 Payments from release authorities—paying debt account discharge liability for a superannuation interest 279

Division 304—Superannuation benefits in breach of legislative requirements etc. 280

Guide to Division 304 280

304-1 What this Division is about 280

Operative provisions 280

304-5 Application 280

304-10 Superannuation benefits in breach of legislative requirements etc. 280

304-20 Excess payments from release authorities—paying debt account discharge liability for a superannuation interest 282

Authorised Version C2022C00307 registered 22/10/2022

Division 305—Superannuation benefits paid from non-complying superannuation plans 283

Guide to Division 305 283

305-1 What this Division is about 283

Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds 283

305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds 283

Subdivision 305-B—Superannuation benefits from foreign superannuation funds 284

Application of Subdivision 284

305-55 Restriction to lump sums received from certain foreign superannuation funds 284

Lump sums received within 6 months after Australian residency or termination of foreign employment etc. 285

305-60 Lump sums tax free—foreign resident period 285

305-65 Lump sums tax free—Australian resident period 286

Lump sums to which sections 305-60 and 305-65 do not apply 287

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc. 287

305-75 Lump sums—*applicable fund earnings* 288

305-80 Lump sums paid into complying superannuation plans—choice 290

Division 306—Roll-overs etc. 291

Guide to Division 306 291

306-1 What this Division is about 291

Operative provisions 291

306-5 Effect of a roll-over superannuation benefit 291

306-10 *Roll-over superannuation benefit* 291

306-12 *Involuntary roll-over superannuation benefit* 292

306-15 Tax on *excess untaxed roll-over amounts* 293

306-20 Effect of payment to government of unclaimed superannuation money 294

306-25 Payments connected with financial claims scheme to RSAs 294

Authorised Version C2022C00307 registered 22/10/2022

Division 307—Key concepts relating to superannuation benefits 297

Guide to Division 307 297

307-1 What this Division is about 297

Subdivision 307-A—Superannuation benefits generally 298

307-5 What is a *superannuation benefit*? 298

307-10 Payments that are not *superannuation benefits* 302

307-15 Payments for your benefit or at your direction or request 303

Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits 304

307-65 Meaning of *superannuation lump sum* 304

307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit* 304

307-75 Meaning of *retirement phase superannuation income stream benefit* 304

307-80 When a superannuation income stream is in the *retirement phase* 305

Subdivision 307-C—Components of a superannuation benefit 307

307-120 Components of superannuation benefit 307

307-125 Proportioning rule 308

307-130 Superannuation guarantee payment consists entirely of taxable component 310

307-135 Superannuation co-contribution benefit payment consists entirely of tax free component 310

307-140 Contributions-splitting superannuation benefit consists entirely of taxable component 310

307-142 Components of certain unclaimed money payments 310

307-145 Modification for disability benefits 315

307-150 Modification in respect of superannuation lump sum with element untaxed in fund 316

Subdivision 307-D—Superannuation interests 317

307-200 Regulations relating to meaning of superannuation interests 318

307-205 *Value* of superannuation interest 319

307-210 *Tax free component* of superannuation interest 319

307-215 *Taxable component* of superannuation interest 320

307-220 What is the *contributions segment*? 320

307-225 What is the *crystallised segment*? 321

Authorised Version C2022C00307 registered 22/10/2022

307-230 Total superannuation balance 322
307-231 Limited recourse borrowing arrangements 325

Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit 326

307-275 *Element taxed in the fund* and *element untaxed in the fund* of superannuation benefits 327
307-280 Superannuation benefits from constitutionally protected funds etc 327
307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund 328
307-290 Taxed and untaxed elements of death benefit superannuation lump sums 328
307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element 329
307-297 Public sector superannuation schemes—elements set by regulations 330
307-300 Certain unclaimed money payments 331

Subdivision 307-F—Low rate cap and untaxed plan cap amounts 336

307-345 *Low rate cap amount* 336
307-350 *Untaxed plan cap amount* 337

Subdivision 307-G—Other concepts 339

307-400 Meaning of *service period* for a superannuation lump sum 339

Division 310—Loss relief for merging superannuation funds 341

Guide to Division 310 341

310-1 What this Division is about 341

Operative provisions 342

Subdivision 310-A—Object of this Division 342

310-5 Object 342

Subdivision 310-B—Choice to transfer losses 342

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts 342
310-15 Original fund's assets include a complying superannuation life insurance policy 344
310-20 Original fund's assets include units in a pooled superannuation trust 346

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 310-C—Consequences of choosing to transfer losses 347
310-25 Who losses can be transferred to 348
310-30 Losses that can be transferred..... 348
310-35 Effect of transferring a net capital loss 349
310-40 Effect of transferring a tax loss..... 350
Subdivision 310-D—Choice for assets roll-over 351
310-45 Choosing the assets roll-over..... 351
310-50 Choosing the form of the assets roll-over..... 353
Subdivision 310-E—Consequences of choosing assets roll-over 353
310-55 CGT assets—if global asset approach chosen 354
310-60 CGT assets—individual asset approach 354
310-65 Revenue assets—if global asset approach chosen 355
310-70 Revenue assets—individual asset approach 356
310-75 Further consequences for roll-overs involving life insurance companies..... 356
Subdivision 310-F—Choices 357
310-85 Choices..... 357
Division 312—Trans-Tasman portability of retirement savings 358
Guide to Division 312 358
312-1 What this Division is about 358
Subdivision 312-A—Preliminary 358
312-5 Division implements Arrangement with New Zealand..... 358
Subdivision 312-B—Amounts contributed to complying superannuation funds from KiwiSaver schemes 359
312-10 Amounts contributed to complying superannuation funds from KiwiSaver schemes..... 359
Subdivision 312-C—Superannuation benefits paid to KiwiSaver scheme providers 361
312-15 Superannuation benefits paid from complying superannuation funds to KiwiSaver schemes 361
312-20 Superannuation benefits paid by Commissioner to KiwiSaver schemes 361
Division 313—First home super saver scheme 362
Guide to Division 313 362
313-1 What this Division is about 362

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 313-A—Preliminary 362

Operative provisions 363

313-5 Object of this Division 363

313-10 Application of this Division 363

Subdivision 313-B—Assessable income and tax offset 363

Guide to Subdivision 313-B 363

313-15 What this Subdivision is about 363

Operative provisions 364

313-20 Amount included in assessable income 364

313-25 Amount of the tax offset 364

Subdivision 313-C—Purchasing or constructing a residential premises 365

Guide to Subdivision 313-C 365

313-30 What this Subdivision is about 365

Operative provisions 365

313-35 Purchasing or constructing a residential premises 365

313-40 Notifying Commissioner 366

Subdivision 313-D—Contributing amounts to superannuation 367

Guide to Subdivision 313-D 367

313-45 What this Subdivision is about 367

Operative provisions 367

313-50 Contributing amounts to superannuation 367

Subdivision 313-E—First home super saver tax 368

Guide to Subdivision 313-E 368

313-55 What this Subdivision is about 368

Operative provisions 369

313-60 First home super saver tax 369

313-65 When tax is payable—original assessments 369

313-70 When tax is payable—amended assessments 369

313-75 General interest charge 370

Subdivision 313-F—Review of decisions 370

Guide to Subdivision 313-F 370

313-80 What this Subdivision is about 370

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions 371
313-85 Review rights for decisions made under this Division 371

Authorised Version C2022C00307 registered 22/10/2022

Authorised Version C2022C00307 registered 22/10/2022

Chapter 3—Specialist liability rules

Part 3-25—Particular kinds of trusts

Division 275—Australian managed investment trusts: general

Table of Subdivisions

Guide to Division 275
275-A Meaning of managed investment trust
275-B Choice for capital treatment of managed investment trust gains and losses
275-C Carried interests in managed investment trusts
275-L Modification for non-arm's length income

Guide to Division 275

275-1 What this Division is about

The trustee of certain Australian managed investment trusts may make a choice that certain assets of the trust be dealt with under CGT rules. If the trustee does not make such a choice, those assets will be treated as revenue assets (see Subdivision 275-B).

Gains and profits from carried interests held in entities that are or were Australian managed investment trusts (or certain other trusts) are included in the assessable income of the holder of the interests. The holder is entitled to a deduction from losses from such interests (see Subdivision 275-C).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 275-A—Meaning of managed investment trust

Guide to Subdivision 275-A

275-5 What this Subdivision is about

This Subdivision sets out the requirements for a trust to be a managed investment trust in relation to an income year.

Table of sections

Operative provisions

275-10 Meaning of ***managed investment trust***
275-15 Trusts with wholesale membership
275-20 Widely-held requirements—ordinary case
275-25 Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)
275-30 Closely-held restrictions
275-35 Licensing requirements for unregistered MIS
275-40 MIT participation interest
275-45 Meaning of ***managed investment trust***—every member of trust is a managed investment trust etc.
275-50 Extended definition of ***managed investment trust***—no fund payment made in relation to the income year
275-55 Extended definition of ***managed investment trust***—temporary circumstances outside the control of the trustee

Operative provisions

275-10 Meaning of *managed investment trust*

(1) A trust is a ***managed investment trust*** in relation to an income year if any of the following requirements are met:

(a) the trust is covered under subsection (3) of this section in relation to the income year (ordinary case);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the trust is covered under section 275-45 in relation to the income year (only members of trust are managed investment trusts etc.).

(2) A trust is also a ***managed investment trust*** in relation to an income year if any of the following requirements are met:

(a) the trust is covered under section 275-50 in relation to the income year (no fund payment made in relation to the income year);

(b) the trust is covered under section 275-55 in relation to the income year (temporary circumstances outside the control of the trustee).

(3) A trust is covered under this subsection in relation to an income year if:

(a) at the time the trustee of the trust makes the first *fund payment in relation to the income year, or at an earlier time in the income year:

(i) the trustee of the trust was an Australian resident; or

(ii) the central management and control of the trust was in Australia; and

(b) the trust is not a trust covered by subsection (4) (trading trust etc.) in relation to the income year; and

(c) at the time the payment is made, the trust is a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*); and

(d) at the time the payment is made:

(i) the trust is covered by section 275-15 (trusts with wholesale membership); or

(ii) if the trust is *not* covered by section 275-15—the trust is registered under section 601EB of the *Corporations Act 2001*; and

(e) the trust satisfies, in relation to the income year:

(i) if, at the time the payment is made, the trust is registered under section 601EB of the *Corporations Act 2001* and is covered by section 275-15—either or both

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

of the widely-held requirements in subsections 275-20(1) and 275-25(1); or

(ii) if, at the time the payment is made, the trust is so registered and is *not* covered by section 275-15—either or both of the widely-held requirements in subsections 275-20(2) and 275-25(1); or

(iii) if, at the time the payment is made, the trust is *not* so registered and is covered by section 275-15—the widely-held requirements in subsection 275-20(1); and

(f) the trust satisfies the closely-held restrictions in subsection 275-30(1) in relation to the income year; and

(g) if the trust is covered by section 275-15 at the time the payment is made—it satisfies the licensing requirements in section 275-35 in relation to the income year.

Trading unit trust or other trust carrying on trading business etc. cannot be managed investment trust

(4) A trust is covered by this subsection in relation to an income year if:

(a) in the case of a unit trust—the trust is a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or

(b) in any other case—the trust at any time in the income year:

(i) carried on a trading business (within the meaning of that Division); or

(ii) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division).

(4A) In determining whether a trust is covered by subsection (4), disregard any interest that the trust has in an *AFOF, an *ESVCLP or a *VCLP unless:

(a) the trust is a *general partner of the AFOF, ESVCLP or VCLP; or

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Authorised Version C2022C00307 registered 22/10/2022

(b) the trust has *committed capital in the partnership that, taken together with the sum of the amounts of committed capital in the partnership of any of that partner's *associates (other than associates to whom subsection (4B) applies), exceeds 30% of the partnership's committed capital.

(4B) This subsection applies to:

(a) an *ADI; or

(b) a *life insurance company; or

(c) a public authority:

(i) that is constituted by a law of a State or internal Territory; and

(ii) that carries on life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*; or

(d) a widely-held complying superannuation fund within the meaning of section 4A of the *Pooled Development Funds Act 1992*; or

(e) a *widely held foreign venture capital fund of funds.

Crown entities etc.

(5) For the purposes of paragraphs (3)(d) and (e), treat an entity as registered under section 601EB of the *Corporations Act 2001* at the time the payment is made if at that time the trust is operated by:

(a) an entity that would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme; or

(b) an entity that:

(i) is a *wholly-owned subsidiary of an entity of a kind mentioned in paragraph (a); and

(ii) would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and operation of the scheme mentioned in paragraph (3)(c),

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Authorised Version C2022C00307 registered 22/10/2022

be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme.

Start-up and wind-down phases

(6) Treat the requirements in paragraphs (3)(e) and (f) as being satisfied if:

(a) the trust is created during the period:

(i) starting 12 months before the start of the income year; and

(ii) ending at the end of the income year; or

(b) the trust ceases to exist during the income year, and was a *managed investment trust (disregarding paragraph (a) of this section) in relation to the previous income year.

275-15 Trusts with wholesale membership

A trust is covered by this section at a time if, at that time:

(a) the trust is not required to be registered in accordance with section 601ED of the *Corporations Act 2001* (whether or not it is actually so registered) because of subsection 601ED(2) of that Act (no product disclosure statement required) or because it is operated or managed by an entity covered by subsection 275-35(2) (Crown entities); and

(b) the total number of entities that had become a *member of the trust because a financial product or a financial service was provided to, or acquired by, the entity as a retail client (within the meaning of sections 761G and 761GA of the *Corporations Act 2001*) is no more than 20; and

(c) the entities mentioned in paragraph (b) have a total *MIT participation interest in the trust of no more than 10%.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

275-20 Widely-held requirements—ordinary case

(1) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made, the trust has at least 25 *members.

(2) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made:

(a) units in the trust are listed for quotation in the official list of an *approved stock exchange in Australia; or

(b) the trust has at least 50 *members (ignoring objects of a trust).

(3) For the purposes of subsection (1) and paragraph (2)(b), determine the number of *members of the trust as follows:

(a) first, by applying the rules in subsection (5), identify:

(i) the members of the trust that are not entities covered by subsection (4); and

(ii) the members of the trust that are entities covered by subsection (4);

(b) next, work out the number of members mentioned in subparagraph (a)(i);

(c) next:

(i) work out the *MIT participation interest in the trust of each entity mentioned in subparagraph (a)(ii); and

(ii) for each of those entities, multiply the total of its MIT participation interest in the trust by 50 and round the result upwards to the nearest whole number; and

(iii) work out the total of the results of subparagraph (ii) for all of those entities;

(d) next, work out the total of the results of paragraphs (b) and (c).

(4) This subsection covers the following kinds of entity:

(a) a *life insurance company;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) a *foreign life insurance company that is regulated under a *foreign law;

(c) a *complying superannuation fund, a *complying approved deposit fund or a *foreign superannuation fund, being a fund that has at least 50 *members;

(d) a *pooled superannuation trust that has at least one member that is a complying superannuation fund that has at least 50 members;

(e) a *managed investment trust in relation to the income year;

(f) an entity:

(i) that is recognised under a foreign law as being used for collective investment by pooling the contributions of its members as consideration to acquire rights to benefits produced by the entity; and

(ii) that has at least 50 members; and

(iii) the contributing members of which do not have day-to-day control over the entity's operation;

(g) an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:

(i) the entity is a fund established by an *exempt foreign government agency; or

(ii) the entity is established under a foreign law for an exempt foreign government agency; or

(iii) the entity is a *wholly-owned subsidiary of an entity mentioned in subparagraph (i) or (ii);

(h) an investment entity that satisfies all of these requirements:

(i) the entity is wholly-owned by one or more *foreign government agencies, or is a wholly-owned subsidiary of one or more foreign government agencies;

(ii) the entity is established using only the public money or public property of the foreign government concerned;

(iii) all economic benefits obtained by the entity have passed, or are expected to pass, to the foreign government concerned;

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) an entity established and wholly-owned by an *Australian government agency, if the capital of the entity, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or obligations (such as superannuation liabilities and liabilities arising from compensation or workcover claims);

(ia) the *Future Fund Board;

(j) a *limited partnership, if, throughout the income year:

(i) at least 95% of the *membership interests in the limited partnership are owned by entities mentioned in the preceding paragraphs of this subsection, or by entities that are wholly-owned by entities so mentioned; and

(ii) the remaining membership interests (if any) in the limited partnership are owned by a *general partner of the limited partnership that habitually exercises the management power of the limited partnership;

(k) an entity, all the membership interests in which are owned by any of the following:

(i) entities mentioned in the preceding paragraphs of this subsection;

(ii) entities that are wholly-owned by entities mentioned in the preceding paragraphs of this subsection;

(iii) entities that are covered under this subsection because of a previous operation of this paragraph;

(l) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.

(4A) Any financial assets (within the meaning of the *Future Fund Act 2006*) held by the *Future Fund Board are taken, for the purposes of subparagraph (4)(k)(ii), to be held by the Future Fund Board in its own right.

(5) The rules are as follows:

(a) if an entity that is not a trust holds interests in the trust indirectly, through a *chain of trusts:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) treat the entity as a member of the trust; and
(ii) do not treat a trust in the chain of trusts as a member of the trust;

(b) do not treat an object of the trust as a member of the trust;

(c) if the trust is mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—do not treat an individual as a member of the trust (other than an individual who became a member of the trust because a financial product or a financial service was provided to, or acquired by, the individual as a wholesale client (within the meaning of section 761G of the *Corporations Act 2001*));

(d) the rules in subsection (7).

(6) For the purposes of paragraph (5)(a), treat an entity covered by subsection (4) as an entity that is not a trust.

(7) The rules are as follows:

(a) treat the following entities as together being one entity:
(i) an individual;
(ii) each of his or her *relatives;
(iii) each entity acting in the capacity of nominee of an individual mentioned in subparagraph (i) or (ii);

(b) treat the following entities as together being one entity (the ***notional entity***):
(i) an entity that is not an individual;
(ii) each entity acting in the capacity of nominee of the entity mentioned in subparagraph (i).

(8) For the purposes of subsection (5), if the entity mentioned in subparagraph (7)(b)(i) is an entity covered by subsection (4), treat the notional entity as an entity covered by subsection (4).

275-25 Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)

(1) The trust satisfies the requirements in this subsection in relation to the income year if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) one or more entities covered by subsection 275-20(4) have a total *MIT participation interest in the trust of more than 25% at the time the payment mentioned in paragraph 275-10(3)(a) is made; and

(b) at no time in the income year does an entity (other than an entity covered by subsection 275-20(4)) have a MIT participation interest in the trust of more than 60%.

(2) For the purposes of paragraphs (1)(a) and (b):

(a) if:

(i) an entity covered by subsection 275-20(4) has a *MIT participation interest (the ***first interest***) in the trust; and

(ii) another entity covered by subsection 275-20(4) also has a MIT participation interest (the ***second interest***) in the trust;

disregard the second interest to the extent that it arises through the existence of the first interest; and

(b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts—do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.

(3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.

(4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

275-30 Closely-held restrictions

(1) The trust satisfies the requirements in this subsection in relation to the income year unless, at any time in the income year, any of the following situations exist:

(a) for a trust mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—10 or fewer persons have a total *MIT participation interest in the trust of 75% or more;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) if paragraph (a) does not apply—20 or fewer persons have a total MIT participation interest in the trust of 75% or more;

(c) a foreign resident individual has a MIT participation interest in the trust of 10% or more.

(2) For the purposes of paragraphs (1)(a) and (b):

(a) if an entity covered by subsection 275-20(4) has a *MIT participation interest in the trust—treat that entity as *not* having a MIT participation interest in the trust; and

(b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts:

(i) if the entity is covered by subsection 275-20(4)—do not treat it as having a MIT participation interest in the trust; and

(ii) do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.

(3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.

(4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

275-35 Licensing requirements for unregistered MIS

(1) The trust satisfies the requirements in this section in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made (the time of the first fund payment for the income year):

(a) the trust is operated or managed by:

(i) a financial services licensee (within the meaning of section 761A of the *Corporations Act 2001*) holding an Australian financial services licence whose licence covers it providing financial services (within the meaning of section 766A of that Act) to wholesale clients (within the meaning of section 761G of that Act); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or

(b) the trust is operated or managed by an entity covered by subsection (2); or

(c) the trust is operated or managed by an entity that:

(i) is a *wholly-owned subsidiary of an entity covered by subsection (2); and

(ii) is an entity covered by subsection (3).

(2) An entity is covered by this subsection if it would, but for subsection 5A(4) of the *Corporations Act 2001* (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).

(3) An entity is covered by this subsection if it would, but for any instrument issued by ASIC under the *Corporations Act 2001* that has effect in relation to the entity and the operation of the scheme mentioned in paragraph 275-10(3)(c), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).

275-40 MIT participation interest

(1) An entity has a ***MIT participation interest*** in a trust if the entity, directly or indirectly:

(a) holds, or has the right to *acquire, interests representing a percentage of the value of the interests in the trust; or

(b) has the control of, or the ability to control, a percentage of the rights attaching to *membership interests in the trust; or

(c) has the right to receive a percentage of any distribution of income that the trust may make.

(2) The ***MIT participation interest*** of the entity in the trust is the greatest of the percentages mentioned in paragraphs (1)(a), (b) and (c).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

275-45 Meaning of *managed investment trust*—every member of trust is a managed investment trust etc.

(1) A trust is covered under this section in relation to an income year if:

(a) the condition in paragraph 275-10(3)(a) is satisfied; and

(b) the condition in paragraph 275-10(3)(b) is satisfied; and

(c) either:

(i) the only *members of the trust are entities that are covered by subsection 275-20(4) (other than entities mentioned in paragraph 275-20(4)(f)); or

(ii) the only members of the trust are entities that are *managed investment trusts in relation to the income year because of subsection 275-10(2); and

(d) the trust satisfies the licensing requirements in section 275-35 in relation to the income year.

(2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is satisfied:

(a) at the time the trustee of the trust makes the first *fund payment in relation to the income year; or

(b) if the trustee does not make such a payment in relation to the income year—at both the start and the end of the income year.

275-50 Extended definition of *managed investment trust*—no fund payment made in relation to the income year

A trust is covered under this section in relation to an income year if:

(a) the trustee of the trust does not make a *fund payment in relation to the income year; and

(b) the trust would be a *managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year when it was in existence; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) the trust would be a managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year on which it was in existence.

275-55 Extended definition of *managed investment trust*—temporary circumstances outside the control of the trustee

A trust is covered under this section in relation to an income year if:

(a) apart from a particular circumstance, the trust would be a *managed investment trust in relation to the income year; and

(b) the circumstance is temporary; and

(c) the circumstance arose outside the control of the trustee of the trust; and

(d) it is fair and reasonable to treat the trust as a managed investment trust in relation to the income year, having regard to the following matters:

(i) the matters in paragraphs (a) and (b);

(ii) the nature of the circumstance;

(iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;

(iv) the extent to which treating the trust as a managed investment trust in relation to the income year would increase or reduce the amount of tax otherwise payable by the trustee, the *members of the trust or any other entity;

(v) any other relevant matter.

Subdivision 275-B—Choice for capital treatment of managed investment trust gains and losses

Table of sections

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

275-105 Covered assets
275-110 MIT not to be trading trust
275-115 MIT CGT choices
275-120 Consequences of not making choice—revenue account treatment

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses

(1) The modifications in subsection (2) apply if:

(a) a *CGT event happens at a time involving a *CGT asset; and

(b) the CGT asset is owned at that time by an entity that is a *managed investment trust in relation to the income year in which the time occurs; and

(c) the CGT event happens because the managed investment trust *disposes of, ceases to own or otherwise realises the asset; and

(d) the asset is covered by section 275-105; and

(e) the entity meets the requirement in section 275-110 at the time; and

(f) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.

(1A) Without limiting paragraph (1)(b), if:

(a) a *VCLP or an *ESVCLP owns a *CGT asset at the time referred to in that paragraph; and

(b) at that time, the *managed investment trust has an interest in the asset as a *limited partner of the VCLP or ESVCLP;

for the purposes of that paragraph, the managed investment trust is taken to own the asset to the extent of that interest.

(2) These provisions do not apply to the *CGT event:

(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);

(b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes);

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) section 118-20 (about reducing capital gains if amount otherwise assessable);
(d) Division 70 and section 118-25 (about trading stock).

General exceptions

(3) The provisions referred to in subsection (2) can apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-13	Shares in a PDF
3	Section 118-60	Certain gifts

Trading stock and profit-making undertakings or plans involving land etc.

(4) The provisions referred to in subsection (2) can also apply to the *CGT event if:
(a) where the *CGT asset is land (including an interest in land), or a right or option to *acquire or *dispose of land (including an interest in land):
(i) the CGT asset is *trading stock; or
(ii) the circumstances existing at the time of the event would, disregarding this Subdivision, give rise to an amount being included in the assessable income of the entity under section 15-15 or to a deduction for the entity under section 25-40 (about profit-making undertakings or plans); or
(b) where paragraph (a) does not apply:
(i) the *managed investment trust acquired the CGT asset in an income year for which the choice mentioned in paragraph (1)(f) was not in force; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the start of the income year in which that choice first came into force; and

(iii) the CGT asset was treated as trading stock in the *income tax return for the managed investment trust for the most recent income year ending before the start of the income year in which that choice first came into force; and

(iv) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the time of the event; and

(v) the CGT asset was treated as trading stock in the income tax return for the managed investment trust for the most recent income year ending before the time of the event.

Treatment of outgoings to acquire trading stock

(5) The modifications in subsection (6) apply if:

(a) an entity that is a *managed investment trust in relation to the income year *acquires a *CGT asset at a time in that income year; and

(b) the CGT asset is an item of *trading stock; and

(c) the CGT asset is *not* land (including an interest in land), or a right or option to acquire or *dispose of land (including an interest in land); and

(d) the entity incurs an outgoing in connection with acquiring the asset; and

(e) the asset is covered by section 275-105; and

(f) the entity meets the requirement in section 275-110 at the time; and

(g) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.

(6) The modifications are as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) section 8-1 (about amounts you can deduct) does not apply to the *acquisition;
(b) Division 70 (about trading stock) does not apply in relation to the asset in respect of:
(i) the income year in which the time occurs; and
(ii) any later income year in relation to which the entity is a *managed investment trust and throughout which the entity meets the requirement in section 275-110.

275-105 Covered assets

(1) An asset is covered by this section if it is any of the following:
(a) a *share in a company (including a share in a *foreign hybrid company);
(b) a *non-share equity interest in a company;
(c) a unit in a unit trust;
(d) land (including an interest in land);
(e) a right or option to *acquire or *dispose of an asset of a kind mentioned in paragraph (a), (b), (c) or (d).

(2) However, the asset is *not* covered by this section if it is any of the following:
(a) a *Division 230 financial arrangement;
(b) a *debt interest.

275-110 MIT not to be trading trust

(1) An entity that is a trust meets the requirement in this section at a time if the entity is not, at that time, a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to that income year.

(2) If, apart from a particular circumstance, a trust would meet the requirement in subsection (1) at a time, the trust also meets the requirement in this section at a time if:
(a) the circumstance is temporary; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the circumstance arose outside the control of the trustee of the trust; and

(c) the trustee of the trust is *not* liable to pay income tax on the net income of the trust under section 102S of the *Income Tax Assessment Act 1936* for the income year in which the time occurs; and

(d) it is fair and reasonable to treat the trust as meeting the requirement in this section at that time, having regard to the following matters:

(i) the matters in paragraphs (a), (b) and (c);

(ii) the nature of the circumstance;

(iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;

(iv) the extent to which treating the trust as meeting the requirement in this section at that time would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;

(v) any other relevant matter.

275-115 MIT CGT choices

(1) The trustee of an entity that is a *managed investment trust may make a choice under this section that covers the managed investment trust.

(2) The choice must be made in the *approved form.

(3) The choice can be made only:

(a) if the entity became a *managed investment trust in the 2009-10 income year or a later income year (whether or not the entity existed before it became a managed investment trust)—on or before the latest of the following days:

(i) the day it is required to lodge its *income tax return for the income year in which it became a managed investment trust;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) if the Commissioner allows a later day for the managed investment trust—that later day; or

(b) otherwise—on or before the latest of the following days:

(i) the last day in the 3 month period starting on the day on which this section commences;

(ii) the last day of the 2009-10 income year;

(iii) if the Commissioner allows a later day for the managed investment trust—that later day.

(4) The choice, once made, cannot be revoked.

(5) The choice is in force:

(a) in the circumstances mentioned in paragraph (3)(a)—for the income year in which the entity became a *managed investment trust (whether or not the entity existed before it became a managed investment trust) and later income years; or

(b) in the circumstances mentioned in paragraph (3)(b)—for the 2008-09 income year and later income years.

275-120 Consequences of not making choice—revenue account treatment

(1) This section applies if:

(a) the requirements in subsection 275-100(1) are met in relation to a *CGT asset held by a *managed investment trust, apart from the requirement in paragraph 275-100(1)(f); and

(b) the CGT asset is not:

(i) land (including an interest in land); or

(ii) a right or option to *acquire or *dispose of land (including an interest in land); and

(c) the managed investment trust disposes of, ceases to own or otherwise realises the asset; and

(d) disregarding this section:

(i) the net proceeds (if any) from the disposal, cessation or realisation would not be reflected in an amount being

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and

(ii) the gain or profit (if any) on the disposal, cessation or realisation would not be reflected in an amount being included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and

(iii) the loss (if any) on the disposal, cessation or realisation would not be reflected in an amount being deductible by the managed investment trust.

(2) For the purposes of this Act, treat the disposal, cessation of ownership of or realisation of the asset in the same way as the disposal, cessation of ownership of or realisation of a *revenue asset.

Subdivision 275-C—Carried interests in managed investment trusts

Table of sections

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

(1) This section applies if:

(a) you hold a *CGT asset in an income year that carries an entitlement to a distribution from an entity; and

(b) the entitlement to such a distribution is contingent upon the attainment of profits by the entity; and

(c) the entity satisfies any of these requirements:

(i) it is a *managed investment trust in relation to the income year;

(ii) it was a managed investment trust in relation to a previous income year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(d) you acquired the asset because of services you or your *associate provided, or will provide, to the entity; and

(e) you or your associate provided, or will provide, those services:

(i) as a manager of the entity; or

(ii) as an associate of a manager of the entity; or

(iii) as an employee of a manager of the entity; or

(iv) as an associate of an employee of a manager of the entity; and

(f) any of the following apply:

(i) you become entitled in the income year to such a distribution (regardless of whether the distribution is made immediately, or is to be made in the future);

(ii) a *CGT event happens in relation to the asset in the income year.

(1A) For the purposes of paragraph (1)(c), in determining whether the entity satisfies any of the requirements mentioned in that paragraph:

(a) disregard paragraph 275-10(3)(b) (requirement of not being a trading trust etc.); and

(b) disregard subsection 102T(16) of the *Income Tax Assessment Act 1936* (exclusion of public trading trust etc.).

(2) Include in your assessable income for the income year:

(a) the amount of the distribution (except to the extent that it represents a return of capital that you or your associate contributed in order for you to *acquire the asset); or

(b) the amount of your gain or profit (if any) on the *CGT event.

(3) Subsection (2) does not apply to the extent that the amount is included in your assessable income as:

(a) *ordinary income under section 6-5; or

(b) *statutory income under a section of this Act, other than a provision in Part 3-1 or 3-3.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(4) An amount to which subsection (2) applies is taken, for the purposes of the *income tax laws, to have a source in Australia. For the purposes of this subsection, disregard subsection (3).

(5) You are entitled to a deduction for the income year for the amount of your loss (if any) on the *CGT event.

(6) Subsection (5) does not apply to the extent that you can deduct the amount under another provision of this Act.

(7) Subdivision 115-C does not apply to the amount of a distribution mentioned in subparagraph (1)(f)(i) if:

(a) that amount is included in your assessable income under subsection (2); or

(b) an amount referable to that amount is included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936*.

Subdivision 275-L—Modification for non-arm's length income

Guide to Subdivision 275-L

275-600 What this Subdivision is about

The trustee of a managed investment trust in relation to an income year is taxed on amounts related to the managed investment trust's non-arm's length income for the income year.

Table of sections

Operative provisions

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust
275-610 Non-arm's length income
275-615 Commissioner's determination in relation to amount of non-arm's length income

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust

(1) Subsections (2), (3) and (4) apply if the Commissioner has made a determination under section 275-615 that specifies an amount of *non-arm's length income for a specified *managed investment trust in relation to a specified income year.

Excess amount to be taxed

(2) The trustee of the *managed investment trust is liable to pay income tax at the rate declared by the Parliament on the amount mentioned in subsection (5).

Note: The rate is set out in subsection 12(10) of the *Income Tax Rates Act 1986*.

Excess amount to be adjusted

(3) If the trust is an *AMIT for the income year:

(a) if paragraph (b) does not apply—treat the trust as having an *over in the income year in which the determination is made, for the specified income year, of a character relating to *ordinary income, or *statutory income, from an *Australian source, equal to the amount mentioned in subsection (5); or

(b) if the trust already has such an over in the income year in which the determination is made, for the specified income year—increase the amount of that over by the amount mentioned in subsection (5).

(4) If the trust is *not* an *AMIT for the income year, reduce the trust's *net income for the income year in which the determination is made by the amount mentioned in subsection (5), to the extent that the net income is attributable to that amount.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Excess amount

(5) The amount is the excess mentioned in paragraph 275-610(1)(b) in respect of the *non-arm's length income, reduced by deductions (if any) that:

(a) are reflected in:

(i) if the trust is an *AMIT for the income year—the amounts of its *trust components for the income year (disregarding subsection (3)); or

(ii) otherwise—its *net income for the income year (disregarding subsection (4)); and

(b) are attributable only to the amount of non-arm's length income.

275-610 Non-arm's length income

(1) An amount of *ordinary income or *statutory income is ***non-arm's length income*** of a *managed investment trust if:

(a) it is derived from a *scheme the parties to which were not dealing with each other at *arm's length in relation to the scheme; and

(b) that amount exceeds the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme; and

(c) the amount is none of the following:

(i) a distribution from a *corporate tax entity;

(ii) a distribution from a trust that is *not* a party to the scheme mentioned in paragraph (a);

(iii) a *return covered by subsection (2).

(1A) Disregard subparagraph (1)(c)(ii) if the amount of *ordinary income or *statutory income is *excepted MIT CSA income.

(2) This subsection covers a *return that an entity pays or provides on a *debt interest, if the rate (expressed on an annual basis) of the return does not exceed the greater of:

(a) the *benchmark rate of return for the interest; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the *base interest rate for the day on which the return is paid or provided, plus 3 percentage points.

(3) Subsection (4) applies if:

(a) an amount would be *non-arm's length income of the *managed investment trust (disregarding that subsection); and

(b) the amount is a distribution from a trust, or a share of the *net income of a trust, if the trust is a party to the scheme mentioned in paragraph (1)(a).

(4) The amount is *non-arm's length income of the *managed investment trust only to the extent that the distribution or share of *net income is attributable to non-arm's length income of the trust mentioned in paragraph (3)(b) (on that assumption that the trust were a managed investment trust) because of another operation of this section.

(5) Subsection (6) applies if:

(a) an amount (the ***first amount***) of *ordinary income or *statutory income of the *managed investment trust that would be *non-arm's length income of the managed investment trust (disregarding that subsection) is:

(i) a distribution from a trust that is a party to the scheme mentioned in paragraph (1)(a); or

(ii) a share of the *net income of a trust that is a party to that scheme; and

(b) another amount (the ***second amount***) of ordinary income or statutory income of the managed investment trust is:

(i) a distribution from another trust (whether or not the other trust is a party to that scheme); or

(ii) a share of the net income of another trust (whether or not the other trust is a party to that scheme); and

(c) it is reasonable to conclude that the second amount would have been higher but for the first amount.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(6) The first amount is *not* *non-arm's length income of the *managed investment trust to the extent that the second amount would have been higher as mentioned in paragraph (5)(c).

275-615 Commissioner's determination in relation to amount of non-arm's length income

(1) The Commissioner may make a determination in writing that specifies an amount of *non-arm's length income for a specified *managed investment trust in relation to a specified income year if the Commissioner is satisfied that:

(a) the amount of non-arm's length income for the managed investment trust in relation to the income year is reflected in:

(i) if the trust is an *AMIT for the income year—one or more of its *trust components for the income year; or

(ii) otherwise—its *net income for the income year; and

(b) the managed investment trust is a party to the *scheme mentioned in paragraph 275-610(1)(a) at a time in the income year in which the amount is derived; and

(c) at least one the parties to that scheme is *not* a managed investment trust in relation to the income year.

(1A) Disregard paragraphs (1)(b) and (c) if the amount of *non-arm's length income is *excepted MIT CSA income.

Determination does not form part of assessment

(2) A determination under subsection (1) does not form part of an assessment.

Notice by Commissioner of determination

(3) If the Commissioner makes a determination under subsection (1), the Commissioner must give a copy of the determination to the *managed investment trust concerned.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Evidence of determination

(4) The production of:

(a) a notice of a determination; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is:

(c) conclusive evidence of the due making of the determination; and

(d) conclusive evidence that the determination is correct (except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination).

Objections

(5) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 276—Australian managed investment trusts: attribution managed investment trusts

Table of Subdivisions

Guide to Division 276
276-A What is an attribution managed investment trust?
276-B Member's vested and indefeasible interest in share of income and capital of AMIT
276-C Taxation etc. of member components
276-D Member components
276-E Trust components
276-F Unders and overs
276-G Shortfall and excess taxation
276-H AMMA statements
276-J Debt-like trust instruments
276-K Ceasing to be an AMIT

Guide to Division 276

276-1 What this Division is about

A managed investment trust in relation to an income year is an attribution managed investment trust (or AMIT) for the income year if certain criteria are satisfied. In particular, for the trust to be an AMIT, the interests of the members of the trust need to be clearly defined at all times during which the trust is in existence in the income year (see Subdivision 276-A).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year (see Subdivision 276-B).

Amounts related to income and tax offsets of an AMIT, determined by the trustee to be of a particular tax character, are attributed to members, generally retaining that tax character (see Subdivision 276-C).

Underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is done on a character-by-character basis. An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character. Unders and overs arise, and are dealt with, in the income year in which they are discovered (see Subdivision 276-F).

The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets (see Subdivision 276-G).

Special rules apply to a trust that ceases to be an AMIT (see Subdivision 276-K).

Subdivision 276-A—What is an attribution managed investment trust?

Guide to Subdivision 276-A

276-5 What this Subdivision is about

A managed investment trust in relation to an income year is an ***attribution managed investment trust*** (or ***AMIT***) for the income year if certain criteria are satisfied. In particular:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) the interests of the members of the trust need to be clearly defined at all times when the trust is in existence in the income year; and
(b) the trustee of the trust needs to have made a choice for the trust to be an AMIT in respect of that income year or an earlier income year.

Table of sections

Operative provisions

276-10 Meaning of ***attribution managed investment trust*** (or ***AMIT***)
276-15 Clearly defined interests
276-20 Trust with classes of membership interests—each class treated as separate AMIT

Operative provisions

276-10 Meaning of *attribution managed investment trust* (or *AMIT*)

(1) A trust is an ***attribution managed investment trust*** (or ***AMIT***) for an income year if:
  (a) the trust is a *managed investment trust in relation to the income year; and
  (b) the rights to income and capital arising from each of the *membership interests in the trust are clearly defined (see section 276-15) at all times when the trust is in existence in the income year; and
  (d) if the regulations specify criteria for the purposes of this paragraph—those criteria are satisfied in relation to the trust; and
  (e) either:
    (i) the trustee of the trust has made a choice for the purposes of this subparagraph in respect of that income year; or
    (ii) the trust was an AMIT for an earlier income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) A choice for the purposes of subparagraph (1)(e)(i) cannot be revoked.

276-15 Clearly defined interests

(1) Without limiting the circumstances in which the rights to income and capital arising from the *membership interests in a trust are clearly defined for the purposes of paragraph 276-10(1)(b), treat such rights as being clearly defined at a particular time for those purposes if any of the following conditions are satisfied at that time:

(a) the trust is registered under section 601EB of the *Corporations Act 2001*;

(b) the rights to income and capital arising from each of the membership interests in the trust are the same.

(2) For the purposes of working out whether the condition in paragraph (1)(b) is satisfied, disregard the following:

(a) fees or charges imposed by the trustee on the *members of the trust;

(b) issue and redemption prices of *membership interests in the trust;

(c) exposure of the membership interests in the trust to foreign exchange gains and losses.

276-20 Trust with classes of membership interests—each class treated as separate AMIT

(1) Subsections (2) and (3) apply if:

(a) the *membership interests in an *AMIT for an income year are divided into classes; and

(b) the rights arising from each of those membership interests in a particular class are the same as the rights arising from every other of those membership interests in that class; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) each of those membership interests in a particular class is distinct from each of those membership interests in another class; and

(d) the trustee of the AMIT has made a choice for the purposes of this paragraph that applies to the income year.

(2) For the purposes of this Division (other than this Subdivision), treat each class of those *membership interests in the *AMIT as being a separate AMIT for that income year.

(3) For the purposes of this Division, allocate assessable income, *exempt income, *non-assessable non-exempt income, *tax losses, *net capital losses and other similar amounts in respect of the *AMIT between each of the separate classes mentioned in subsection (1) on a fair and reasonable basis.

Making of choice by trustee

(4) A choice for the purposes of paragraph (1)(d) applies to the income year for which it is made and every subsequent income year.

(5) A choice for the purposes of paragraph (1)(d) cannot be revoked.

Subdivision 276-B—Member's vested and indefeasible interest in share of income and capital of AMIT

Guide to Subdivision 276-B

276-50 What this Subdivision is about

An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Table of sections

Operative provisions

276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital

Operative provisions

276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital

For the purposes of this Act:

(a) treat an *AMIT for an income year as a *fixed trust; and

(b) treat an entity that is a *member of the AMIT in respect of the income year as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

Subdivision 276-C—Taxation etc. of member components

Guide to Subdivision 276-C

276-75 What this Subdivision is about

Amounts related to income and tax offsets of an AMIT, of a particular tax character, are attributed to members of the AMIT on the basis of their determined member components of that tax character.

This attribution does not apply to the extent that amounts have been withheld etc. in relation to those components under Subdivision 12-F, 12-H or 12A-C in Schedule 1 to the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

The trustee of an AMIT that is not a withholding MIT may be liable to pay income tax in respect of a determined member component of a foreign resident member (including where that member is acting in the capacity of a trustee). As a result, the member may be entitled to a tax offset.

Table of sections

Taxation etc. of member on determined member components

276-80 Member's assessable income or tax offsets for determined member components—general rules
276-85 Member's assessable income or tax offsets for determined member components—specific rules
276-90 Commissioner's determination as to status of member as qualified person
276-95 Relationship between section 276-80 and withholding rules
276-100 Relationship between section 276-80 and other charging provisions in this Act

Foreign resident members—taxation of trustee and corresponding tax offset for members

276-105 Trustee taxed on foreign resident's determined member components
276-110 Refundable tax offset for foreign resident member—member that is not a trustee

Special rule for interposed custodian

276-115 Custodian interposed between AMIT and member

Taxation etc. of member on determined member components

276-80 Member's assessable income or tax offsets for determined member components—general rules

Components of income character

(1) Subsection (2) applies if a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) a character relating to assessable income; or
(b) a character relating to *exempt income; or
(c) a character relating to *non-assessable non-exempt income.

(2) For the purpose of working out the effects mentioned in subsection (3) for the *member, treat the member as having derived, received or made the amount reflected in the *determined member component:
(a) in the member's own right (rather than as a member of a trust); and
(b) in the same circumstances as the *AMIT derived, received or made that amount, to the extent that those circumstances gave rise to the particular character of that component.

(3) The effects are as follows:
(a) including an amount in the assessable income of the *member;
(b) including an amount in the *exempt income of the member;
(c) including an amount in the *non-assessable non-exempt income of the member;
(d) determining whether the member has made a *capital gain from a *CGT event;
(e) determining the extent to which the member's *net capital loss has been *utilised.

Components of tax offset character

(4) Subsection (5) applies if a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of a character relating to a *tax offset.

(5) For the purpose of working out the effects mentioned in subsection (6) for the *member, treat the member as having paid or received the amount reflected in the *determined member component:
(a) in the member's own right (rather than as a member of a trust); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) in the same circumstances as the *AMIT paid or received that amount.

(6) The effects are as follows:
(a) entitling the member to a *tax offset;
(b) entitling the member to a credit under Division 18 in Schedule 1 to the *Taxation Administration Act 1953*.

276-85 Member's assessable income or tax offsets for determined member components—specific rules

(1) This section makes clarifications and modifications of the operation of section 276-80 in respect of a *member of an *AMIT in respect of an income year.

(2) For the purposes of this Act, if an amount is included in the *member's assessable income because of the operation of this section, treat that amount as being so included because of the operation of subsection 276-80(2).

Discount capital gains

(3) Subsection (4) applies if the *member has, for the income year, a *determined member component of the character of:
(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or
(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of section 276-80 and this section, treat the amount of the component as being double what it would be apart from this subsection.

Franking credit gross-up

(5) Subsection (6) applies if the *member has, for the income year, a *determined member component (the ***franking credit gross-up***

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

component) of the character of assessable income under subsection 207-20(1) (franking credit gross-up).

(6) For the purposes of subsection 207-20(1) (franking credit gross-up), treat the reference in that subsection to the amount of the *franking credit on the distribution as instead being a reference to the amount of the franking credit gross-up component.

Limitation on circumstances in paragraph 276-80(2)(b)

(7) The circumstances mentioned in paragraph 276-80(2)(b) or (5)(b) do not include the following:
  (a) the residence of the trustee of the *AMIT;
  (b) the place of the central management and control of the AMIT.

276-90 Commissioner's determination as to status of member as qualified person

(1) Subsection (2) applies to a *member of an *AMIT in respect of an income year if:
  (a) the AMIT is specified in a determination under subsection (3); and
  (b) the income year is specified in the determination; and
  (c) the member:
    (i) is specified in the determination; or
    (ii) is included in a class of members specified in the determination.

(2) Treat the *member as *not* being a qualified person in relation to a distribution in relation to the *AMIT for the income year, for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*.

(3) For the purposes of this section, the Commissioner may make a determination in writing that identifies any of the following:
  (a) a specified *member of a specified *AMIT;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) a specified class of members of a specified AMIT.

(4) The determination may specify one or more income years.

(5) In deciding whether to make a determination under subsection (3), the Commissioner may have regard to any of the following:
   (a) arrangements (if any) entered into by the *member that directly or indirectly reduce the economic exposure of the member to changes in the value of the *membership interests held by the member in the *AMIT;
   (b) the lack of such arrangements;
   (c) the length of time that the member has been a member of the AMIT;
   (d) any other matter that the Commissioner considers relevant.

(6) A determination under subsection (3) is not a legislative instrument.

(7) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

276-95 Relationship between section 276-80 and withholding rules

(1) Subsection 276-80(2) does *not* apply to the extent that the *determined member component is reflected in an *AMIT DIR payment or a *fund payment, if an amount in respect of the payment:
   (a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
   (b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or
   (c) has been paid under Division 12A in that Schedule; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.

(2) However, if the *determined member component is reflected in a *fund payment, subsection (1) applies only to the extent to which an amount attributable to the fund payment is treated under section 840-815 as not assessable income and not *exempt income.

(3) Subsection 276-80(2) does not affect the operation of the following:

(a) Division 11A of Part III of the *Income Tax Assessment Act 1936*;

(b) Subdivision 840-M of this Act;

(c) Division 12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: See Division 12A in Schedule 1 to the *Taxation Administration Act 1953* for provisions about withholding tax that apply specifically to AMITs.

276-100 Relationship between section 276-80 and other charging provisions in this Act

(1) This section applies if:

(a) an amount is included in the assessable income of a *member of an *AMIT in respect of an income year in respect of the member's interest in the AMIT; and

(b) that amount is so included otherwise than because of the operation of subsection 276-80(2).

(2) Reduce the amount included in the assessable income of the *member as mentioned in subsection (1) to the extent (if any) that a corresponding amount is included in the assessable income of the member in respect of the member's interest in the *AMIT because of the operation of subsection 276-80(2).

(3) To avoid doubt, this section is subject to section 230-20 (financial arrangements).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Foreign resident members—taxation of trustee and corresponding tax offset for members

276-105 Trustee taxed on foreign resident's determined member components

(1) This section applies if:

(a) a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of a character relating to assessable income in respect of the AMIT; and

(b) either:

(i) unless subparagraph (ii) applies—the member is a foreign resident at the end of the income year; or

(ii) if the member is, in respect of that determined member component, a beneficiary in the capacity of a trustee of another trust—a trustee of the other trust is a foreign resident at the end of the income year; and

(c) the AMIT is not a *withholding MIT.

(2) The trustee of the *AMIT is to be assessed and is liable to pay income tax:

(a) if subparagraph (1)(b)(i) applies and the *member is *not* a company—in respect of the amount mentioned in subsection (3) as if it were the income of an individual and were not subject to any deduction; or

(b) if subparagraph (1)(b)(i) applies and the member is a company—in respect of the amount mentioned in subsection (3) at the rate declared by the Parliament for the purposes of this paragraph; or

(c) if subparagraph (1)(b)(ii) applies—in respect of the amount mentioned in subsection (4) or (5) at the rate declared by the Parliament for the purposes of this paragraph.

Note: The rates are set out in the following provisions:

(a) for paragraph (a)—subsection 12(6A) of the *Income Tax Rates Act 1986* and Schedule 10A to that Act;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) for paragraph (b)—paragraph 28A(a) of that Act;
(c) for paragraph (c)—paragraph 28A(b) of that Act.

(3) The amount is the *determined member component, to the extent that the component:
(a) is attributable to a period when the *member was an Australian resident; or
(b) is attributable to a period when the member was not an Australian resident and is attributable to sources in Australia.

(4) The amount is the *determined member component, to the extent that the component is attributable to sources in Australia.

(5) For the purposes of subsection (4), treat the entire amount of the *determined member component as not being attributable to sources in Australia if it is of the character of:
(a) a *discount capital gain from a *CGT asset that is not *taxable Australian property; or
(b) a *capital gain (other than a discount capital gain) from a CGT asset that is not taxable Australian property.

Exception for component reflected in AMIT DIR payment or fund payment

(6) Subsection (2) does *not* apply to the extent that the *determined member component is reflected in an *AMIT DIR payment or a *fund payment, if an amount in respect of the payment:
(a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
(b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or
(c) has been paid under Division 12A in that Schedule; or
(d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Gross-up for discount capital gain

(7) Subsection (8) applies if a *determined member component is of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(8) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

276-110 Refundable tax offset for foreign resident member—member that is not a trustee

(1) This section applies if a trustee is assessed and liable to pay income tax under section 276-105 in respect of a *member because of paragraph 276-105(2)(a) or (b).

(2) The *member is entitled to a *tax offset for the income year equal to the tax paid by the trustee in accordance with subsection 276-105(2).

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23.

Special rule for interposed custodian

276-115 Custodian interposed between AMIT and member

(1) This section applies if:

(a) a trust that is a *custodian is a *member of an *AMIT in respect of an income year; and

(b) the custodian has, for the income year, a *determined member component of a particular character for the AMIT; and

(c) the custodian is interposed between the AMIT and another entity (the ***subsequent recipient***); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(d) the subsequent recipient:
(i) starts to have, at a time in the income year, an entitlement to an amount that is reasonably attributable to all or part of the determined member component; or
(ii) would start to have, at a time in the income year, such an entitlement if the determined member component were an actual payment of an amount.

(2) For the purposes of this Subdivision, reduce the *custodian's *determined member component by the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

Note: This subsection may operate to reduce the amount of the determined member component multiple times if there is more than one subsequent recipient in respect of which the requirements in paragraphs (1)(c) and (d) are satisfied.

(3) For the purposes of this Subdivision:
(a) treat the subsequent recipient as being a *member of the *AMIT in respect of the income year; and
(b) treat the subsequent recipient as having, for the income year, a *determined member component for the AMIT that:
(i) is of the character mentioned in paragraph (1)(b); and
(ii) is equal to the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

Subdivision 276-D—Member components

Guide to Subdivision 276-D

276-200 What this Subdivision is about

A member's ***member component*** of a particular character is so much of an AMIT's determined trust component of that character (see Subdivision 276-E) as is attributable to membership interests held by the member, worked out in accordance with certain requirements.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

A member's ***determined member component*** of a particular character is the amount stated to be the member's member component of that character in an AMMA statement (see Subdivision 276-H).

Table of sections

Member-level concepts

276-205 Meaning of ***determined member component***
276-210 Meaning of ***member component***

Member-level concepts

276-205 Meaning of *determined member component*

(1) The ***determined member component*** of a particular character for an income year of a *member of an *AMIT in respect of the income year is the amount of the member's *member component of that character as reflected in the AMIT's latest *AMMA statement for the member for the income year.

(2) Subsection (3) applies if:
  (a) the *member makes a choice for the purposes of this paragraph that complies with subsection (5); and
  (b) the member gives a copy of the choice to the Commissioner within 4 months after:
    (i) unless subparagraph (ii) applies—the end of the member's income year; or
    (ii) if the *AMIT gives the member a revised *AMMA statement for the income year at a time after the end of that income year—that time; and
  (c) the member gives a notice of the choice, in accordance with subsection (7), to the trustee of the AMIT within those 4 months.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) Despite subsection (1), if the *determined member component of that character for the income year (disregarding this subsection) does *not* accord with subsections 276-210(2), (3) and (4), that ***determined member component*** is instead the member's *member component of that character for the income year.

(4) For the purposes of subsection (3), in working out the member's *member component of that character for the income year, if the *trust component of that character differs from the *determined trust component of that character, treat the references in section 276-210 to determined trust component as instead being references to trust component.

Example: The determined trust component exceeds the trust component because of an unintentional mistake by the trustee of the AMIT. As a result, a member's corresponding determined member component under subsection (1) exceeds what it would have been if the trustee had not made the mistake.

If the member makes a choice under subsection (2), the amount of the determined member component will be determined according to the amount of the trust component.

(5) The choice must:
  (a) be in writing; and
  (b) state the following matters:
    (i) the income year to which the choice relates;
    (ii) what the *member considers to be the member's *member component of that character for the income year;
    (iii) the reason why the member considers that the *determined member component of that character for the income year does *not* accord with subsections 276-210(2), (3) and (4).

(6) The way the *member's *income tax return is prepared is sufficient evidence of the making of the choice.

(7) The notice must:
  (a) be in writing; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) state the matters mentioned in paragraph (5)(b).

276-210 Meaning of *member component*

(1) This section applies to a *member of an *AMIT in respect of an income year and sets out how to work out the member's *member components for the year.

*Meaning of **member component***

(2) The *member's ***member component*** of a character is so much of the *AMIT's *determined trust component of that character as is attributable to the *membership interests in the AMIT held by the member, worked out in accordance with the requirements in subsections (3) and (4).

Attribution must be fair and reasonable and accord with constituent documents

(3) The attribution must be worked out on a fair and reasonable basis, in accordance with the constituent documents of the *AMIT. This requirement is subject to the requirement in subsection (4).

Attribution must not involve streaming of character amounts

(4) The attribution must not attribute any part of a *determined trust component of a particular character to a *member's *membership interests because of the tax characteristics of the member.

Safe harbour rules

(5) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) the constituent documents of the *AMIT give the trustee of the AMIT the power to direct an amount arising from the sale of an asset to a particular *member, if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) the member redeems one or more *membership interests in the AMIT; and

(ii) the direction of the amount is made to fund the redemption; and

(b) the trustee exercises that power.

(6) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) either:

(i) an amount of an *under, relating to a base year (as mentioned in subsection 276-345(1)) increases a *trust component of the *AMIT for a later income year under section 276-305; or

(ii) an amount of an *over, relating to a base year (as mentioned in subsection 276-345(1)) decreases a trust component of the AMIT for a later income year under section 276-305; and

(b) an entity is a *member of the AMIT at a time in the later income year, but was *not* a member of the AMIT in respect of the base year.

(7) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) the trustee made a *capital gain or *capital loss in an income year (for the purposes of working out the amount of a *trust component of the *AMIT for an income year in accordance with the rules in section 276-265); and

(b) an entity was a *member of the AMIT in respect of the income year, but was *not* a member of the AMIT at the time the capital gain or capital loss was made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 276-E—Trust components

Guide to Subdivision 276-E

276-250 What this Subdivision is about

An AMIT's ***trust component*** of a particular character is worked out on the basis of the AMIT's assessable income, exempt income, non-assessable non-exempt income and tax offsets (on the assumption that the AMIT were an Australian resident liable to pay tax).

An AMIT's ***determined trust component*** of a particular character is the amount stated to be its trust component of that character in a document that meets certain requirements.

Table of sections

Trust-level concepts

276-255 Meaning of ***determined trust component***
276-260 Meaning of ***trust component***
276-265 Rules for working out trust components—general rules
276-270 Rules for working out trust components—allocation of deductions

Trust-level concepts

276-255 Meaning of *determined trust component*

(1) An *AMIT's ***determined trust component*** of a particular character for an income year is the amount stated to be its *trust component of that character in a document that meets the requirements in subsection (2).

(2) The requirements are as follows:
(a) the document was created by the *AMIT;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the document states expressly the amount of the *trust component;

(c) at a time after the document was created, the AMIT sent *AMMA statements for the income year to entities that were *members of the AMIT in respect of the income year;

(d) the amount of the trust component stated in the document reflects the amount of the *determined member components reflected in those AMMA statements.

(3) If, apart from this subsection, there are 2 or more documents that meet the requirements in subsection (2), treat the most recently created of those documents as being the only document that meets those requirements.

Example: The income year for the AMIT ends on 30 June. The trustee creates a document stating the amount for the income year on 1 July. It sends all AMMA statements on 10 July. The trustee creates another document stating a different amount for the income year on 1 September. It sends revised AMMA statements reflecting that amount on 10 September. The document created on 1 September is the only document that meets the requirements in this section in respect of the amount for the income year.

276-260 Meaning of *trust component*

(1) The object of this section is to ensure that an *AMIT's amounts of assessable income, *exempt income, *non-assessable non-exempt income and *tax offsets for an income year are allocated, according to their character, into separate components for the purposes of this Act.

(2) An *AMIT's ***trust component*** for an income year:

(a) of a character relating to assessable income; or

(b) of a character relating to *exempt income; or

(c) of a character relating to *non-assessable non-exempt income; or

(d) of a character relating to a *tax offset;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

is the amount of that character for the income year worked out for the AMIT in accordance with the rules in sections 276-265 and 276-270.

(3) This section is subject to Subdivision 276-F (which deals with the effect of *unders and *overs).

(4) The rules in sections 276-265 and 276-270 apply only for the purposes of determining the amounts of *trust components.

276-265 Rules for working out trust components—general rules

General taxability and residence assumptions to be made

(1) Work out the amount of the *trust component of each character in relation to the *AMIT assuming that the AMIT's trustee:
(a) was liable to pay *tax; and
(b) was an Australian resident.

Trust components of assessable income character are net of deductions

(2) The sum of all of the *trust components of a character relating to assessable income of the *AMIT for the income year equals the total assessable income of the AMIT for the income year, reduced by all deductions of the AMIT for the year. To avoid doubt, for the purposes of this subsection, apply subsection (1).

(3) However, if that total assessable income does not exceed those deductions, the amount of each *trust component of a character relating to assessable income of the *AMIT for the income year is nil.

276-270 Rules for working out trust components—allocation of deductions

(1) An amount of a deduction that relates directly only to one or more amounts of assessable income can be deducted only against that

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

amount or those amounts of assessable income. If there are 2 or more such amounts of assessable income, the amount of the deduction is allocated against those amounts on a reasonable basis.

(2) If an amount of a deduction remains after applying the rules in subsection (1), the remainder can be deducted against other amounts of assessable income. The amount of the remainder is allocated against those amounts on a reasonable basis.

(3) For the purposes of this section, determine whether a deduction relates directly to an amount of assessable income on a reasonable basis.

Subdivision 276-F—Unders and overs

Guide to Subdivision 276-F

276-300 What this Subdivision is about

This Subdivision sets out how underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is generally done on a character-by-character basis.

An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character.

Unders and overs arise, and are dealt with, in the income year in which they are discovered.

Table of sections

Adjustment of trust component for unders and overs etc.

276-305 Adjustment of trust component for unders and overs
276-310 Rounding adjustment deficit increases trust component
276-315 Rounding adjustment surplus decreases trust component
276-320 Meaning of ***trust component deficit***

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount
276-330 Meaning of ***cross-character allocation amount*** and ***carry-forward trust component deficit***
276-335 Meaning of ***FITO allocation amount***
276-340 Trust component character relating to tax offset—taxation of trust component deficit

Unders and overs

276-345 Meaning of ***under*** and ***over*** of a character
276-350 Limited discovery period for unders and overs

Adjustment of trust component for unders and overs etc.

276-305 Adjustment of trust component for unders and overs

Object

(1) The object of this section is to adjust an *AMIT's *trust component of a particular character for an income year to take account of any *unders or *overs of that character that the AMIT has in the income year.

Unders increase trust component

(2) If the *AMIT has an *under of that character in the income year (relating to any earlier income year), increase the amount of the *trust component by that under.

Note: Those earlier income years are referred to in section 276-345 as base years.

Overs decrease trust component

(3) If the *AMIT has an *over of that character in the income year (relating to any earlier income year), decrease the amount of the *trust component by that over.

Note: Those earlier income years are referred to in section 276-345 as base years.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

276-310 Rounding adjustment deficit increases trust component

(1) If the *AMIT has a *rounding adjustment deficit of that character for the income year, increase the amount of the *trust component by the amount of that rounding adjustment deficit.

(2) The *AMIT has a ***rounding adjustment deficit*** of a particular character for an income year if:

(a) the AMIT has a shortfall for the previous income year under subsection 276-415(1); and

(b) the shortfall results wholly or partly from the trustee of the AMIT rounding down amounts in working out *determined member components for the previous income year.

The amount of the rounding adjustment deficit is the amount of the shortfall, to the extent that it results from that rounding down.

276-315 Rounding adjustment surplus decreases trust component

(1) If the *AMIT has a *rounding adjustment surplus of that character for the income year, decrease the amount of the *trust component by the amount of that rounding adjustment surplus.

(2) The *AMIT has a ***rounding adjustment surplus*** of a particular character for an income year if:

(a) the AMIT has an excess for the previous income year under subsection (3); and

(b) the excess results wholly or partly from the trustee of the AMIT rounding up amounts in working out *determined member components for the previous income year.

The amount of the rounding adjustment surplus is the amount of the excess, to the extent that it results from that rounding up.

(3) The *AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:

(a) the sum of all the *determined member components of all the *members of the AMIT of a particular character relating to

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

assessable income, *exempt income or *non-assessable non-exempt income for the income year;

exceeds:

(b) the *determined trust component of that character of the AMIT for the income year.

276-320 Meaning of *trust component deficit*

If the amount of the *trust component, worked out after applying sections 276-305, 276-310 and 276-315 (and, if applicable, section 276-325), falls short of nil:

(a) despite those provisions, the *trust component of that character is nil; and

(b) the shortfall is the *AMIT's ***trust component deficit*** of that character for the income year.

276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount

Section applies to trust component of assessable income character

(1) This section applies if the *trust component is of a character relating to assessable income.

Cross-character allocation amount decreases trust component

(2) If the *AMIT has a *cross-character allocation amount of that character for the income year, decrease the amount of the *trust component by that amount.

Note: A cross-character allocation amount of a character for the income year is allocated from a trust component deficit of another character for the income year in accordance with subsections 276-330(2), (3) and (4).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Carry-forward trust component deficit decreases trust component

(3) If the *AMIT has a *carry-forward trust component deficit of that character for the income year, decrease the amount of the *trust component by the amount of that deficit.

Note: A carry-forward trust component deficit for the income year is worked out in respect of the previous income year under subsection 276-330(5).

FITO allocation amount increases trust component with the character of foreign source income

(4) If:

(a) the character of the *trust component is a character relating to *ordinary income, or *statutory income, from a source *other than* an *Australian source; and

(b) the *AMIT has a *FITO allocation amount for the income year;

increase the amount of the trust component by that FITO allocation amount.

Note: A FITO allocation amount for the income year is worked out in accordance with section 276-335.

276-330 Meaning of *cross-character allocation amount* and *carry-forward trust component deficit*

Section applies to trust component of assessable income character

(1) This section applies if the *trust component is of a character relating to assessable income.

Cross-character allocation amount

(2) The trustee may, in accordance with subsection (3), allocate a *trust component deficit (if any) of that character for the income year against the *AMIT's *other* trust components for that income year that are also of a character relating to assessable income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) For the trustee to make an allocation under subsection (2) the trustee:
   (a) must allocate that *trust component deficit between those other *trust components on a reasonable basis; and
   (b) cannot allocate more to a trust component than the amount of that trust component.

(4) If the trustee allocates an amount under subsection (2) to a *trust component of a character for that income year, the amount allocated is a ***cross-character allocation amount*** of that character for that income year.

Carry-forward trust component deficit

(5) If there is an amount of that *trust component deficit remaining after allocating it in accordance with subsection (2), the remaining amount is the *AMIT's ***carry-forward trust component deficit*** of the character mentioned in subsection (1) for the *next* income year.

276-335 Meaning of *FITO allocation amount*

(1) This section applies if:
   (a) the *AMIT has a *trust component of the character of *foreign income tax paid that counts towards a *tax offset under Division 770; and
   (b) the AMIT has a *trust component deficit for the income year of that character.

(2) The *AMIT has a ***FITO allocation amount*** for the income year equal to the sum of:
   (a) that *trust component deficit; and
   (b) the product of:
      (i) that trust component deficit; and
      (ii) the *corporate tax gross-up rate.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

276-340 Trust component character relating to tax offset—taxation of trust component deficit

(1) This section applies if:

(a) the *AMIT has a *trust component of a character relating to a *tax offset; and

(b) the character of the trust component is *not* the character of *foreign income tax paid that counts towards a tax offset under Division 770; and

(c) the AMIT has a *trust component deficit for the income year of that character.

Offset trust component deficit (other than FITO character) taxed

(2) The trustee of the *AMIT is liable to pay tax at the rate declared by the Parliament on the amount of the *trust component deficit.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

Unders and overs

276-345 Meaning of *under* and *over* of a character

(1) This section sets out how to work out the amount (if any) of an *AMIT's *under or *over of a particular character for an income year (the ***base year***) in a later income year (the ***discovery year***).

(2) The time (the ***discovery time***) at which this is worked out for the discovery year is just before the trustee works out the *determined trust component of that character for the discovery year.

Note: This allows unders and overs to be included in the determined trust component for the discovery year: see section 276-305.

(3) Compare the following amounts:

(a) the *AMIT's *trust component of that character for the base year, worked out on the basis of the trustee's knowledge at the discovery time (the ***discovery year amount***);

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) this amount (the ***base year running balance***):

(i) if the discovery year is the first income year after the base year—the AMIT's *determined trust component of that character for the base year; or

(ii) otherwise—the discovery year amount worked out under a previous operation of this section for the most recent income year before the discovery year.

*A shortfall is an **under***

(4) If the base year running balance *falls short* of the discovery year amount, the amount of the shortfall is an ***under*** of that character, for the base year, that the *AMIT has in the discovery year.

*An excess is an **over***

(5) If the base year running balance *exceeds* the discovery year amount, the amount of the excess is an ***over*** of that character, for the base year, that the *AMIT has in the discovery year.

276-350 Limited discovery period for unders and overs

Despite section 276-345, an *AMIT does not have an *under or an *over of a particular character for an income year (the ***base year***) if:

(a) assuming the Commissioner made an assessment of the *trust component of that character on the day on which the document stating the AMIT's *determined trust component of that character for the base year was created; and

(b) assuming the assessment had not been amended at the discovery time mentioned in subsection 276-345(2) for the under or over;

section 170 of the *Income Tax Assessment Act 1936* would prevent the assessment from being amended to take account of the under or over.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 276-G—Shortfall and excess taxation

Guide to Subdivision 276-G

276-400 What this Subdivision is about

> The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets.

Table of sections

Ensuring determined trust components are properly taxed

276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)
276-410 Trustee taxed on excess in determined member component (character relating to tax offset)
276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components

Ensuring unders and overs are properly taxed

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward
276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward

Commissioner may remit tax under this Subdivision

276-430 Commissioner may remit tax under this Subdivision

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Ensuring determined trust components are properly taxed

276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)

Income character shortfall

(1) An *AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:

(a) the *determined member component of a *member of the AMIT of a character relating to assessable income for the income year;

falls short of:

(b) the *member component of the member of that character for the income year.

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(11) of the *Income Tax Rates Act 1986*.

276-410 Trustee taxed on excess in determined member component (character relating to tax offset)

(1) An *AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:

(a) the *determined member component of a *member of the AMIT of a character relating to a *tax offset for the income year;

exceeds:

(b) the *member component of the member of that character for the income year.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Liability to tax

(2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each excess of the *AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components

(1) An *AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:

(a) the sum of all the *determined member components of all the *members of the AMIT of a particular character relating to assessable income, *exempt income or *non-assessable non-exempt income for the income year;

falls short of:

(b) the *determined trust component of that character of the AMIT for the income year.

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount worked out as follows:

(a) first, work out the sum of each shortfall of the *AMIT under subsection (1) for the income year;

(b) next, work out the extent (if any) to which each of those shortfalls gives rise to a *rounding adjustment deficit (see subsection 276-310(2));

(c) next, subtract the result of paragraph (b) from the result of paragraph (a);

(d) next, work out the extent (if any) to which the result of paragraph (c) is referable to one or more shortfalls under subsection 276-405(1);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(e) next, subtract the result of paragraph (d) from the result of paragraph (c).

Note: The rate is set out in subsection 12(12) of the *Income Tax Rates Act 1986*.

Gross-up for discount capital gain

(3) Subsection (4) applies if a *determined member component is of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of subsection (2), treat the amount of the shortfall under subsection (1) relating to the component as being double what it would be apart from this subsection.

Ensuring unders and overs are properly taxed

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward

(1) An *AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:

(a) an *under of the AMIT of a character relating to assessable income in the income year for an earlier income year (the ***base year***) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));

falls short of:

(b) what the under would have been if it had been worked out on the basis of what the trustee should have known at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(13) of the *Income Tax Rates Act 1986*.

Adjustment for later unders relating to the same base year

(3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later income year, increase the amount mentioned in subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.

(4) Subsection (5) applies if:

(a) there is a shortfall under subsection (1) for a particular character for an income year; and

(b) the *AMIT has an *under of that character in a later income year for the base year mentioned in subsection (1); and

(c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the under.

(5) Reduce the shortfall by the extent to which the *under in the later income year reflects the amount mentioned in paragraph (1)(b).

276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward

(1) An *AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:

(a) an *over of the AMIT of a character relating to a *tax offset in the income year relating to an earlier income year (the ***base year***) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

falls short of:

(b) what the over would have been if it had been worked out on the basis of what the trustee should have known at that time.

Liability to tax

(2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

Adjustment for later overs relating to the same base year

(3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later income year, decrease the amount mentioned in subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.

(4) Subsection (5) applies if:

(a) there is a shortfall under subsection (1) of a particular character relating to a *tax offset for an income year; and

(b) the *AMIT has an *over of that character in a later income year relating to the base year mentioned in subsection (1); and

(c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the over.

(5) Reduce the shortfall by the extent to which the *over in the later income year reflects the amount mentioned in paragraph (1)(b).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Commissioner may remit tax under this Subdivision

276-430 Commissioner may remit tax under this Subdivision

The Commissioner may remit the whole or any part of income tax for which a liability arises under this Subdivision if the Commissioner is satisfied that doing so does not result in a detriment to the revenue.

Subdivision 276-H—AMMA statements

Guide to Subdivision 276-H

276-450 What this Subdivision is about

An AMIT for an income year must give each member of the AMIT in respect of the income year an AMIT member annual statement (or AMMA statement) for the income year.

Table of sections

Operative provisions

276-455 Obligation to give an AMMA statement
276-460 ***AMIT member annual statement*** (or ***AMMA statement***)

Operative provisions

276-455 Obligation to give an AMMA statement

(1) An *AMIT for an income year must give each *member of the AMIT in respect of the income year an *AMMA statement for the income year.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) The statement must be given no later than 3 months after the end of the income year.

(3) However, the *AMIT need not give an *AMMA statement under subsection (1) to a *member if:

(a) all of the member's *determined member components for the AMIT for the income year are nil; and

(b) all of the member's *membership interests in the AMIT have an *AMIT cost base net amount for the income year of nil.

(4) To avoid doubt, the *AMIT does not fail to comply with subsection (1) merely because:

(a) the AMIT gives *AMMA statements for the income year to *members in accordance with subsection (1) by the time required under subsection (2); and

(b) after that time, the AMIT gives those members further AMMA statements for the income year that replace the AMMA statements mentioned in paragraph (a).

276-460 *AMIT member annual statement* (or *AMMA statement*)

(1) An ***AMIT member annual statement*** (or ***AMMA statement***) is a statement made by an *AMIT for an income year in accordance with this section.

(2) The statement must:

(a) include information that reflects the amount and character of each *member component of the *member for the income year; and

(b) state what the trustee reasonably estimates to be the amount of the excess or shortfall mentioned in section 104-107C (AMIT cost base net amount) for the income year in respect of the *CGT asset that is the member's unit or interest in the *AMIT.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) The statement is *not* an ***AMMA statement*** if the *AMIT fails to give it to the *member to whom it is addressed within 4 years after the end of the income year.

Note: The AMIT must give each member an AMMA statement for the income year no later than 3 months after the end of the income year (see section 276-455).

Subdivision 276-J—Debt-like trust instruments

Guide to Subdivision 276-J

276-500 What this Subdivision is about

A debt-like trust instrument in an AMIT is treated as a debt interest in the AMIT. A distribution in relation to the instrument is treated as interest for the purposes of provisions relating to interest withholding tax, and may be treated as a deduction in working out the trust components of the AMIT.

Table of sections

Operative provisions

276-505 Meaning of ***debt-like trust instrument***
276-510 Debt-like trust instruments treated as debt interests etc.
276-515 Distribution on debt-like trust instrument could be deductible in working out trust components

Operative provisions

276-505 Meaning of *debt-like trust instrument*

(1) An instrument that gives rise to an interest in a trust is a ***debt-like trust instrument*** in relation to the trust if:

(a) the amount of any distribution relating to the interest is fixed, at the time the interest is created, by reference to the amount subscribed for the interest; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) any distribution relating to the interest is made solely at the discretion of the trustee of the trust; and

(c) rights to distributions of capital or profits arising from all interests in the trust that are in the same *class as the interest, rank above all such rights arising from other interests in the trust (other than those covered under subsection (2)) if:

(i) the trust ceases to exist; or

(ii) where the trust is a *managed investment scheme—the scheme is under administration or is being wound up; and

(d) in a case where, in relation to a particular period, the trustee of the trust does *not* make a distribution relating to the interest—making a distribution of any of the following kinds, in relation to that period, is prohibited by the constituent documents of the trust:

(i) a distribution relating to any membership interest in the trust;

(ii) a distribution relating to a membership interest in another entity, if that interest is stapled together with a membership interest in the trust.

(2) This subsection covers an interest in the trust that:

(a) is *not* a *membership interest in the trust; or

(b) satisfies the requirements in paragraphs (1)(a) and (b).

276-510 Debt-like trust instruments treated as debt interests etc.

(1) For the purposes of this Act:

(a) treat a *debt-like trust instrument in relation to an *AMIT as a *debt interest in the AMIT; and

(b) treat a distribution on a debt-like trust instrument in relation to an AMIT as a cost incurred by the AMIT in relation to a debt interest issued by the AMIT.

(2) If a trust is an *AMIT for an income year (disregarding this subsection), paragraph (1)(a) applies for the purposes of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) determining whether the trust is a *managed investment trust in relation to the income year; and

(b) determining whether the trust is an AMIT for the income year.

(3) For the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, if an entity is the holder of a *debt-like trust instrument in an *AMIT, treat a distribution to the entity in accordance with the instrument as interest.

276-515 Distribution on debt-like trust instrument could be deductible in working out trust components

(1) If an entity is the holder of a *debt-like trust instrument in relation to an *AMIT, for the purposes of sections 276-265 and 276-270, treat a distribution to the entity in accordance with the instrument as a *return that the AMIT pays or provides on a *debt interest.

(2) For the purposes of subsection (1), disregard the distribution to the extent (if any) that it is referable to any of the following:

(a) *exempt income of the *AMIT;

(b) *non-assessable non-exempt income of the AMIT.

Subdivision 276-K—Ceasing to be an AMIT

Guide to Subdivision 276-K

276-800 What this Subdivision is about

If a trust ceases to be an AMIT, and discovers an under or over from an income year when it was an AMIT, the under or over will have taxation consequences for the trust in the discovery year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Table of sections

Operative provisions

276-805 Application of Subdivision to former AMIT
276-810 Continue to work out trust components, unders, overs etc.
276-815 Effect of increase
276-820 Effect of decrease

Operative provisions

276-805 Application of Subdivision to former AMIT

This Subdivision applies if:

(a) a trust was an *AMIT for an income year; and

(b) the trust is *not* an AMIT for a later income year (the ***discovery year***).

276-810 Continue to work out trust components, unders, overs etc.

(1) For the purposes of this section, assume that the trust is an *AMIT for the discovery year.

(2) If the trust has an *under or *over of a character in the discovery year for an earlier income year when the trust was an *AMIT, work out the extent to which the under or over:

(a) increases the amount of the AMIT's *trust component of that character for the discovery year; or

(b) decreases the amount of the AMIT's trust component of that character for the discovery year.

276-815 Effect of increase

(1) This section applies if there is an increase as mentioned in paragraph 276-810(2)(a).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) If the character mentioned in subsection 276-810(2) relates to assessable income, treat the amount of the increase as assessable income of the trust for the discovery year.

(3) Subsection (4) applies if the character mentioned in subsection 276-810(2) is the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of subsection (2), treat the amount of the increase as being double what it would be apart from this subsection.

(5) If that character relates to *exempt income, treat the amount of the increase as exempt income of the trust for the discovery year.

(6) If that character relates to *non-assessable non-exempt income, treat the amount of the increase as non-assessable non-exempt income of the trust for the discovery year.

(7) If that character relates to a *tax offset, treat the amount of the increase as a tax offset of the trust for the discovery year of a kind corresponding to that character (in addition to any other tax offsets of that kind that the trust may have for the discovery year).

276-820 Effect of decrease

(1) This section applies if there is a decrease as mentioned in paragraph 276-810(2)(b).

(2) If the character mentioned in subsection 276-810(2) relates to assessable income:

(a) in the case of a character of:

(i) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(ii) a discount capital gain from a CGT asset that is *not* taxable Australian property;

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

treat half the amount of the decrease as a *capital loss of the trust for the discovery year; or

(b) in the case of a character of:

(i) a *capital gain (other than a discount capital gain) from a CGT asset that is taxable Australian property; or

(ii) a capital gain (other than a discount capital gain) from a CGT asset that is *not* taxable Australian property;

treat the amount of the decrease as a capital loss of the trust for the discovery year; or

(c) in any other case—treat the amount of the decrease as a deduction of the trust for the discovery year.

(3) If that character relates to *exempt income, treat the amount of the decrease as reducing the exempt income of the trust for the discovery year.

(4) If that character relates to *non-assessable non-exempt income, treat the amount of the decrease as reducing the non-assessable non-exempt income of the trust for the discovery year.

(5) If that character relates to a *tax offset, treat the amount of the decrease as reducing the tax offset or offsets (the ***existing offset or offsets***) of the trust for the discovery year of a kind corresponding to that character.

(6) If that character relates to a *tax offset and exceeds the total of the existing offset or offsets (before the reduction under subsection (5)):

(a) unless paragraph (b) applies—the trustee is liable to pay tax at the rate declared by the Parliament on the excess; or

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

(b) if that character is the character of *foreign income tax paid that counts towards a tax offset under Division 770—subsection (7) applies.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(7) Increase the trust's assessable income for the discovery year by the sum of:

(a) the excess mentioned in subsection (6); and

(b) the product of:

(i) that excess; and

(ii) the *corporate tax gross-up rate.

Treat the amount of that increase as assessable income from a source *other than* an *Australian source.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Part 3-30—Superannuation

Division 280—Guide to the superannuation provisions

Table of sections

280-1 Effect of this Division
280-5 Overview

Contributions phase

280-10 Contributions phase—deductibility
280-15 Contributions phase—limits on superannuation tax concessions

Investment phase

280-20 Investment phase

Benefits phase

280-25 Benefits phase—different types of superannuation benefit
280-30 Benefits phase—taxation varies with age of recipient and type of benefit
280-35 Benefits phase—roll-overs

The regulatory scheme outside this Act

280-40 Other relevant legislative schemes

280-1 Effect of this Division

(1) This Division is a *Guide.

(2) Tax concessions in this Part are intended to encourage Australians to save in order to make provision for their retirement, recognising that superannuation investments, and the income from them, are quarantined for retirement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

280-5 Overview

(1) There are 3 phases in the tax treatment of superannuation, as follows:
  (a) the contributions phase;
  (b) the investment phase;
  (c) the benefits phase.

(2) In the contributions phase, contributions are made to a superannuation plan in respect of a member of the plan.

(3) In the investment phase, these contributions are invested by the superannuation provider.

(4) In the benefits phase, these contributions, plus earnings from investing them, are usually paid as benefits to the member when he or she retires after reaching preservation age. In the event of death, the benefits are usually paid to the member's dependants.

(5) There is also a regulatory scheme outside this Act that is relevant to the taxation treatment of superannuation. For example, other Acts set out prudential and operating standards for superannuation providers.

Contributions phase

280-10 Contributions phase—deductibility

Contributions that can be deducted

(1) Employers can usually deduct contributions they make in respect of their employees. Individuals can usually deduct contributions they make in respect of themselves to most complying superannuation funds.

Other contributions cannot be deducted

(2) Other contributions cannot be deducted. These include contributions made by others in respect of individuals (such as

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Authorised Version C2022C00307 registered 22/10/2022

contributions by a spouse or family member, or Government co-contributions).

280-15 Contributions phase—limits on superannuation tax concessions

(1) There is a limit to contributions that can be made in respect of an individual in a year that receive favourable tax treatment.

(2) If concessional contributions exceed an indexed cap, the excess is included in the individual's assessable income and gives rise to a tax offset. The individual can release the excess concessional contributions from his or her superannuation interests. Unused cap can be carried forward for 5 years.

(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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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*.

Investment phase

280-20 Investment phase

(1) Contributions that can be deducted are assessable income of the superannuation provider. Contributions that cannot be deducted are not assessable income of the superannuation provider. (There are some exceptions.)

(2) Earnings on the investment of amounts in a superannuation plan are assessable income of the superannuation provider.

(3) The superannuation provider's taxable income is generally taxed at the concessional rate of 15%.

(4) However, superannuation providers pay no tax on earnings from the assets that support the payment of benefits in the form of income streams, once the income streams have commenced.

Benefits phase

280-25 Benefits phase—different types of superannuation benefit

Superannuation benefits can be drawn down as lump sums, income streams (such as pensions or annuities), or combinations of both. Different tax treatment may apply depending on whether a lump sum or income stream is paid.

280-30 Benefits phase—taxation varies with age of recipient and type of benefit

(1) The taxation of superannuation benefits depends primarily on the age of the member.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) If the member is aged 60 or over, superannuation benefits (both lump sums and income streams) are tax free if the benefits have already been subject to tax in the fund (that is, where the benefits comprise a taxed element). This covers the great majority of superannuation members.

(3) Where a superannuation benefit contains an amount that has not been subject to tax in the fund (an untaxed element), this element is subject to tax for those aged 60 or over, though at concessional rates. This is relevant generally to those people (for example, public servants), who are members of a superannuation fund established by the Australian Government or a state government.

(4) If the member is less than 60, superannuation benefits may receive concessional taxation treatment, though the treatment is less concessional than for those aged 60 and over.

(5) Superannuation benefits may also include a "tax free component"; this component of the benefit is always paid tax free.

(6) Additional tax concessions may apply when superannuation benefits are paid after a member's death.

280-35 Benefits phase—roll-overs

A member can "roll over" their superannuation benefits from one complying superannuation plan to another, or between different interests in the same plan. This is usually done to keep the benefits invested in the superannuation system, or to convert a lump sum to a superannuation income stream. No tax is generally payable until the benefits are finally drawn down.

The regulatory scheme outside this Act

280-40 Other relevant legislative schemes

(1) The *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* regulate the prudential and operating standards for superannuation providers. Concessional tax

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

treatment is generally available only if providers comply with these standards.

(2) Other legislative schemes relevant to superannuation include the following:

(a) the *Superannuation Guarantee (Administration) Act 1992*, which requires that employers provide a minimum level of superannuation contributions for each of their eligible employees;

(b) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, which provides for Government co-contributions to low income earners' superannuation;

(c) the *Small Superannuation Accounts Act 1995*, which provides a facility to accept payments of superannuation guarantee shortfalls;

(d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which provides for the payment of unclaimed superannuation money, and the maintenance of a register of lost members.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 285—General concepts relating to superannuation

285-5 Transfers of property

(1) Any of the following payments covered by this Part can be or include a transfer of property:
  (a) a contribution;
  (b) a *superannuation lump sum.

(2) The amount of the payment is or includes the *market value of the property.

(3) The *market value is reduced by the value of any consideration given for the transfer of the property.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 290—Contributions to superannuation funds

Table of Subdivisions

Guide to Division 290
290-A General rules
290-B Deduction of employer contributions and other employment-connected contributions
290-C Deducting personal contributions
290-D Tax offsets for spouse contributions

Guide to Division 290

290-1 What this Division is about

This Division sets out the rules for deductions and tax offsets for superannuation contributions.

Subdivision 290-A—General rules

Table of sections

290-5 Non-application to roll-over superannuation benefits etc.
290-10 No deductions other than under this Division

290-5 Non-application to roll-over superannuation benefits etc.

This Division does not apply to a contribution that is any of the following:

(a) a *roll-over superannuation benefit;

(b) a *superannuation lump sum that is paid from a *foreign superannuation fund;

(c) an amount transferred to a *complying superannuation fund or an *RSA from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund; and

(ii) was not established in Australia; and

(iii) is not centrally managed or controlled in Australia.

290-10 No deductions other than under this Division

(1) You cannot deduct under this Act an amount you pay as a contribution to a *complying superannuation fund or *RSA, except as provided by this Division.

(2) You cannot deduct under this Act an amount you pay as a contribution to a *non-complying superannuation fund, except as provided by this Division.

Note: Under Subdivision 290-B (Deduction of employer contributions and other employment-connected contributions), you may be able to deduct contributions you make to a non-complying fund that you believe to be a complying fund.

Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions

Table of sections

Deducting employer contributions

290-60 Employer contributions deductible
290-65 Application to employees etc.

Conditions for deducting an employer contribution

290-70 Employment activity conditions
290-75 Complying fund conditions
290-80 Age related conditions

Other employment-connected deductions

290-85 Contributions for former employees etc.
290-90 Controlling interest deductions

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

290-95 Amounts offset against superannuation guarantee charge

Returned contributions

290-100 Returned contributions assessable

Deducting employer contributions

290-60 Employer contributions deductible

(1) You can deduct a contribution you make to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation benefits for another person who is your employee when the contribution is made (regardless whether the benefits are payable to a *SIS dependant of the employee if the employee dies before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see sections 85-25 and 86-75 of this Act.

(2) However, the conditions in sections 290-70, 290-75 and 290-80 must also be satisfied for you to deduct the contribution.

(3) You can deduct the contribution only for the income year in which you made the contribution.

(4) You cannot deduct the contribution if it is an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a *regulated superannuation fund, or to an *RSA, to be held for the benefit of your *non-member spouse in satisfaction of his or her entitlement in respect of the *superannuation interest concerned.

290-65 Application to employees etc.

(1) At a time when an individual is an employee of an entity within the expanded meaning of ***employee*** given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*, this Subdivision applies as if the individual were an employee of the entity.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) For the purposes of this Subdivision:

(a) in relation to a contribution by a partnership in respect of an employee of the partnership—treat the employee as an employee of the partnership; and

(b) in relation to a contribution by a partner in a partnership in respect of an employee of the partnership—treat the employee as an employee of the partner.

Conditions for deducting an employer contribution

290-70 Employment activity conditions

To deduct the contribution, the employee must be:

(aa) your employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*); or

(a) engaged in producing your assessable income; or

(b) an Australian resident who is engaged in your business.

290-75 Complying fund conditions

(1) If the contribution was made to a *superannuation fund, at least one of these conditions must be satisfied:

(a) the fund was a *complying superannuation fund for the income year of the fund in which you made the contribution;

(b) at the time you made the contribution, you had reasonable grounds to believe that the fund was a complying superannuation fund for that income year;

(c) at or before the time you made the contribution, you obtained a written statement (given by or on behalf of the trustee of the fund) that the fund:

(i) was a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) was not subject to a direction under section 63 of that Act (which prevents a fund from accepting employer contributions).

(2) However, the condition in paragraph (1)(b) or (c) cannot be satisfied if, when the contribution was made:

(a) you were:

(i) the trustee or the manager of the fund; or

(ii) an *associate of the trustee or the manager of the fund; and

(b) you had reasonable grounds to believe that:

(i) the fund was not a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or

(ii) the fund was operating in contravention of a regulatory provision (within the meaning of section 38A of that Act).

(3) For the purposes of subparagraph (2)(b)(ii), a contravention of the *Superannuation Industry (Supervision) Act 1993* or regulations made under it is to be ignored unless the contravention is:

(a) an offence; or

(b) a contravention of a civil penalty provision of that Act or those regulations.

(4) For the purposes of subparagraph (2)(b)(ii), it is sufficient if a contravention is established on the balance of probabilities.

290-80 Age related conditions

(1) To deduct the contribution:

(a) you must have made the contribution on or before the day that is 28 days after the end of the month in which the employee turns 75; or

(b) you must have been required to make the contribution by an industrial award, determination or notional agreement preserving State awards (within the meaning of the *Fair*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Work (Transitional Provisions and Consequential Amendments) Act 2009) that is in force under an *Australian law; or

(c) the contribution must reduce your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

(2) If only paragraph (1)(b) applies, you can deduct only the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards.

Note: An industrial agreement, such as an enterprise agreement within the meaning of the *Fair Work Act 2009*, or a similar agreement made under a State law, is not an award or determination.

(2A) If only paragraph (1)(c) applies, you can deduct only the amount of the contribution that reduces your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

(2B) If both paragraphs (1)(b) and (c) apply and paragraph (1)(a) does not apply, you can deduct only the greater of the following amounts (or only one of them if they are equal):

(a) the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards;

(b) the amount of the contribution that reduces your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

Note: If paragraph (1)(a) applies, you can deduct the whole of the contribution (whether or not paragraph (1)(b) or (1)(c) also applies).

(3) For the purposes of this section, a reference to a determination does not include a reference to a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Other employment-connected deductions

290-85 Contributions for former employees etc.

(1) Section 290-60 applies as modified by this section if a contribution you make in respect of another person:

(a) reduces your charge percentage under sections 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or

(b) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was your employee.

(1AA) Section 290-60 also applies as modified by this section if:

(a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and

(b) you make the contribution within 4 months after the person stops being your employee; and

(c) you would have been entitled to a deduction in relation to the contribution if:

(i) you had made it at a time when the other person was your employee; and

(ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.

(1AB) Section 290-60 also applies as modified by this section if:

(a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and

(b) the contribution relates to a *defined benefit interest of the other person; and

(c) you are at *arm's length with the other person in relation to the contribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(d) you obtain an *actuary's certificate that:

(i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and

(ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund to meet the fund's liabilities in connection with defined benefit interests; and

(e) you would have been entitled to a deduction in relation to the contribution if:

(i) you had made it at a time when the other person was your employee; and

(ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.

(1A) Section 290-60 also applies as modified by this section if:

(a) you make a contribution in respect of another person at a time; and

(b) the other person had been employed by a company or other entity before that time; and

(c) section 290-90 would apply in relation to the contribution if the other person were employed by the company or entity at that time; and

(d) the contribution:

(i) reduces the company's or entity's charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or

(ii) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was the company's or entity's employee; or

(iii) if subsection (1B) or (1C) applies—relates to a period of service during which the other person was the company's or entity's employee.

(1B) This subsection applies if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) you make the contribution within 4 months after the person stops being the company's or entity's employee; and

(b) you would have been entitled to a deduction in relation to the contribution if you had made it while the other person was the company's or entity's employee.

(1C) This subsection applies if:

(a) the contribution relates to a *defined benefit interest of the other person; and

(b) you and the company are at *arm's length with the other person in relation to the contribution; and

(c) you obtain an *actuary's certificate that:

(i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and

(ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund or *RSA to meet the fund's or RSA's liabilities in connection with defined benefit interests; and

(d) you would have been entitled to a deduction in respect of the contribution if you had made it while the other person was the company's or entity's employee.

(2) Treat the other person as your employee for the purposes of subsection 290-60(1).

(3) Despite subsection 290-60(2):

(a) if subsection (1) or (1AA) applies—the condition in section 290-70 must be satisfied at the most recent time when the other person was your employee (apart from subsection (2) of this section); or

(b) if subsection (1A) applies:

(i) the condition in section 290-70 need not be satisfied; and

(ii) instead, the condition in subsection 290-90(4) must be satisfied at the most recent time when the other person was the company's or entity's employee.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

290-90 Controlling interest deductions

(1) Section 290-60 applies as modified by this section if you make a contribution in respect of another person at a time, and at that time:

(a) the other person is an employee of a company in which you have a controlling interest; or

(b) you are connected to the other person in the circumstances set out in subsection (5); or

(c) you are a company connected to the other person in the circumstances described in subsection (6).

(2) Treat the other person as your employee at that time for the purposes of subsection 290-60(1).

Note 1: A deduction may be denied by section 85-25 if the employee is your associate.

Note 2: Section 86-60 (read together with section 86-75) limits the extent to which superannuation contributions by personal service entities are deductions.

(3) Despite subsection 290-60(2), for you to deduct the contribution the condition in subsection (4) needs to be satisfied instead of the condition in section 290-70.

(4) The other person must be:

(aa) an employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*) of the other person's employer; or

(a) engaged in producing the assessable income of the other person's employer; or

(b) an Australian resident engaged in the business of the other person's employer.

(5) For the purposes of paragraph (1)(b), the circumstances are:

(a) you are the beneficial owner of shares in a company of which the other person is an employee, but you do not have a controlling interest in the company; and

(b) you are at *arm's length with the other person in relation to the contribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) neither the other person, nor a *relative of the other person:

(i) has set apart an amount as a fund, or has made a contribution to a fund, for the purpose of providing *superannuation benefits for you or a relative of yours; or

(ii) has made an *arrangement under which the other person or relative will or may do so.

Company controlling interest deductions

(6) For the purposes of paragraph (1)(c), the circumstances are:

(a) the other person is an employee of an entity that has a controlling interest in the company; or

(b) an entity that has a controlling interest in the company also has a controlling interest in a company of which the other person is an employee.

290-95 Amounts offset against superannuation guarantee charge

(1) You cannot deduct a contribution under this Act if you elect under subsection 23A(1) of the *Superannuation Guarantee (Administration) Act 1992* that the contribution be offset against your liability to pay superannuation guarantee charge.

Note: Section 26-95 restricts deductions for charges imposed by the *Superannuation Guarantee Charge Act 1992*.

(2) However, this section does not apply to such a contribution that is made during the amnesty period (within the meaning of subsection 74(3) of the *Superannuation Guarantee (Administration) Act 1992*), to the extent that the charge relates to a *superannuation guarantee shortfall for which you qualify for an amnesty under section 74 of that Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Returned contributions

290-100 Returned contributions assessable

(1) Your assessable income includes a payment, or the value of a benefit, you receive in the income year so far as it reasonably represents the direct or indirect return of:

(a) a contribution for which you or another entity have deducted or can deduct an amount for any income year; or

(b) earnings on a contribution of that kind.

Note: An example of an indirect return of a contribution is if the fund to which it was made transfers to another fund assets that include the contribution, and the other fund returns the contribution to the person who made it.

(2) Subsection (1) does not apply if you receive the payment, or the value of the benefit, as a *superannuation benefit.

Subdivision 290-C—Deducting personal contributions

Table of sections

290-150 Personal contributions deductible

Conditions for deducting a personal contribution

290-155 Complying superannuation fund condition
290-165 Age-related conditions
290-167 Contribution must not be a downsizer contribution
290-168 Contribution must not be a re-contribution under the first home super saver scheme
290-169 Contribution must not be a COVID-19 re-contribution
290-170 Notice of intent to deduct conditions
290-175 Deduction limited by amount specified in notice
290-180 Notice may be varied but not revoked or withdrawn

290-150 Personal contributions deductible

(1) You can deduct a contribution you make to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation benefits

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

for yourself (regardless whether the benefits are payable to your *SIS dependants if you die before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see section 26-55 of this Act.

(2) However, the conditions in sections 290-155, 290-165, 290-167, 290-168, 290-169 and 290-170 must also be satisfied for you to deduct the contribution.

(3) You can deduct the contribution only for the income year in which you made the contribution.

(4) If the contribution is attributable in whole or part to a *capital gain from a *CGT event:

(a) if you disregarded all or part of the capital gain from the CGT event under subsection 152-305(1) and you were under 55 just before you made the choice mentioned in that subsection—you cannot deduct the contribution to the extent that it is attributable to the capital gain; or

(b) if a company or trust disregarded all or part of the capital gain from the CGT event under subsection 152-305(2) and you were under 55 just before the contribution was made—you cannot deduct the contribution to the extent that it is attributable to the capital gain.

Conditions for deducting a personal contribution

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

290-165 Age-related conditions

Condition if you are under 18

(1) If you were under the age of 18 at the end of the income year in which you made the contribution, you must have *derived income in the income year:

(a) from the carrying on of a *business; or

(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).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Work test condition for ages 67 to 75

(1A) If you made the contribution during the period starting on the day you turn 67 and ending on the day that is 28 days after the end of the month in which you turn 75:

(a) you must have been *gainfully employed for at least 40 hours in any period of 30 consecutive days during the income year in which the contribution was made; or

(b) if you do not satisfy paragraph (a)—you must satisfy the following requirements:

(i) you were gainfully employed for at least 40 hours in any period of 30 consecutive days during the income year (the ***previous income year***) ending before the income year in which the contribution was made;

(ii) you had a *total superannuation balance of less than $300,000 at the end of the previous income year;

(iii) you have not deducted a contribution in the previous income year or any earlier income years on the basis of satisfying the requirements in this paragraph;

(iv) no contribution made by you, or in respect of you, in the previous income year or any earlier income years, was accepted by a *superannuation fund or an *RSA under a prescribed provision of regulations made for the purposes of the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997*.

Maximum age condition

(2) You cannot deduct the contribution if it is made after the day that is 28 days after the end of the month in which you turn 75.

290-167 Contribution must not be a downsizer contribution

You cannot deduct the contribution if it is a contribution that is covered under section 292-102 (about downsizer contributions).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

290-168 Contribution must not be a re-contribution under the first home super saver scheme

You cannot deduct the contribution if you notified the Commissioner about the contribution under section 313-50 (about contributing amounts to superannuation that were previously released under the *first home super saver scheme).

290-169 Contribution must not be a COVID-19 re-contribution

You cannot deduct the contribution if it is a contribution that is covered under section 292-103 (about COVID-19 re-contributions).

290-170 Notice of intent to deduct conditions

Deductibility of contributions

(1) To deduct the contribution, or a part of the contribution:
  (a) you must give to the trustee of the fund or the *RSA provider a valid notice, in the *approved form, of your intention to claim the deduction; and
  (b) the notice must be given before:
    (i) if you have lodged your *income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
    (ii) otherwise—the end of the next income year; and
  (c) the trustee or provider must have given you an acknowledgment of receipt of the notice.

Validity of notices

(2) The notice is not valid if at least one of these conditions is satisfied:
  (a) the notice is not in respect of the contribution;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the notice includes all or a part of an amount covered by a previous notice;

(c) when you gave the notice:

(i) you were not a member of the fund or the holder of the *RSA; or

(ii) the trustee or *RSA provider no longer holds the contribution; or

(iii) the trustee or RSA provider has begun to pay a *superannuation income stream based in whole or part on the contribution;

(d) before you gave the notice:

(i) you had made a contributions-splitting application (within the meaning given by the regulations) in relation to the contribution; and

(ii) the trustee or RSA provider to which you made the application had not rejected the application;

(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.

Acknowledgment of notice

(3) The trustee or provider must, without delay, give you an acknowledgment of a valid notice, subject to subsection (4).

(4) The trustee or provider may refuse to give you an acknowledgment of receipt of a valid notice if the *value of the *superannuation interest to which the notice relates, at the end of the day on which the trustee or *RSA provider received the notice, is less than the tax that would be payable in respect of your contribution (or part of the contribution) if the trustee or provider were to acknowledge receipt of the notice.

Application to successor funds

(5) Subsections (1) to (4) and section 290-180 apply as if:

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) references in those provisions to the fund or *RSA were references to a *successor fund; and

(b) references in those provisions to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;

if:

(c) after making your contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund; and

(d) you have not previously given a valid notice under this section to any *superannuation provider in relation to the contribution.

290-175 Deduction limited by amount specified in notice

You cannot deduct more for the contribution (or a part of the contribution) than the amount stated in the notice.

290-180 Notice may be varied but not revoked or withdrawn

(1) You cannot revoke or withdraw a valid notice in relation to the contribution (or a part of the contribution).

(2) You can vary a valid notice, but only so as to reduce the amount stated in relation to the contribution (including to nil). You do so by giving notice to the trustee or the *RSA provider in the *approved form.

(3) However, you cannot vary a valid notice after:

(a) if you have lodged your *income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or

(b) otherwise—the end of the next income year.

(3A) The variation is not effective if, when you make it:

(a) you were not a member of the fund or the holder of the *RSA; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the trustee or *RSA provider no longer holds the contribution; or

(c) the trustee or RSA provider has begun to pay a *superannuation income stream based in whole or part on the contribution.

(4) Subsection (3) does not apply to a variation if:

(a) you claimed a deduction for the contribution (or a part of the contribution); and

(b) the deduction is not allowable (in whole or in part); and

(c) the variation reduces the amount stated in relation to the contribution by the amount not allowable as a deduction.

Application to successor funds

(5) Subsections (2) and (3A) apply as if:

(a) the reference in subsection (3A) to the fund or *RSA were a reference to a *successor fund; and

(b) references in those subsections to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;

if, after a valid notice is given under section 290-170 in relation to the contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund.

Subdivision 290-D—Tax offsets for spouse contributions

Table of sections

290-230 Offset for spouse contribution
290-235 Limit on amount of tax offsets
290-240 Tax file number

290-230 Offset for spouse contribution

(1) You are entitled to a *tax offset for an income year for a contribution you make in the income year to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

benefits for your *spouse (regardless whether the benefits are payable to your spouse's *SIS dependants if your spouse dies before or after becoming entitled to receive the benefits).

(2) You are entitled to the *tax offset only if:

(a) he or she was your *spouse when you made the contribution; and

(b) both you and your spouse were Australian residents when you made the contribution; and

(c) the total of your spouse's:

(i) assessable income, disregarding your spouse's *assessable FHSS released amount for the income year; and

(ii) *reportable fringe benefits total; and

(iii) *reportable employer superannuation contributions;

for the income year is less than $40,000; and

(d) you have not deducted and cannot deduct an amount for the contribution under section 290-60 (employer contributions); and

(e) if the contribution is made to a *superannuation fund—it is a *complying superannuation fund for the income year of the fund in which you make the contribution.

(3) You are *not* entitled to the *tax offset if, when you make the contribution, you are living separately and apart from your *spouse on a permanent basis.

(4) You are *not* entitled to the *tax offset for an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a *regulated superannuation fund, or to an *RSA, to be held for the benefit of your *non-member spouse in satisfaction of his or her entitlement in respect of the *superannuation interest concerned.

(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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

(5) For the purposes of subparagraph (2)(c)(iii), reduce (but not below zero) the *reportable employer superannuation contributions by the amount of any *excess concessional contributions your *spouse has for the *financial year corresponding to the income year.

290-235 Limit on amount of tax offsets

(1) The total of the amounts of *tax offset to which you are entitled for contributions you make for an income year cannot exceed 18% of the lesser of the following:

(a) $3,000 reduced by the amount (if any) by which the total mentioned in paragraph 290-230(2)(c) for the income year exceeds $37,000;

(b) the sum of the *spouse contributions you make in the income year.

(2) The maximum *tax offset to which you are entitled for an income year is $540, even if you are entitled to a tax offset for more than 1 *spouse.

290-240 Tax file number

If you are entitled to the *tax offset for the contribution, you may, with your *spouse's consent, quote your spouse's *tax file number to the trustee (or *RSA provider) of the *superannuation fund (or *RSA) to which the contribution is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 291—Excess concessional contributions

Table of Subdivisions

Guide to Division 291
291-A Object of this Division
291-B Excess concessional contributions
291-C Modifications for defined benefit interests
291-CA Contributions that do not result in excess contributions
291-D Other provisions

Guide to Division 291

291-1 What this Division is about

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

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 equals or exceeds $500,000).

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

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

Note: Part 2-35 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about releasing the excess concessional contributions from superannuation.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 291-A—Object of this Division

Table of sections

291-5 Object of this Division

291-5 Object of this Division

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

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

Subdivision 291-B—Excess concessional contributions

Guide to Subdivision 291-B

291-10 What this Subdivision is about

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

Table of sections

Operative provisions

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

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

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

(a) an amount equal to the excess concessional contributions is included in your assessable income for your corresponding income year; and

(b) you are entitled to a *tax offset for that income year equal to 15% of the excess concessional contributions.

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

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

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

(1) You have ***excess concessional contributions*** for a *financial year if the amount of your *concessional contributions for the year exceeds your *concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.

(2) Your ***concessional contributions cap*** is:

(a) for the 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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

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

(1) The amount of your ***concessional contributions*** for a *financial year is the sum of:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) each contribution covered under subsection (2); and
(b) each amount covered under subsection (3).

Note: For rules about defined benefit interests, see Subdivision 291-C.

(2) A contribution is covered under this subsection if:
(a) it is made in the *financial year to a *complying superannuation plan in respect of you; and
(b) it is included in the assessable income of the *superannuation provider in relation to the plan, or, by way of a *roll-over superannuation benefit, in the assessable income of a *complying superannuation fund or *RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds); and
(c) it is *not* 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); and
(e) it is *not* an amount mentioned in subsection 99G(6) of the *Superannuation Industry (Supervision) Act 1993* that is refunded in accordance with that subsection.

(3) An amount in a *complying superannuation plan is covered under this subsection if it is allocated by the *superannuation provider in relation to the plan for you for the year in accordance with conditions specified in the regulations.

(4) 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).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 291-C—Modifications for defined benefit interests

Guide to Subdivision 291-C

291-155 What this Subdivision is about

This Subdivision modifies the meaning of ***concessional contributions*** relating to defined benefits interests.

Table of sections

Operative provisions

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

Operative provisions

291-160 Application

This Subdivision applies if, in a *financial year, you have:

(a) a *superannuation interest that is or includes a *defined benefit interest; or

(b) more than one superannuation interest that is or includes a defined benefit interest.

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

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

(a) the contributions covered by subsection 291-25(2), and the amounts covered by subsection 291-25(3), to the extent to which they do *not* relate to the *defined benefit interest or interests; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) your *notional taxed contributions for the financial year in respect of the defined benefit interest or interests; 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.

291-170 *Notional taxed contributions*

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

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

(2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the ***notional taxed contributions***.

(3) Regulations made for the purposes of subsection (1) may define the *notional taxed contributions, and the amount of notional taxed

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

(a) the individual who has the *superannuation interest that is or includes the *defined benefit interest;

(b) the *superannuation plan in which the superannuation interest exists;

(c) the *superannuation provider in relation to the superannuation plan;

(d) any other matter.

(4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of *notional taxed contributions for a *financial year is nil.

(5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.

291-175 *Defined benefit interest*

(1) An individual's *superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to *superannuation benefits payable from the interest by reference to one or more of the following matters:

(a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;

(b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;

(c) a specified amount;

(d) specified conversion factors.

(2) However, an individual's *superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:

(a) *disability superannuation benefits;

(b) *superannuation death benefits;

(c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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;

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

the amount of those notional taxed contributions;

(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;

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*.

Subdivision 291-D—Other provisions

Guide to Subdivision 291-D

291-460 What this Subdivision is about

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

Table of sections

Operative provisions

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

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

(1) The Commissioner may make a written determination that, for the purposes of working out the amount of your *excess concessional contributions for a *financial year, all or part of your *concessional contributions for a financial year is to be:

(a) disregarded; or

(b) allocated instead for the purposes of another financial year specified in the determination.

Conditions for making of determination

(2) The Commissioner may make the determination only if:

(a) you apply for the determination in accordance with this section; and

(b) the Commissioner considers that:

(i) there are special circumstances; and

(ii) making the determination is consistent with the object of this Division and Division 292.

(2A) Paragraph (2)(a) does not apply if:

(a) the determination relates to a contribution that is an amount the Commissioner pays for your benefit under Part 8 of the *Superannuation Guarantee (Administration) Act 1992*; and

(b) the amount represents an amount of a charge payment (within the meaning of section 63A of that Act) paid as a result of a disclosure to which paragraph 74(1)(a) of that Act applies; and

(c) the entity making the disclosure qualified, under section 74 of that Act, for an amnesty in relation to the *superannuation guarantee shortfall to which the charge payment relates.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Matters to which regard may be had

(3) In making the determination the Commissioner may have regard to the following:

(a) whether a contribution made in the relevant *financial year would more appropriately be allocated towards another financial year instead;

(b) whether it was reasonably foreseeable, when a relevant contribution was made, that you would have *excess concessional contributions or *excess non-concessional contributions for the relevant financial year, and in particular:

(i) if the relevant contribution is made in respect of you by another individual—the terms of any agreement or arrangement between you and that individual as to the amount and timing of the contribution; and

(ii) the extent to which you had control over the making of the contribution;

(c) any other relevant matters.

Requirements for application

(4) The application:

(a) must be in the *approved form; and

(b) can only be made after all of the contributions sought to be disregarded or reallocated have been made; and

(c) if you receive an *excess concessional contributions determination for the *financial year—must be given to the Commissioner within:

(i) 60 days after receiving the determination; or

(ii) a further period allowed by the Commissioner.

Notification

(5) The Commissioner must give you:

(a) a copy of the determination; or

(b) if the Commissioner decides not to make a determination—notice of that decision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Review

(7) If you are dissatisfied with:

(a) a determination made under this section in relation to you; or

(b) a decision the Commissioner makes not to make such a determination;

you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(8) To avoid doubt:

(a) subject to subsection 14ZVB(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a determination or decision, relating to all or part of your *concessional contributions for a *financial year:

(i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or

(ii) under section 97-10 in Schedule 1 to the *Taxation Administration Act 1953* against an *excess concessional contributions determination made in relation to you for the financial year; and

(b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a determination under this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 292—Excess non-concessional contributions

Table of Subdivisions

Guide to Division 292
292-A Object of this Division
292-B Assessable income and tax offset
292-C Excess non-concessional contributions tax
292-E Excess non-concessional contributions tax assessments
292-F Amending excess non-concessional contributions tax assessments
292-G Collection and recovery
292-H Other provisions

Guide to Division 292

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 292-A—Object of this Division

Table of sections

292-5 Object of this Division

292-5 Object of this Division

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

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

Subdivision 292-B—Assessable income and tax offset

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Table of sections

292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions
292-25 Amount included in assessable income
292-30 Amount of the tax offset

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.

292-25 Amount included in assessable income

(1) The amount included in your assessable income for the income year is equal to the amount of associated earnings stated in the most recent of those determinations.

(2) However, if:

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

(b) section 292-467 does not apply to you for the *financial year;

the amount included in your assessable income for the income year is equal to the amount of associated earnings that would have been stated in that most recent determination if the total amount had been the amount of the excess stated in that determination.

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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).

292-30 Amount of the tax offset

The *tax offset is equal to 15% of the amount included in your assessable income for the income year under section 292-25.

Note 1: This tax offset compensates for any tax liability of the superannuation provider on earnings from investments made with the contributions making up the excess amount stated in the most recent determination.

Note 2: This offset cannot be refunded, transferred or carried forward (see item 20 of the table in subsection 63-10(1)).

Subdivision 292-C—Excess non-concessional contributions tax

292-75 What this Subdivision is about

This Subdivision defines ***non-concessional contributions*** and ***excess non-concessional contributions***, and sets liability to pay excess non-concessional contributions tax.

Table of sections

Operative provisions

292-80 Liability for excess non-concessional contributions tax
292-85 Your ***excess non-concessional contributions*** for a financial year
292-90 Your ***non-concessional contributions*** for a financial year
292-95 Contributions arising from structured settlements or orders for personal injuries
292-100 Contribution relating to some CGT small business concessions
292-102 Downsizer contributions
292-103 COVID-19 re-contributions
292-105 CGT cap amount

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

292-80 Liability for excess non-concessional contributions tax

You are liable to pay *excess non-concessional contributions tax imposed by the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* if you have *excess non-concessional contributions for a *financial year.

Note: The amount of the tax is set out in that Act.

292-85 Your *excess non-concessional contributions* for a financial year

Your excess non-concessional contributions

(1) You have ***excess non-concessional contributions*** for a *financial year if:

(a) you receive one or more *excess non-concessional contributions determinations for the financial year; and

(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

(c) section 292-467 of this Act does not apply to you for the financial year.

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

(1A) The amount of your ***excess non-concessional contributions*** is:

(a) if no amounts were paid as described in paragraph (1)(b)—the excess amount stated in that most recent determination; or

(b) otherwise—the amount of the excess worked out under paragraph (1)(b).

Note: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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 75 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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

292-90 Your *non-concessional contributions* for a financial year

(1) The amount of your ***non-concessional contributions*** for a *financial year is the sum of:

(a) each contribution covered under subsection (2); and

(aa) each amount covered under subsection (4); and

(b) the amount of your *excess concessional contributions (if any) for the financial year.

Modification for released excess concessional contributions

(1A) However, if:

(a) you make a valid request under section 131-5 in Schedule 1 to the *Taxation Administration Act 1953* in relation to *excess concessional contributions you have for the *financial year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) a *superannuation provider pays an amount in relation to the release authority issued under section 131-15 in that Schedule in relation to that request;

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

Non-concessional contributions and amounts

(2) A contribution is covered under this subsection if:

(a) it is made in the *financial year to a *complying superannuation plan in respect of you; and

(b) it is *not* included in the assessable income of the *superannuation provider in relation to the *superannuation plan, or, by way of a *roll-over superannuation benefit, in the assessable income of any *complying superannuation fund or *RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds); and

(c) it is *not* any of the following:

(i) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

(ii) a contribution covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries);

(iii) a contribution covered under section 292-100 (certain CGT-related payments), to the extent that it does not exceed your *CGT cap amount when it is made;

(iiia) a contribution covered under section 292-102 (downsizer contributions);

(iiib) a contribution covered by section 292-103 (COVID-19 re-contributions);

(iv) a contribution made to a *constitutionally protected fund (other than a contribution included in the *contributions segment of your *superannuation interest in the fund);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(v) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180;

(vi) a contribution that is a *roll-over superannuation benefit.

(3) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

(4) An amount is covered under this subsection if it is any of the following:

(a) an amount in a *complying superannuation plan that is allocated by the *superannuation provider in relation to that plan for you for the year in accordance with conditions specified in the regulations;

(b) the amount of any contribution made to that plan in respect of you in the year that is covered by a valid and acknowledged notice under section 290-170, to the extent that it is not allowable as a deduction for the person making the contribution;

(c) the sum of each contribution made to that plan in respect of you at a time on or after 10 May 2006 when that plan was not a complying superannuation plan (other than a contribution covered under this paragraph in relation to a previous financial year).

292-95 Contributions arising from structured settlements or orders for personal injuries

(1) A contribution is covered under this section if:

(a) the contribution arises from:

(i) the settlement of a claim that satisfies the conditions in subsection (3); or

(ii) the settlement of a claim in relation to a personal injury suffered by you under a law of the Commonwealth or of a State or Territory relating to workers compensation; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(iii) the order of a court that satisfies the conditions in subsection (4); and

(b) the contribution is made within 90 days, or such longer period as the Commissioner allows, after the later of the following:

(i) the day of receipt of the payment from which the contribution is made; or

(ii) in relation to subparagraph (a)(i) or (iii)—the day mentioned in subsection (2); and

(c) 2 legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that you can ever be *gainfully employed in a capacity for which you are reasonably qualified because of education, experience or training; and

(d) no later than the time the contribution is made to a *superannuation plan, you or your *legal personal representative notify the *superannuation provider in relation to the plan, in the *approved form, that this section is to apply to the contribution.

(2) For the purposes of subparagraph (1)(b)(ii), the day is:

(a) for a settlement mentioned in subparagraph (a)(i):

(i) the day on which the agreement mentioned in paragraph (3)(c) was entered into; or

(ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court—the day on which that order was made; or

(b) for an order mentioned in subparagraph (1)(a)(iii)—the day on which the order was made.

(3) For the purposes of subparagraph (1)(a)(i), the conditions are as follows:

(a) the claim:

(i) is for compensation or damages for, or in respect of, personal injury suffered by you; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) is made by you or your *legal personal representative;

(b) the claim is based on the commission of a wrong, or on a right created by statute;

(c) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court).

(4) For the purposes of subparagraph (1)(a)(iii), the conditions are as follows:

(a) the order is made in respect of a claim that:

(i) is for compensation or damages for, or in respect of, personal injury suffered by you; and

(ii) is made by you or your *legal personal representative;

(b) the claim is based on the commission of a wrong, or on a right created by statute;

(c) the order is not an order approving or endorsing an agreement as mentioned in paragraph (3)(c).

(5) If a claim is both:

(a) for compensation or damages for personal injury suffered by you; and

(b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);

subsections (3) and (4) apply to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to amounts that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

(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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

292-100 Contribution relating to some CGT small business concessions

(1) A contribution is covered under this section if:

(a) the contribution is made by you to a *complying superannuation plan in respect of you in a *financial year; and

(b) the requirement in subsection (2), (4), (7) or (8) is met; and

(c) you choose, in accordance with subsection (9), to apply this section to an amount that is all or part of the contribution.

(2) The requirement in this subsection is met if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) the contribution is equal to all or part of the *capital proceeds from a *CGT event for which you can disregard any *capital gain under section 152-105 (or would be able to do so, assuming that a capital gain arose from the event); and

(b) the contribution is made on or before the later of the following days:

(i) the day you are required to lodge your *income tax return for the income year in which the CGT event happened;

(ii) 30 days after the day you receive the capital proceeds.

(3) For the purposes of paragraph (2)(a), ignore the requirement in paragraph 152-105(b) if you are permanently incapacitated at the time of the *CGT event but were not permanently incapacitated at the time the relevant *CGT asset was acquired.

(4) The requirement in this subsection is met if:

(a) just before a *CGT event, you were a *CGT concession stakeholder of an entity that could, under section 152-110, disregard any *capital gain arising from the CGT event (or would be able to do so, assuming that a capital gain arose from the event); and

(b) the entity makes a payment to you before the later of:

(i) 2 years after the CGT event; and

(ii) if the CGT event happened because the entity *disposed of the relevant *CGT asset—6 months after the latest time a possible *financial benefit becomes or could become due under a *look-through earnout right relating to that CGT asset and the disposal; and

(c) the contribution is equal to all or part of your stakeholder's participation percentage (within the meaning of subsection 152-125(2)) of the *capital proceeds from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and

(d) the contribution is made within 30 days after the payment mentioned in paragraph (b).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(5) In determining whether the conditions in subsection (2) or (4) are satisfied for a *CGT event in relation to a *pre-CGT asset, treat the asset as a *post-CGT asset.

(6) For the purposes of paragraph (4)(a), ignore the requirement in paragraph 152-110(1)(b) if a *significant individual was permanently incapacitated at the time of the *CGT event but was not permanently incapacitated when the relevant *CGT asset was acquired.

(7) The requirement in this subsection is met if:
   (a) the contribution is equal to all or part of the *capital gain from a *CGT event that you disregarded under subsection 152-305(1); and
   (b) the contribution is made on or before the later of the following days:
      (i) the day you are required to lodge your *income tax return for the income year in which the CGT event happened;
      (ii) 30 days after the day you receive the *capital proceeds from the CGT event.

(8) The requirement in this subsection is met if:
   (a) just before a *CGT event, you were a *CGT concession stakeholder of an entity that could, under subsection 152-305(2), disregard all or part of a *capital gain arising from the CGT event; and
   (b) the entity makes a payment to you that satisfies the conditions in section 152-325; and
   (c) the contribution is equal to all or part of the capital gain arising from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
   (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(9) To make a choice for the purposes of paragraph (1)(c), you must:
  (a) make the choice in the *approved form; and
  (b) give it to the *superannuation provider in relation to the *complying superannuation plan on or before the time when the contribution is made.

292-102 Downsizer contributions

Criteria for a downsizer contribution

(1) A contribution is covered under this section if:
  (a) the contribution is made to a *complying superannuation plan in respect of you when you are aged 60 years or over; and
  (b) the contribution is an amount equal to all or part of the *capital proceeds received from the *disposal of an *ownership interest (the ***old interest***) in a *dwelling; and
  (c) you or your *spouse held the old interest just before the disposal; and
  (d) any *capital gain or *capital loss from the disposal of the old interest:
    (i) for the case where you held it just before the disposal—is wholly or partially disregarded under Subdivision 118-B (or would have been if you had *acquired it on or after 20 September 1985); or
    (ii) otherwise—would have been wholly or partially disregarded under Subdivision 118-B had you *acquired the old interest on or after 20 September 1985 and held it for a period before the disposal; and
  (e) the condition in subsection (2) is met for the disposal; and
  (f) the dwelling is located in *Australia, and is not a caravan, houseboat or other mobile home; and
  (g) the contribution is made within 90 days, or such longer period as the Commissioner allows, after the time the change of ownership occurs as a result of the disposal; and
  (h) you choose, in accordance with subsection (8), to apply this section to the contribution; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) there is not already a contribution covered under this section, and made to a complying superannuation plan in respect of you, from an earlier choice you made in relation to the disposal of:

(i) another ownership interest in the dwelling that was not a related spousal interest to the old interest; or

(ii) an ownership interest in another dwelling.

Note 1: Subparagraph (i)(i) does not prevent another contribution, made for you from the capital proceeds from the disposal of the same interest, from also being a contribution covered under this section.

Note 2: That subparagraph also does not prevent another contribution, made for you from the capital proceeds from the disposal of a related spousal interest, from being a contribution covered under this section.

10-year ownership condition

(2) The condition in this subsection is met for the *disposal of the old interest if either or both of the following paragraphs applies:

(a) at all times during the 10 years ending just before the disposal:

(i) the old interest was held by you, your *spouse or your former spouse; or

(ii) an *ownership interest in the land on which the *dwelling is situated was held by you, your spouse or your former spouse;

(b) if subsection 118-147(1):

(i) applies because the old interest was a substitute property interest (within the meaning of that subsection) for an old dwelling referred to in paragraph 118-147(1)(a); or

(ii) would have applied as described in subparagraph (i) if paragraph 118-147(1)(a) were modified to refer to a dwelling (the ***old dwelling***) that was your main residence;

you, your spouse or your former spouse *acquired an ownership interest in that old dwelling at least 10 years before the disposal.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note: Section 118-147 deals with a dwelling replacing an earlier dwelling that was compulsorily acquired or destroyed etc.

Cap on the amount of a downsizer contribution

(3) Despite subsection (1), the contribution is covered under this section only to the extent that it does not exceed the lesser of:

(a) $300,000, less any other contribution that is already covered under this section and made to a *complying superannuation plan in respect of you; and

(b) the sum of the *capital proceeds from the disposals of:

(i) the old interest; and

(ii) any *related spousal interest to the old interest;

less the sum of all other contributions that are already covered under this section, in relation to the disposal of the old interest or any related spousal interest to the old interest, and made to complying superannuation plans in respect of you or your *spouse.

Market value substitution rule

(3A) In working out *capital proceeds for the purposes of paragraph (1)(b) or (3)(b), disregard section 116-30 to the extent that it has the effect of increasing those capital proceeds.

*Meaning of **related spousal interest***

(4) A ***related spousal interest***, to an *ownership interest in a *dwelling, is another ownership interest in the dwelling if:

(a) both ownership interests are *disposed of under the same contract; and

(b) just before the disposal, you *held one of the ownership interests and your *spouse held the other.

When interest held by trustee of deceased estate

(5) For the purposes of determining whether an individual held an interest at a particular time, if the interest was held at the particular

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

time by the trustee of the deceased estate of an individual who was your *spouse when the individual died, the interest is taken to be held at the particular time by that individual.

Review of the period for making the contribution

(6) If:

(a) you requested the Commissioner to allow a longer period under paragraph (1)(g); 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)(g) 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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Requirements for choices

(8) To make a choice for the purposes of paragraph (1)(h), you must:
  (a) make the choice in the *approved form; and
  (b) give it to the *superannuation provider in relation to the *complying superannuation plan at or before the time when the contribution is made.

Commissioner to notify providers if contributions are not downsizer contributions

(9) The Commissioner must, in writing, notify a *superannuation provider that all, or a specified part, of a contribution is not covered under this section if:
  (a) the Commissioner is aware that a choice referred to in subsection (8) has been given to the superannuation provider for the contribution; and
  (b) the Commissioner is satisfied that the contribution, or that part of the contribution, (as applicable) is not covered under this section.

The Commissioner may give a copy of the notification to *APRA.

292-103 COVID-19 re-contributions

(1) A contribution is covered by this section if:
  (a) the contribution is made by you to a *complying superannuation plan in respect of you in a *financial year; and
  (b) the contribution is made in the financial year beginning on 1 July 2021, or a later financial year ending on or before 30 June 2030; and
  (c) one or more amounts (the ***COVID-19 early release amounts***) have been paid to you from a complying superannuation plan, in either or both of the financial years beginning on 1 July 2019 or 1 July 2020, because you satisfied:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) a condition of release specified in item 107A or 207AA of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*; or

(ii) a condition of release specified in item 109AA of the table in Schedule 2 to the *Retirement Savings Accounts Regulations 1997*; and

(d) the amount of the contribution is not more than the total of your COVID-19 early release amounts; and

(e) if you made one or more previous contributions covered by this section—the sum of:

(i) the amount of the contribution; and

(ii) the amounts of those previous contributions;

is not more than the total of your COVID-19 early release amounts; and

(f) you choose, in accordance with subsection (2), to apply this section to the contribution.

(2) To make a choice for the purposes of paragraph (1)(f), you must:

(a) make the choice in the *approved form; and

(b) give it to the *superannuation provider in relation to the *complying superannuation plan on or before the time when the contribution is made.

292-105 CGT cap amount

(1) Your ***CGT cap amount*** at the start of the 2007-2008 *financial year is $1,000,000.

Note: For transitional rules about contributions made in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

Reductions and increases

(2) If a contribution covered by section 292-100 is made in respect of you at a time, reduce your ***CGT cap amount*** just after that time:

(a) if the contribution falls short of your *CGT cap amount at that time—by the amount of the contribution; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) otherwise—to nil.

(3) At the start of each *financial year after the 2007-2008 financial year, increase your ***CGT cap amount*** by the amount (if any) by which the index amount for that financial year exceeds the index amount for the previous financial year.

(4) For the purposes of subsection (3), the index amount for the 2007-2008 *financial year is $1,000,000. The index amount is then indexed annually.

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

Subdivision 292-E—Excess non-concessional contributions tax assessments

Guide to Subdivision 292-E

292-225 What this Subdivision is about

The Commissioner may make an assessment of a person's liability to pay excess non-concessional contributions tax, and the excess non-concessional contributions on which that liability is based.

Table of sections

Operative provisions

292-230 Commissioner must make an ***excess non-concessional contributions tax assessment***
292-240 Validity of assessment
292-245 Objections

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

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

(1) The Commissioner must make an assessment (an ***excess non-concessional contributions tax assessment***) of:

(a) if a person has *excess non-concessional contributions for a *financial year—the amount of the excess non-concessional contributions; and

(b) the amount (if any) of *excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.

(2) The Commissioner must give the person notice in writing of an *excess non-concessional contributions tax assessment as soon as practicable after making the assessment.

292-240 Validity of assessment

The validity of an *excess non-concessional contributions tax assessment is not affected because any of the provisions of this Act have not been complied with.

292-245 Objections

If a person is dissatisfied with an *excess non-concessional contributions tax assessment made in relation to the person, the person may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 292-F—Amending excess non-concessional contributions tax assessments

Guide to Subdivision 292-F

292-300 What this Subdivision is about

The Commissioner may amend excess non-concessional contributions tax assessments within certain time limits.

Table of sections

Operative provisions

292-305 Amendments within 4 years of the original assessment
292-310 Amended assessments are treated as excess non-concessional contributions tax assessments
292-315 Later amendments—on request
292-320 Later amendments—fraud or evasion
292-325 Further amendment of an amended particular
292-330 Amendment on review etc.

Operative provisions

292-305 Amendments within 4 years of the original assessment

(1) The Commissioner may amend an *excess non-concessional contributions tax assessment for a person for a *financial year at any time during the period of 4 years after the *original excess non-concessional contributions tax assessment day for the person for that year.

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

(1) Once an amended *excess non-concessional contributions tax assessment for a person for a *financial year is made, it is taken to be an ***excess non-concessional contributions tax assessment*** for the person for the year.

(2) If the Commissioner amends a person's *excess non-concessional contributions tax assessment, the Commissioner must give the person notice in writing of the amendment as soon as practicable after making the amendment.

292-315 Later amendments—on request

The Commissioner may amend an *excess non-concessional contributions tax assessment for a person for a *financial year after the end of the period of 4 years after the *original excess non-concessional contributions tax assessment day for the person for the year if, within that 4 year period:

(a) the person applies for the amendment in the *approved form; and

(b) the person gives the Commissioner all the information necessary for making the amendment.

292-320 Later amendments—fraud or evasion

(1) If:

(a) a person (or a *superannuation provider covered under subsection (2)) does not make a full and true disclosure to the Commissioner of the information necessary for an *excess non-concessional contributions tax assessment for the person for a *financial year; and

(b) in making the assessment, the Commissioner makes an under-assessment; and

(c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

the Commissioner may amend the assessment at any time.

(2) A *superannuation provider is covered under this subsection if any of the following conditions are satisfied:

(a) contributions have been made to a *superannuation plan of the provider on behalf of the person in the *financial year;

(b) an amount is included in the person's *concessional contributions for the financial year under subsection 291-25(3) because the superannuation provider allocated it to the person;

(c) *notional taxed contributions are included in the person's concessional contributions for the financial year under section 291-165 because of the person's *defined benefit interest in a superannuation plan of the provider.

292-325 Further amendment of an amended particular

If:

(a) an *excess non-concessional contributions tax assessment has been amended (the ***earlier amendment***) in any particular; and

(b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular;

the Commissioner may do so within a period of 4 years after the earlier amendment.

292-330 Amendment on review etc.

Nothing in this Subdivision prevents the amendment of an *excess non-concessional contributions tax assessment:

(a) to give effect to a decision on a review or appeal; or

(b) as a result of an objection or pending an appeal or review.

Note: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 292-G—Collection and recovery

Guide to Subdivision 292-G

292-380 What this Subdivision is about

Excess non-concessional contributions tax is due and payable at the end of 21 days after notice of assessment and the general interest charge applies to unpaid amounts. Money may be released from a superannuation plan to pay the tax.

Table of sections

Operative provisions

292-385 Due date for payment of excess non-concessional contributions tax
292-390 General interest charge
292-395 Refunds of amounts overpaid

Operative provisions

292-385 Due date for payment of excess non-concessional contributions tax

*Excess non-concessional contributions tax assessed for a person for a *financial year is due and payable at the end of 21 days after the Commissioner gives the person notice of the *excess non-concessional contributions tax assessment.

292-390 General interest charge

If *excess non-concessional contributions tax or *shortfall interest charge payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) starts at the beginning of the day on which the excess non-concessional contributions tax or shortfall interest charge was due to be paid; and

(b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the excess non-concessional contributions tax or shortfall interest charge;

(ii) general interest charge on any of the excess non-concessional contributions tax or shortfall interest charge.

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

292-395 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to *excess non-concessional contributions tax.

Subdivision 292-H—Other provisions

Table of sections

292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

292-467 Direction that the value of superannuation interests is nil

292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

(1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division and Subdivision 97-B in Schedule 1 to the *Taxation Administration Act 1953*, all or part of your *non-concessional contributions for a *financial year is to be:

(a) disregarded; or

(b) allocated instead for the purposes of another financial year specified in the determination.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) You may apply to the Commissioner in the *approved form for a determination under subsection (1). The application can only be made:

(a) after all of the contributions sought to be disregarded or reallocated have been made; and

(b) if you receive one or more *excess non-concessional contributions determinations for the *financial year—before the end of:

(i) the period of 60 days starting on the day you receive the most recent of those determinations; or

(ii) a longer period allowed by the Commissioner.

(3) The Commissioner may make a determination under subsection (1) only if he or she considers that:

(a) there are special circumstances; and

(b) making the determination is consistent with the object of this Division.

(4) In making a determination under subsection (1) the Commissioner may have regard to the matters in subsections (5) and (6) and any other relevant matters.

(5) The Commissioner may have regard to whether a contribution made in the relevant *financial year would more appropriately be allocated towards another financial year instead.

(6) The Commissioner may have regard to whether it was reasonably foreseeable, when a relevant contribution was made, that you would have *excess concessional contributions or *excess non-concessional contributions for the relevant *financial year, and in particular:

(a) if the relevant contribution is made in respect of you by another person—the terms of any agreement or arrangement between you and that person as to the amount and timing of the contribution; and

(b) the extent to which you had control over the making of the contribution.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(7) The Commissioner must give you a copy of a determination made under subsection (1).

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.

292-467 Direction that the value of superannuation interests is nil

(1) The Commissioner must, by writing, direct that this section applies to you for a *financial year if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) you receive one or more *excess non-concessional contributions determinations for the financial year; and

(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

(d) the Commissioner is satisfied that the *value of all of your remaining *superannuation interests is nil.

Note 1: The direction means you have no excess non-concessional contributions for the financial year (see paragraph 292-85(1)(c)), even though not all of the excess amount has been released in response to release authorities issued under Division 131, or former Division 96, in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The direction does not prevent an amount from being included in your assessable income (see Subdivision 292-B).

Note 3: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

(2) The Commissioner must give you a copy of the direction.

(4) To avoid doubt:

(a) you may object under section 292-245 against an *excess non-concessional contributions tax assessment made in relation to you on the ground that a direction was not made under this section; and

(b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, not making a direction under this section is a decision forming part of the process of making an assessment of tax under this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 293—Sustaining the superannuation contribution concession

Table of Subdivisions

Guide to Division 293
293-A Object of this Division
293-B Sustaining the superannuation contribution concession
293-C When tax is payable
293-D Modifications for defined benefit interests
293-E Modifications for constitutionally protected State higher level office holders
293-F Modifications for Commonwealth justices
293-G Modifications for temporary residents who depart Australia

Guide to Division 293

293-1 What this Division is about

This Division reduces the concessional tax treatment of certain superannuation contributions made for high income individuals.

The high income threshold is $250,000.

There are special rules for defined benefit interests, constitutionally protected State higher level office holders, certain Commonwealth justices and temporary residents who depart Australia.

Note: Part 3-20 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about the administration of the Division 293 tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 293-A—Object of this Division

Table of sections

Operative provisions

293-5 Object of this Division

Operative provisions

293-5 Object of this Division

The object of this Division is to reduce the concessional tax treatment of superannuation contributions for high income individuals.

Subdivision 293-B—Sustaining the superannuation contribution concession

Guide to Subdivision 293-B

293-10 What this Subdivision is about

This Subdivision reduces the superannuation tax concession for high income earners.

An individual's income is added to certain superannuation contributions and compared to the high income threshold of $250,000. A tax is payable on the excess, or on the superannuation contributions (whichever is less).

The tax is not payable in respect of excess concessional contributions.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Table of sections

Liability for tax

293-15 Liability for tax
293-20 Your ***taxable contributions***

Low tax contributions

293-25 Your ***low tax contributions***
293-30 Low tax contributed amounts

Liability for tax

293-15 Liability for tax

You are liable to pay *Division 293 tax if you have *taxable contributions for an income year.

Note: The amount of the tax is set out in the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

293-20 Your *taxable contributions*

(1) If the sum of:

(a) your *income for surcharge purposes for an income year (disregarding your *reportable superannuation contributions); and

(b) your *low tax contributions for the corresponding *financial year;

exceeds $250,000, you have ***taxable contributions*** for the income year equal to the lesser of the low tax contributions and the amount of the excess.

(2) However, you do not have ***taxable contributions*** for an income year if the amount of your *low tax contributions is nil.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Low tax contributions

293-25 Your *low tax contributions*

The amount of your ***low tax contributions*** for a *financial year is:

(a) the low tax contributed amounts covered by section 293-30 for the financial year; less

(b) your *excess concessional contributions for the financial year (if any).

Note 1: Low tax contributions are modified for defined benefit interests (see Subdivision 293-D).

Note 2: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

293-30 Low tax contributed amounts

(1) The low tax contributed amounts covered by this section for a *financial year are the sum of the contributions covered by subsection (2) and the amounts covered by subsection (5) for the financial year.

Note: Low tax contributed amounts covered by this section are modified for State higher level office holders (see Subdivision 293-E).

Contributions to complying superannuation plans

(2) A contribution is covered under this section for a *financial year if:

(a) it is made in the financial year to a *complying superannuation plan in respect of you; and

(b) it is included:

(i) in the assessable income of the *superannuation provider in relation to the plan; or

(ii) by way of a *roll-over superannuation benefit, in the assessable income of a *complying superannuation fund or *RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) 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).

Exceptions

(4) Despite subsection (2), a contribution is not covered under this section if it is any of the following:
  (a) an amount mentioned in subsection 295-200(2) (about amounts transferred from foreign superannuation funds);
  (b) an amount mentioned in item 2 of the table in subsection 295-190(1) (about certain roll-over superannuation benefits);
  (c) an amount that the Commissioner pays for your benefit under Part 8 of the *Superannuation Guarantee (Administration) Act 1992*, if:
    (i) the amount represents an amount of a charge payment (within the meaning of section 63A of that Act) paid as a result of a disclosure to which paragraph 74(1)(a) of that Act applies; and
    (ii) the entity making the disclosure qualified, under section 74 of that Act, for an amnesty in relation to the *superannuation guarantee shortfall to which the charge payment relates;
  (d) an amount that an entity contributes for your benefit that is offset, under section 23A of that Act, against the entity's liability to pay superannuation guarantee charge (within the meaning of that Act), if:
    (i) the amount represents an amount of a superannuation guarantee charge covered by a disclosure to which paragraph 74(1)(a) of that Act applies; and
    (ii) the entity qualified, under section 74 of that Act, for an amnesty in relation to the superannuation guarantee shortfall to which the superannuation guarantee charge relates.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Amounts allocated in relation to a complying superannuation plan

(5) An amount in a *complying superannuation plan is covered under this section if it is allocated by the *superannuation provider in relation to the plan for you for the *financial year in accordance with conditions specified by a regulation made for the purposes of subsection 291-25(3).

Subdivision 293-C—When tax is payable

Guide to Subdivision 293-C

293-60 What this Subdivision is about

This Subdivision has rules about payment of Division 293 tax.

Table of sections

Operative provisions

293-65 When tax is payable—original assessments
293-70 When tax is payable—amended assessments
293-75 General interest charge

Operative provisions

293-65 When tax is payable—original assessments

(1) Your *assessed Division 293 tax for an income year is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the *Division 293 tax.

Exception for tax deferred to a debt account

(2) However, subsection (1) does not apply to an amount of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 1: For assessments of Division 293 tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For ***deferred to a debt account***, see Division 133 in that Schedule.

Note 3: For release of money from a superannuation plan to pay these amounts, see Division 135 in that Schedule.

293-70 When tax is payable—amended assessments

(1) If the Commissioner amends your assessment, any extra *assessed Division 293 tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

Exception for tax deferred to a debt account

(2) However, subsection (1) does not apply to an amount of extra *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest.

Note 1: For ***deferred to a debt account***, see Division 133 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For release of money from a superannuation plan to pay these amounts, see Division 131 in that Schedule.

293-75 General interest charge

If an amount of *assessed Division 293 tax or *shortfall interest charge on assessed Division 293 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 Division 293 tax or the shortfall interest charge;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) general interest charge on any of the assessed Division 293 tax or the shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Note 2: Shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 3: See section 5-10 of this Act for when the amount of shortfall interest charge becomes due and payable.

Subdivision 293-D—Modifications for defined benefit interests

Guide to Subdivision 293-D

293-100 What this Subdivision is about

This Subdivision modifies the meaning of ***low tax contributions*** for individuals who have a defined benefit interest or interests in a financial year.

Table of sections

Operative provisions

293-105 ***Low tax contributions*—**modification for defined benefit interests
293-115 ***Defined benefit contributions***

Operative provisions

293-105 *Low tax contributions*—modification for defined benefit interests

Despite section 293-25, if you have a *defined benefit interest or interests in a *financial year, the amount of your ***low tax contributions*** for the financial year is worked out as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Method statement

Step 1. Start with the low tax contributed amounts covered by section 293-30 for the *financial year, to the extent to which they do *not* relate to the *defined benefit interest or interests.

Step 2. Subtract your *excess concessional contributions for the *financial year (if any).

Note: The result of step 2 could be nil, or a negative amount.

Step 3. Add your *defined benefit contributions for the *financial year in respect of the *defined benefit interest or interests.

The result (but not less than nil) is the amount of your ***low tax contributions*** for the financial year.

Note: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

293-115 *Defined benefit contributions*

(1) Your ***defined benefit contributions***, for a *financial year in respect of a *defined benefit interest, has the meaning given by regulation.

Note: There are modifications in sections 293-150 (about constitutionally protected State higher level office holders) and 293-195 (about Commonwealth justices).

(2) A regulation made for the purposes of subsection (1) may provide for a method of determining the amount of the ***defined benefit contributions***.

(3) A regulation made for the purposes of subsection (1) may define the *defined benefit contributions, and the amount of defined benefit contributions, in different ways depending on any of the following matters:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) the person who has the *superannuation interest that is or includes the *defined benefit interest;
(b) the *superannuation plan in which the superannuation interest exists;
(c) the *superannuation provider in relation to the superannuation plan;
(d) any other matter.

(4) A regulation made for the purposes of subsection (1) may specify circumstances in which the amount of *defined benefit contributions for a *financial year is nil.

(5) Subsections (2), (3) and (4) do not limit a regulation that may be made for the purposes of this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 293-E—Modifications for constitutionally protected State higher level office holders

Guide to Subdivision 293-E

293-140 What this Subdivision is about

Constitutionally protected State higher level office holders do not pay Division 293 tax in respect of contributions to constitutionally protected funds, unless the contributions are made as part of a salary package.

Table of sections

Operative provisions

293-145 Who this Subdivision applies to
293-150 ***Low tax contributions*—modification for CPFs**
293-155 High income threshold—effect of modification
293-160 Salary packaged contributions

Operative provisions

293-145 Who this Subdivision applies to

(1) This Subdivision applies to an individual for an income year if:

(a) the individual has a *superannuation interest in a *constitutionally protected fund in the corresponding *financial year; and

(b) at any time in the income year, the individual is declared by regulation to be an individual to whom this Subdivision applies.

(3) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note: Section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013* provides that Division 293 tax is not imposed in relation to a person if the imposition would exceed the legislative power of the Commonwealth.

293-150 Low tax contributions—modification for CPFs

(1) This section applies for the purpose of working out under section 293-25 or 293-105 the amount of the individual's *low tax contributions for the *financial year corresponding to the income year.

Modified low tax contributed amounts in CPFs

(2) Despite section 293-30, the low tax contributed amounts covered by that section for the *financial year do not include any contributions to a *constitutionally protected fund, other than contributions covered by section 293-160 (about salary packaged contributions).

*Modified **defined benefit contributions** in CPFs*

(3) Despite section 293-115, the individual's ***defined benefit contributions*** for the *financial year in respect of a *defined benefit interest in a *constitutionally protected fund are equal to:

(a) unless paragraph (b) applies—nil; or

(b) if, having regard to subsection (2) of this section, the low tax contributed amounts covered by section 293-30 for the year include contributions in respect of the defined benefit interest—the amount of those contributions.

293-155 High income threshold—effect of modification

(1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the $250,000 threshold mentioned in that subsection, disregard section 293-150.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) To avoid doubt, the effect of subsection (1) is that the amount of the individual's *taxable contributions for an income year is the lesser of:

(a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-150) for the income year; and

(b) the individual's *low tax contributions for the corresponding *financial year (worked out having regard to section 293-150).

293-160 Salary packaged contributions

(1) A contribution made to a *complying superannuation plan in respect of an individual is covered by this section if it is made because the individual agreed with an entity, or an *associate of an entity:

(a) for the contribution to be made; and

(b) in return, for the *withholding payments covered by subsection (2) that are to be made to the individual by the entity to be reduced (including to nil).

(2) This subsection covers a *withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

Withholding payments covered

Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-55	Voluntary agreement to withhold
5	Section 12-60	Payment under labour hire arrangement, or specified by regulations

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 293-F—Modifications for Commonwealth justices

Guide to Subdivision 293-F

293-185 What this Subdivision is about

Division 293 tax is not payable by Commonwealth justices and judges in respect of contributions to a defined benefit interest established under the *Judges' Pensions Act 1968*.

Table of sections

Operative provisions

293-190 Who this Subdivision applies to
293-195 ***Defined benefit contributions***—modified treatment of contributions under the *Judges' Pensions Act 1968*
293-200 High income threshold—effect of modification

Operative provisions

293-190 Who this Subdivision applies to

(1) This Subdivision applies to an individual if the individual is a Justice of the High Court, or a justice or judge of a court created by the Parliament, at any time on or after the start of the individual's 2012-13 income year.

(2) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

Note: Section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013* provides that Division 293 tax is not imposed in relation to a person if the imposition would exceed the legislative power of the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

293-195 *Defined benefit contributions*—modified treatment of contributions under the *Judges' Pensions Act 1968*

(1) This section applies for the purpose of working out under section 293-105 the amount of the individual's *low tax contributions for any *financial year.

(2) Despite section 293-115 and subsection 293-150(3), the individual's ***defined benefit contributions*** for a *financial year for a *defined benefit interest in a *superannuation fund established under the *Judges' Pensions Act 1968* are nil.

293-200 High income threshold—effect of modification

(1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the $250,000 threshold mentioned in that subsection, disregard section 293-195.

(2) To avoid doubt, the effect of subsection (1) is that the amount of the individual's *taxable contributions for an income year is the lesser of:

(a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-195) for the income year; and

(b) the individual's *low tax contributions for the corresponding *financial year (worked out having regard to section 293-195).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 293-G—Modifications for temporary residents who depart Australia

Guide to Subdivision 293-G

293-225 What this Subdivision is about

If you receive a departing Australia superannuation payment, you are entitled to a refund of any Division 293 tax you have paid.

Table of sections

Operative provisions

293-230 Who is entitled to a refund
293-235 Amount of the refund
293-240 Entitlement to refund stops all Division 293 tax liabilities

Operative provisions

293-230 Who is entitled to a refund

You are entitled to a refund if:

(a) you have made payments of any of the following:
  (i) *assessed Division 293 tax;
  (ii) a voluntary payment made under section 133-70 in Schedule 1 to the *Taxation Administration Act 1953* for the purpose of reducing the amount by which a debt account for a *superannuation interest is in debit;
  (iii) *debt account discharge liability; and

(b) you receive a *departing Australia superannuation payment; and

(c) you apply to the Commissioner in the *approved form for the refund.

Note: How the refund is applied is set out in Part IIB of the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

293-235 Amount of the refund

(1) The amount of the refund to which you are entitled is the sum of the payments mentioned in paragraph 293-230(a) that you have made.

(2) However, the amount of the refund is reduced by the amount of any refunds to which you are entitled under a previous application of this Subdivision.

Exception—Division 293 tax attributable to period when you are an Australian resident

(3) Despite subsection (1), if:

(a) at any time in your 2012-13 income year, or a later income year, you are an Australian resident (but not a *temporary resident); and

(b) a payment mentioned in paragraph 293-230(a) that you have made relates, or is reasonably attributable, to that income year;

the payment is to be disregarded in working out under subsection (1) of this section the amount of the refund to which you are entitled.

293-240 Entitlement to refund stops all Division 293 tax liabilities

(1) The Commissioner may decide to release you from any existing or future liability to pay *Division 293 tax or *debt account discharge liability if:

(a) you become entitled to a refund under section 293-230; or

(b) you would become entitled to such a refund, if you were to pay the liability and paragraph 293-230(c) were disregarded.

(2) The Commissioner may take such action as is necessary to give effect to a decision under subsection (1).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

294-40 Proportionally indexed transfer balance cap
294-45 Transfer balance account ends
294-50 Assumptions about income streams
294-55 Repayment of limited recourse borrowing arrangement

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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 from the income stream
2	on a day (the ***starting day***) 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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Credits in the transfer balance account			
Item	**If:**	**A credit of:**	**Arises:**
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

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

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.

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).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) The ***general transfer balance cap*** is:

(a) for the 2017-2018 *financial year—$1,600,000; 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.

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:

$$\text{Unused cap percentage} \times \text{Indexation increase}$$

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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 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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

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 *small superannuation fund 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.

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

294-80 Transfer balance debits
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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Debits in the transfer balance account			
Item	**If:**	**A debit of:**	**Arises:**
			day you first start to have a *transfer balance account
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	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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Debits in the transfer balance account			
Item	**If:**	**A debit of:**	**Arises:**
7	the Commissioner gives you a notice under section 136-70 in Schedule 1 to the *Taxation Administration Act 1953* (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
8	a *transfer balance debit arises under regulations made for the purposes of this item	the amount of the debit worked out in accordance with the regulations	at the time specified in the regulations

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.

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.

294-85 Certain events that result in reduced superannuation

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

(4) The debit arises at the later of:
(a) the operative time (within the meaning of Part VIIIB or VIIIC (as the case may be) 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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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 *Superannuation Industry (Supervision) Act 1993* (the ***SIS Act***) that is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994* (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 annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Capped defined benefit income streams		
Item	**Topic**	**A superannuation income stream is covered if:**
		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 *Retirement Savings Accounts Act 1997* that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the *Retirement Savings Accounts Regulations 1997*

(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:

$$\text{Annual entitlement} \times 16$$

where:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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:

$$\text{Annual entitlement} \times \text{Remaining term}$$

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).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

(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) in a case where the commutation mentioned in column 1 of that item is a commutation in full—the *debit value, just

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

before the commutation takes place, of the *superannuation interest that supports the capped defined benefit income stream; or

(b) in a case where that commutation is a commutation in part:

(i) if the capped defined benefit income stream is, or was at any time, covered by item 1 or 2 of the table in subsection 294-130(1)—the debit value mentioned in paragraph (a), multiplied by the fraction mentioned in subsection (1A); or

(ii) if the capped defined benefit income stream is, or was at any time, covered by any of items 3 to 7 of the table in subsection 294-130(1)—the amount mentioned in subsection (1B).

(1A) For the purposes of subparagraph (1)(b)(i), the fraction is:

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

where:

SV just after commutation means the *special value, just after the commutation takes place, of the *superannuation interest that supports the *capped defined benefit income stream.

SV just before commutation means the *special value, just before the commutation takes place, of the *superannuation interest that supports the *capped defined benefit income stream.

(1B) For the purposes of subparagraph (1)(b)(ii), the amount is the lesser of the following:

(a) the *debit value mentioned in paragraph (1)(a);

(b) the amount (disregarding this section) of the *superannuation lump sum you received because of the commutation (as mentioned in item 1 of the table in subsection 294-80(1)).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

*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:

(a) the amount of the *transfer balance credit that arose in your *transfer balance account in respect of the income stream; less

(b) the sum of the following:

(i) 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;

(ii) if item 1 of the table in subsection 294-80(1) applies in relation to the income stream because the income stream is commuted—the amount worked out under subsection (6A).

(6A) The amount is the sum of the following:

(a) the total amount of *superannuation income stream benefits that you were entitled to receive from the income stream before the start of the financial year in which the commutation takes place;

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) if regulation 1.07B of the *Superannuation Industry (Supervision) Regulations 1994* applies to the income stream—the greater of the following:

(i) the minimum amount under subregulation 1.07B(4) of those regulations for the income stream for that financial year;

(ii) the total amount of superannuation income stream benefits that you received from the income stream in that financial year (other than superannuation income stream benefits that you were entitled to receive from the income stream before the start of that financial year);

(c) if regulation 1.07C of the *Superannuation Industry (Supervision) Regulations 1994* applies to the income stream—the greater of the following:

(i) the minimum amount under subregulation 1.07C(3) of those regulations for the income stream for that financial year;

(ii) the total amount of superannuation income stream benefits that you received from the income stream in that financial year (other than superannuation income stream benefits that you were entitled to receive from the income stream before the start of that financial year);

(d) if regulation 1.08 of the *Retirement Savings Accounts Regulations 1997* applies to the income stream—the greater of the following:

(i) the minimum amount under regulation 1.08 of those regulations for the income stream for that financial year;

(ii) the total amount of superannuation income stream benefits that you received from the income stream in that financial year (other than superannuation income stream benefits that you were entitled to receive from the income stream before the start of that financial year).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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:

(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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

(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

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Authorised Version C2022C00307 registered 22/10/2022

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 295—Taxation of superannuation entities

Table of Subdivisions

Guide to Division 295
295-A Provisions of general operation
295-B Modifications of provisions of this Act
295-C Contributions included
295-D Contributions excluded
295-E Other income amounts
295-F Exempt income
295-G Deductions
295-H Components of taxable income
295-I No-TFN contributions
295-J Tax offset for no-TFN contributions income (TFN quoted within 5 years)

Guide to Division 295

295-1 What this Division is about

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-A—Provisions of general operation

Table of sections

295-5 Entities to which Division applies
295-10 How to work out the tax payable by superannuation entities
295-15 Division does not impose a tax on property of a State
295-20 Exempting laws ineffective
295-25 Assessments on basis of anticipated SIS Act notice
295-30 Effect of revocation etc. of SIS Act notices
295-35 Acronyms used in tables

295-5 Entities to which Division applies

(1) This Division applies to these entities:

(a) a *complying superannuation fund;

(b) a *non-complying superannuation fund;

(c) a *complying approved deposit fund;

(d) a *non-complying approved deposit fund;

(e) a *pooled superannuation trust;

whether they are established by an *Australian law, by a public authority constituted by or under such a law or in some other way.

(2) The *superannuation provider in relation to an entity referred to in paragraph (1)(a) to (d) is liable to pay tax on the taxable income of the entity.

Note: A superannuation provider in relation to an entity referred to in paragraphs (1)(a) and (b) or in relation to an RSA is liable to pay tax on the no-TFN contributions income of the entity: see section 295-605.

(3) The trustee of a *pooled superannuation trust is liable to pay tax on the taxable income of the trust.

(4) This Division also applies to an *RSA provider that is not a *life insurance company.

Note 1: Division 320 deals with RSA providers that are life insurance companies.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 2: However, Subdivisions 295-I and 295-J apply to RSA providers that are life insurance companies: see section 320-155.

295-10 How to work out the tax payable by superannuation entities

(1) Use this method for *superannuation funds, *approved deposit funds and *pooled superannuation trusts:

Method statement

Step 1. For a *superannuation fund, work out the *no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.

Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.

Step 3. Work out the entity's taxable income as if its trustee:

(a) were an Australian resident (except where paragraph (b) applies); or

(b) for a *non-complying superannuation fund that is a *foreign superannuation fund for the income year—were not an Australian resident.

Step 4. For a *complying superannuation entity, work out the *low tax component and *non-arm's length component of the entity's taxable income.

Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to:

(a) if step 4 applies to the entity—the components worked out under that step; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

	(b) otherwise—the entity's taxable income.
Step 6.	Subtract the entity's *tax offsets from the step 5 amount or, for a *superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

(2) Use this method for *RSA providers:

Method statement

Step 1.	Work out the entity's *no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
Step 2.	Work out the entity's assessable income and deductions taking account of the special rules in this Division.
Step 3.	Work out the *RSA component and *standard component of the entity's taxable income.
Step 5.	Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The *RSA component is taxed at a concessional rate.
Step 6.	Subtract the entity's *tax offsets from the sum of the entity's step 1 and step 5 amounts.

295-15 Division does not impose a tax on property of a State

This Division does not impose a tax on property of any kind belonging to a State (within the meaning of section 114 of the Constitution).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

295-20 Exempting laws ineffective

A *Commonwealth law (other than this Act) does not have the effect of exempting the trustee of an entity to which this Division applies from the liability to pay tax unless it does so expressly.

295-25 Assessments on basis of anticipated SIS Act notice

(1) The Commissioner may make an assessment for a fund or trust that is not a *complying superannuation entity for the income year as if it were such an entity if the Commissioner considers it likely that a notice will be given under section 40 of the *Superannuation Industry (Supervision) Act 1993* having the effect that it will become such an entity.

(2) However, the grounds for making an assessment under subsection (1) are taken never to have existed if:

(a) the Commissioner becomes satisfied that the notice will not be given; or

(b) *APRA does not receive the documents referred to in subsection 36(1) of the *Superannuation Industry (Supervision) Act 1993* about the fund or trust before the end of 12 months after the assessment is made.

295-30 Effect of revocation etc. of SIS Act notices

This Division has effect as if a notice given under section 342 of the *Superannuation Industry (Supervision) Act 1993* (about pre-1 July 88 funding credits) or under regulations made for the purposes of that section had never been given if:

(a) the notice is revoked; or

(b) the decision to give the notice is set aside.

295-35 Acronyms used in tables

In tables in this Division, these acronyms are used for these entities:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Acronyms used in tables		
Item	**Entity**	**Acronym**
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

Subdivision 295-B—Modifications of provisions of this Act

Table of sections

295-85 CGT to be primary code for calculating gains or losses
295-90 CGT rules for pre-30 June 1988 assets
295-95 Deductions related to contributions
295-100 Deductions for investing in PSTs and life policies
295-105 Distributions to PST unitholders

295-85 CGT to be primary code for calculating gains or losses

(1) The modifications in subsection (2) apply if a *CGT event happens involving a *CGT asset that was owned by a *complying superannuation entity just before the time of the event.

(2) These provisions do not apply to the *CGT event:

(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);

(aa) section 230-15 (about financial arrangements);

(b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

Exceptions

(3) The provisions referred to in subsection (2) can apply to the *CGT event if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) any *capital gain or *capital loss from the event is attributable to currency exchange rate fluctuations; or

(b) the *CGT asset is one of these:

(i) debenture stock, a bond, *debenture, certificate of entitlement, bill of exchange, promissory note or other security;

(ii) a deposit with a bank, building society or other financial institution;

(iii) a loan (secured or not);

(iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).

(4) The provisions referred to in subsection (2) can also apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	R&D
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Subsection 118-300(1), for general insurance policies covered by table item 2 in that subsection	General insurance policies for property
11	Section 118-305	Superannuation

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Where gain or loss disregarded because of CGT provision		
Item	**Provision**	**Brief description**
12	Section 118-310	CGT event happens to right to, or part of, RSA

Note: For item 5, certain assets (particularly shares, units in a unit trust, and land) are not trading stock when owned by the entity (see paragraph 70-10(2)(b)).

295-90 CGT rules for pre-30 June 1988 assets

(1) This section applies to the trustee of a *complying superannuation entity.

(2) Parts 3-1 and 3-3 (about capital gains and losses) apply to a *CGT asset that:

(a) the trustee or a former trustee owned at the end of 30 June 1988; and

(b) the trustee owned at the commencement of this section;

as if the trustee had *acquired the asset on 30 June 1988.

(3) Subsection (2) does not affect how to work out the asset's *cost base or *reduced cost base.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base.

(4) Subsection 104-30(5) applies to an option granted by the trustee as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

295-95 Deductions related to contributions

(1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:

(a) *complying superannuation funds;

(b) *non-complying superannuation funds that are *Australian superannuation funds;

(c) *complying approved deposit funds;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(d) *non-complying approved deposit funds;

(e) *RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

Note 2: Examples of contributions that are not assessable are:

- contributions which the contributor cannot deduct;
- contributions excluded from assessable income under Subdivision 295-D.

(2) A *superannuation fund is an ***Australian superannuation fund*** at a time, and for the income year in which that time occurs, if:

(a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and

(b) at that time, the central management and control of the fund is ordinarily in Australia; and

(c) at that time either the fund had no member covered by subsection (3) (an ***active member***) or at least 50% of:

(i) the total *market value of the fund's assets attributable to *superannuation interests held by active members; or

(ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;

is attributable to superannuation interests held by active members who are Australian residents.

(3) A member is covered by this subsection at a time if the member is:

(a) a contributor to the fund at that time; or

(b) an individual on whose behalf contributions have been made, other than an individual:

(i) who is a foreign resident; and

(ii) who is not a contributor at that time; and

(iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(4) To avoid doubt, the central management and control of a *superannuation fund is ordinarily in Australia at a time even if that central management and control is temporarily outside Australia for a period of not more than 2 years.

295-100 Deductions for investing in PSTs and life policies

(1) Provisions of this Act about deducting amounts apply to *complying superannuation funds and *complying approved deposit funds as if *ordinary income and *statutory income received from these investments were included in their assessable income:

(a) units in a *pooled superannuation trust;

(b) *life insurance policies issued by a *life insurance company;

(c) an interest in a trust whose assets consist only of life insurance policies issued by a life insurance company.

Note: Income from these investments is not assessable: see for example sections 295-105 and 118-350.

(2) A *complying superannuation fund cannot deduct an amount (otherwise than under section 295-465) for fees or charges incurred for:

(a) *complying superannuation life insurance policies; or

(b) *exempt life insurance policies; or

(c) units in a *pooled superannuation trust that are *segregated current pension assets of the fund.

295-105 Distributions to PST unitholders

The assessable income of a *complying superannuation entity does not include amounts *derived by the entity because it holds units in a *pooled superannuation trust.

Note: The entity will not be subject to any tax liability when it disposes of the units: see subsection 295-85(2) and section 118-350.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-C—Contributions included

Guide to Subdivision 295-C

295-155 What this Subdivision is about

There are basically 3 types of assessable contributions:

(a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and

(b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and

(c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

Table of sections

Contributions and payments

295-160 Contributions and payments
295-165 Exception—spouse contributions
295-170 Exception—Government co-contributions and contributions for a child
295-173 Exception—trustee contributions
295-175 Exception—payments by a member spouse
295-180 Exception—choice to exclude certain contributions
295-185 Exception—temporary residents

Personal contributions and roll-over amounts

295-190 Personal contributions and roll-over amounts
295-195 Exclusion of personal contributions—contributions
295-197 Exclusion of personal contributions—successor funds

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Transfers from foreign funds

295-200 Transfers from foreign superannuation funds

Application of tables to RSA providers

295-205 Application of tables to RSA providers

Former constitutionally protected funds

295-210 Former constitutionally protected funds

Contributions and payments

295-160 Contributions and payments

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

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

Contributions and payments included in assessable income

Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)
2	N-CSF that is a *foreign superannuation fund for the income year	Contribution to provide *superannuation benefits for someone else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Contributions and payments included in assessable income		
Item	**Assessable income of this entity:**	**Includes:**
3	CSF CADF *RSA provider	Payment under section 65 of the *Superannuation Guarantee (Administration) Act 1992*
4	CSF *RSA provider	Payment under section 61 or 61A of the *Small Superannuation Accounts Act 1995*

295-165 Exception—spouse contributions

(1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a *complying superannuation fund or an *RSA:

(a) to provide *superannuation benefits for the individual's *spouse (regardless whether the benefits are payable to the individual's spouse's *SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and

(b) that the individual cannot deduct under Subdivision 290-B.

(2) Paragraph (1)(a) does not apply to *superannuation benefits for a *spouse living permanently separately and apart from the individual.

295-170 Exception—Government co-contributions and contributions for a child

(1) Item 1 of the table in section 295-160 does not include in assessable income a contribution:

(a) that is a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or

(b) for the benefit of a person under 18 that is not made by or on behalf of the person's employer.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) Item 4 of the table in section 295-160 does not include in assessable income a payment to the extent to which it represents a Government co-contribution or co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

295-173 Exception—trustee contributions

Item 1 of the table in section 295-160 does not include in assessable income:

(a) a contribution made by an entity that was, when the contribution was made, the trustee of a *complying superannuation entity; or

(b) a contribution made out of the *complying superannuation assets, or out of the *segregated exempt assets, of a *life insurance company.

295-175 Exception—payments by a member spouse

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a *regulated superannuation fund, or to an *RSA provider, to be held for the benefit of the *non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the *superannuation interest concerned.

295-180 Exception—choice to exclude certain contributions

(1) Item 1 of the table in section 295-160 does not include an amount in the assessable income of a *public sector superannuation scheme for an income year to the extent that the trustee chooses that it not be included.

(2) The entity that made the contributions must consent to the choice.

Note: Making this choice effectively shifts the liability for tax on the contributions to the recipient of the benefit. The benefit is treated as an element untaxed in the fund: see Subdivision 301-C.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) However, the choice cannot be made for an income year for an amount that exceeds the sum of amounts covered by notices given by the trustee under section 307-285 for *superannuation benefits paid in the income year.

(4) A choice under this section cannot be revoked or withdrawn.

(5) A choice under this section cannot be made in relation to a *public sector superannuation scheme that comes into operation after 5 September 2006.

295-185 Exception—temporary residents

Item 2 of the table in section 295-160 does not include a contribution in the assessable income of an entity if the individual (for whom it was made) is a *temporary resident at the end of the income year to which the contribution relates.

Personal contributions and roll-over amounts

295-190 Personal contributions and roll-over amounts

(1) The assessable income of an entity includes amounts as set out in this table.

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

Personal contributions and roll-over amounts included in assessable income

Item	Assessable income of this entity:	Includes:
1	CSF *RSA provider	A contribution: (a) made to the CSF or *RSA; and (b) covered by a valid and acknowledged notice given to the *superannuation provider of the CSF or RSA under section 290-170

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Personal contributions and roll-over amounts included in assessable income		
Item	**Assessable income of this entity:**	**Includes:**
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund (other than an element untaxed in the fund under subsection 307-290(4)); and (b) is not an *excess untaxed roll-over amount for that individual
2A	CSF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was not covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) while the benefit is held in the successor fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of the successor fund under that section
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*)

(1A) Items 2 and 2A of the table in subsection (1) do not apply to a *roll-over superannuation benefit that is a *departing Australia

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

superannuation payment made under subsection 20H(2), (2AA) or (2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Income years in which amounts are included in assessable income

(2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the *superannuation provider by the day the provider lodges its *income tax return for that income year.

(3) Otherwise it is included in the income year in which the notice is received.

(4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the *superannuation provider.

(5) A benefit referred to in item 2A is included in the income year in which it is received if the notice is received by the *superannuation provider by the day the provider lodges its *income tax return for that income year.

(6) Otherwise it is included in the income year in which the notice is received.

295-195 Exclusion of personal contributions—contributions

Variation notice received before return lodged

(1) A contribution is not included in the assessable income of a *complying superannuation fund or *RSA provider under item 1 of the table in subsection 295-190(1) to the extent that it has been reduced by a notice under section 290-180 if the notice is received by the *superannuation provider before it has lodged its *income tax return for the income year in which the contribution was made.

Variation notice received after return lodged

(2) A contribution is not included in the assessable income of a *complying superannuation fund or *RSA provider under item 1 of

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

the table in subsection 295-190(1) for the income year in which the contribution was made to the extent that it has been reduced by a notice under section 290-180 if:

(a) the notice is received by the *superannuation provider after it has lodged its *income tax return for the income year; and

(b) the provider exercises the option mentioned in subsection (3).

(3) An amount referred to in subsection (2) may, at the option of the provider, be excluded from the assessable income of the fund or *RSA provider for the income year referred to in subsection (2) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2 of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2 of the table in subsection 295-490(1).

295-197 Exclusion of personal contributions—successor funds

Scope

(1) This section applies to the *superannuation provider (the ***successor provider***) of a *complying superannuation fund or *RSA if, apart from this section, a *roll-over superannuation benefit would be included in the assessable income of the fund or *RSA provider under item 2A of the table in subsection 295-190(1).

Variation notice received before return lodged

(2) The benefit is not so included, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if the notice is received by the successor provider before the successor provider has lodged its *income tax return for the income year in which the benefit was transferred.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Variation notice received after return lodged

(3) The benefit is not so included in the assessable income for the income year in which the benefit was transferred, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if:

(a) the notice is received by the successor provider after the successor provider has lodged its *income tax return for the income year; and

(b) the successor provider exercises the option mentioned in subsection (4).

(4) An amount referred to in subsection (3) may, at the option of the successor provider, be excluded from the assessable income of the fund or *RSA provider for the income year referred to in subsection (3) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2B of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2B of the table in subsection 295-490(1).

Transfers from foreign funds

295-200 Transfers from foreign superannuation funds

(1) The assessable income of a fund that is an *Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a *foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.

(2) The assessable income of a fund that is a *complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a *foreign superannuation fund for the income year as is specified in a choice

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

made by a former member of the foreign fund under section 305-80.

(3) The amount is included in the income year in which the transfer happens.

(4) This section also applies to an amount transferred from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

(a) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund; and

(b) was not established in Australia; and

(c) is not centrally managed or controlled in Australia.

Application of tables to RSA providers

295-205 Application of tables to RSA providers

The tables in this Subdivision apply to *RSA providers only to the extent that amounts are paid to *RSAs they provide.

Former constitutionally protected funds

295-210 Former constitutionally protected funds

(1) This section applies to a *complying superannuation fund for an income year if the fund ceased to be a *constitutionally protected fund during the year or at the end of the previous year.

(2) The assessable income of the fund for the income year includes the sum of the *roll-over superannuation benefits to the extent that they consist of the *element untaxed in the fund of the *taxable component that would be included in that assessable income if all contributions and earnings accumulated in the fund when the fund ceased to be a *constitutionally protected fund:

(a) had been paid out of the fund immediately before it ceased to be a constitutionally protected fund; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) were paid to the fund as roll-over superannuation benefits immediately after that time.

Subdivision 295-D—Contributions excluded

Table of sections

295-260 Transfer of liability to investment vehicle
295-265 Application of pre-1 July 88 funding credits
295-270 Anticipated funding credits

295-260 Transfer of liability to investment vehicle

(1) The *superannuation provider in relation to a *complying superannuation fund or a *complying approved deposit fund (the ***transferor***) may reduce the amount that would otherwise be included in the fund's assessable income for an income year under Subdivision 295-C by agreement with another entity (the ***transferee***) in which it holds investments.

What the transferee must be

(2) The transferee must be a *life insurance company or a *pooled superannuation trust.

Note: Amounts transferred are included in the transferee's assessable income: see section 295-320 (for PSTs) and paragraph 320-15(1)(i) (for life insurance companies).

Agreement requirements

(3) The transferor may make one agreement only for an income year with a particular transferee.

(4) An agreement:
(a) must be in writing, and must be signed by or for the transferor and transferee; and
(b) must be made by the day the transferor lodges its *income tax return for its income year to which the agreement relates; and
(c) cannot be revoked.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Limits on transfer

(5) The total amount covered by the agreements cannot exceed the amount that would otherwise be included in the transferor's assessable income under Subdivision 295-C for that income year.

(6) The amount covered by an agreement with a particular transferee cannot exceed this amount:

$$\frac{\text{Greatest equity value}}{\text{Transferor's low tax component tax rate}}$$

where:

greatest equity value is the greatest of these amounts during the transferor's income year:

(a) if the transferee is a *pooled superannuation trust—the *market value of the transferor's investment in units in the trust;

(b) if not—the market value of the transferor's investment in:

(i) *life insurance policies issued by the transferee; or

(ii) a trust whose assets consist only of life insurance policies issued by the transferee.

transferor's low tax component tax rate is the rate of tax imposed on the *low tax component of the fund's taxable income for the income year.

295-265 Application of pre-1 July 88 funding credits

Choice to reduce contributions included in assessable income

(1) The *superannuation provider in relation to a *complying superannuation fund can choose to reduce the amount of contributions that would otherwise be included in the fund's assessable income for an income year under item 1 of the table in section 295-160 if it has pre-1 July 88 funding credits available for the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

When funding credits are available

(2) Use this method to work out whether a fund has pre-1 July 88 funding credits available for an income year:

Method statement

Step 1. Identify the amount of pre-1 July 88 funding credits unused at the end of the previous income year.

Step 2. Index that amount.

Note: Subdivision 960-M shows you how to index amounts.

Step 3. Add any pre-1 July 88 funding credits transferred to the fund in the income year under regulations made for the purposes of subsection 342(7) of the *Superannuation Industry (Supervision) Act 1993*.

Step 4. Deduct from the step 3 amount:

(a) pre-1 July 88 funding credits transferred from the fund in the income year under regulations made for the purposes of subsection 342(7) of that Act; and

(b) amounts specified in a notice given to the *superannuation provider in relation to the fund under subsection 342(6) of that Act for the income year.

Step 5. The result is the pre-1 July 88 funding credits available to the fund for the income year.

That amount, reduced by any amount specified in a choice made under subsection (1) for the income year, is the amount of pre-1 July 88 funding credits unused at the end of the income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 1: Regulations under subsection 342(7) of the SIS Act allow APRA to approve transfers of pre-1 July 88 funding credits between funds.

Note 2: Subsection 342(6) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the trustee notifies APRA of the change.

(3) If a notice is given to the *superannuation provider in relation to the fund under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* granting the trustee a pre-1 July 88 funding credit, this section applies as if the pre-1 July 88 funding credit had arisen at the beginning of the income year in which 1 July 1988 occurred.

(4) However, if a notice is given to the *superannuation provider in relation to the fund under subsection 342(4) of the *Superannuation Industry (Supervision) Act 1993* for the income year, the fund has no pre-1 July 88 funding credits.

Note: Subsection 342(4) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the provider fails to notify APRA of the change.

Limit on choice

(5) The total amount covered by the choice cannot exceed the pre-1 July 88 funding credits available to the fund for the income year.

(6) The total amount covered by the choice also cannot exceed the amount of contributions that would otherwise be included in the fund's assessable income for the income year under item 1 of the table in section 295-160 that are used to fund liabilities that accrued before 1 July 1988.

(7) The regulations may prescribe either or both of the following:

(a) the manner in which the *superannuation provider in relation to a *superannuation fund is to work out the amount applicable to the fund under subsection (6) for an income year;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) methods (other than the method specified in subsection (6)) of working out how the provider of a superannuation fund can apply pre-1 July 88 funding credits.

(8) Methods prescribed under paragraph (7)(b) may be applicable to particular *superannuation funds or to a class or classes of superannuation funds.

295-270 Anticipated funding credits

(1) Subsection (2) has effect if the *superannuation provider in relation to a *complying superannuation fund expects a notice to be given under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of subsection 342(7) of that Act to the effect that pre-1 July 88 funding credits of a particular amount will be available to the fund for the income year.

(2) Section 295-265 applies to the fund as if pre-1 July 88 funding credits of the anticipated amount were available to the fund for the income year (in addition to any other pre-1 July 88 funding credits available to the fund for the year).

(3) However, section 295-265 applies to the fund for the income year as if pre-1 July 88 funding credits of the anticipated amount were not available to the fund for the income year if:

(a) it becomes clear that the expected notice will not be given or that the specified amount of pre-1 July 88 funding credits will not be available; or

(b) *APRA does not receive the things referred to in subsection 342(3) of the *Superannuation Industry (Supervision) Act 1993* (for a notice expected under subsection 342(2) of that Act) or the things required to be given under regulations made for the purposes of subsection 342(7) of that Act (for a notice under those regulations) before the earlier of:

(i) the end of 12 months after the fund's assessment is made for the income year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) the time the things are required to be given by the regulations.

Subdivision 295-E—Other income amounts

Table of sections

Amounts included

295-320 Other amounts included in assessable income
295-325 Previously complying funds
295-330 Previously foreign funds

Amounts excluded

295-335 Amounts excluded from assessable income

Amounts included

295-320 Other amounts included in assessable income

The assessable income of an entity includes the amounts as set out in this table.

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

Amounts included in assessable income

Item	Assessable income of this entity:	Includes:	For the income year:
1	PST	Amount transferred to it by a CSF or CADF under section 295-260	Of the PST that includes the last day of the transferor's income year to which the agreement relates

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Amounts included in assessable income			
Item	**Assessable income of this entity:**	**Includes:**	**For the income year:**
2	N-CSF that was a CSF for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-325	Following the income year in which it was a CSF
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year and that was a *foreign superannuation fund for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund
4	CSF	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under an item of the table in subsection 295-465(1)	In which the rebate or refund is received
5	*RSA provider	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under section 295-475	In which the rebate or refund is received

295-325 Previously complying funds

The amount of *ordinary income and *statutory income from previous years included in the assessable income of a fund in an income year under item 2 of the table in section 295-320 is:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Sum of the *market values of the fund's assets just before the start of the income year	–	Sum of the part of the *crystallised undeducted contributions that relates to the period after 30 June 1983 and the *contributions segment for current members at that time so far as they have not been, and cannot be, deducted

295-330 Previously foreign funds

The amount of *ordinary income and *statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the *market values of the fund's assets just before the start of the income year	–	Amount in the fund at that time representing contributions made by current members

Amounts excluded

295-335 Amounts excluded from assessable income

The assessable income of an entity does not include the amounts set out in this table.

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

Amounts excluded from assessable income

Item	This entity:	Does not include this in assessable income:
1	CSF CADF PST	A bonus on a *life insurance policy (except a reversionary bonus)
2	PST	Amount attributable to amounts received from a *constitutionally protected fund
3	*RSA provider	A bonus on a *life insurance policy that is an *RSA (except a reversionary bonus)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-F—Exempt income

Table of sections

295-385 Income from assets set aside to meet current pension liabilities
295-387 Disregarded small fund assets
295-390 Income from other assets used to meet current pension liabilities
295-395 Meaning of ***segregated non-current assets***
295-400 Income of a PST attributable to current pension liabilities
295-405 Other exempt income
295-407 Covered superannuation income streams—RSAs
295-410 Amount credited to RSA

295-385 Income from assets set aside to meet current pension liabilities

(1) The *ordinary income and *statutory income of a *complying superannuation fund for an income year is exempt from income tax to the extent that:

(a) it would otherwise be assessable income; and

(b) it is from *segregated current pension assets.

Exception

(2) Subsection (1) does not apply to:

(a) *non-arm's length income; or

(b) amounts included in assessable income under Subdivision 295-C.

*Meaning of **segregated current pension assets***

(3) Assets of a *complying superannuation fund are ***segregated current pension assets*** at a time if:

(a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of *RP superannuation income stream benefits of the fund at that time; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the trustee of the fund obtains an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.

(4) Assets of a *complying superannuation fund are also ***segregated current pension assets*** of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of *superannuation income stream benefits:

(a) that are *RP superannuation income stream benefits of the fund at that time; and

(b) prescribed by the regulations for the purposes of this section.

(5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay *RP superannuation income stream benefits of the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.

(6) However, assets of a *complying superannuation fund that are supporting a *superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not ***segregated current pension assets*** to the extent that the *market value of the assets exceeds the account balance supporting the benefit.

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

Meaning of ***segregated current pension assets****—trustee choice*

(8) Despite subsections (3) to (6), none of the assets of a *complying superannuation fund are ***segregated current pension assets*** of the fund at any time in an income year if the trustee of the fund

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

chooses under subsection (9) to treat all of the assets as not being segregated current pension assets for the year.

(9) The trustee of a *complying superannuation fund may choose to treat all of the assets of the fund as not being *segregated current pension assets of the fund for an income year if, at one or more times in the year, all *superannuation interests in the fund are in the *retirement phase.

(10) Subsections (8) and (9) do not apply if:

(a) at all times in the year, all *superannuation interests in the fund are in the *retirement phase; or

(b) the assets of the fund are *disregarded small fund assets at all times in the year.

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) the fund is a *small superannuation 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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

superannuation interest is the superannuation interest mentioned in paragraph (b)).

(3) However, the fund is not covered by subsection (2) for an income year if, at all times during the income year, all of the assets of the superannuation fund would, apart from subsection 295-385(7), be *segregated current pension assets.

295-390 Income from other assets used to meet current pension liabilities

(1) A proportion of the *ordinary income and *statutory income of a *complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

Exception

(2) Subsection (1) does not apply to:
(a) *non-arm's length income; or
(b) amounts included in assessable income under Subdivision 295-C; or
(c) income *derived from *segregated non-current assets; or
(d) income that is exempt from income tax under section 295-385.

Formula

(3) The proportion is:

$$\frac{\text{Average value of current pension liabilities}}{\text{Average value of superannuation liabilities}}$$

where:

average value of current pension liabilities is the average value for the income year of the fund's current liabilities (contingent or not) in respect of *RP superannuation income stream benefits of

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

the fund at any time in that year. This does not include liabilities for which *segregated current pension assets are held.

average value of superannuation liabilities is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of *superannuation benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which *segregated current pension assets or *segregated non-current assets are held.

Actuary's certificate

(4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an *actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.

(5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except *segregated current pension assets or *segregated non-current assets).

Superannuation liabilities where no current certificate

(6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no *segregated current pension assets or *segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

current value of assets is the value of all of the fund's assets at a time in the income year, as specified in an *actuary's certificate

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.

last value of assets is the most recent value of all of the fund's assets specified in an *actuary's certificate.

last value of superannuation liabilities is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an *actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

(7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of *RP superannuation income stream benefits of the fund at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

295-395 Meaning of *segregated non-current assets*

(1) Assets of a *complying superannuation fund are ***segregated non-current assets*** at a time in an income year if:

(a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its current and future liabilities (contingent or not) to pay benefits in respect of which contributions have, or were liable to have, been made; and

(b) the trustee of the fund obtains an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) The liabilities referred to in paragraph (1)(a) do not include liabilities (contingent or not) in respect of *RP superannuation income stream benefits of the fund at that time.

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

295-400 Income of a PST attributable to current pension liabilities

(1) This proportion of the *ordinary income and *statutory income that would otherwise be assessable income of a *pooled superannuation trust is *exempt income:

$$\frac{\text{Average number of units in the trust during the income year that are *segregated current pension assets of unitholders that are *complying superannuation funds}}{\text{Average number of units in the trust during the income year}}$$

Exceptions

(2) Subsection (1) does not apply to:
(a) *non-arm's length income; or
(b) amounts included in assessable income under item 1 of the table in section 295-320.

Alternative exemption

(3) However, the trustee of the *pooled superannuation trust can choose that a different amount be *exempt income of the trust under this section if a percentage of the assessable income of the trust would have been exempt income under section 295-385 or 295-390 if it had been *derived instead by the unitholders in the trust in proportion to their holdings.

(4) That percentage of the trust's *ordinary income and *statutory income is then *exempt income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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 *Superannuation Industry (Supervision) Act 1993*
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.

295-410 Amount credited to RSA

For item 3 of the table in section 295-405, the part of the amount credited to the *RSA that is *exempt income is worked out by:

(a) multiplying the amount by the number of days in the income year for which the pension covered by section 295-407 was paid; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) dividing the result by the number of days in the income year that the RSA existed.

Subdivision 295-G—Deductions

Table of sections

Death or disability benefits

295-460 Benefits for which deductions are available
295-465 Complying funds—deductions for insurance premiums
295-470 Complying funds—deductions for future liability to pay benefits
295-475 RSA providers—deductions for insurance premiums
295-480 Meaning of ***whole of life policy*** and ***endowment policy***

Other deductions

295-490 Other deductions

Certain amounts cannot be deducted

295-495 Amounts that cannot be deducted

Death or disability benefits

295-460 Benefits for which deductions are available

Sections 295-465 (about deductions for complying funds for insurance premiums), 295-470 (about deductions for complying funds for future liability to pay benefits) and 295-475 (about deductions for *RSA providers for insurance premiums) apply to these benefits:

(a) a *superannuation death benefit;

(aa) a benefit consisting of an amount payable to an individual because a *terminal medical condition exists in relation to the individual;

(b) a *disability superannuation benefit;

(c) a benefit consisting of an amount payable to an individual under an income stream because of the individual's

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

temporary inability to engage in *gainful employment, that is payable for no longer than:

(i) 2 years; or

(ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period—that longer period; or

(iii) if there is no such approval in force—a longer period allowed by the Commissioner.

Note 1: The fund can deduct amounts in relation to these benefits under either section 295-465 or 295-470, but not both.

Note 2: The taxable component of the superannuation lump sums will contain an element untaxed in the fund: see section 307-290.

295-465 Complying funds—deductions for insurance premiums

Deductions for insurance premiums

(1) A *complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

Deductions of *complying superannuation funds

Item	The fund can deduct this amount:
1	30% of the premium for a *whole of life policy if all individuals whose lives are insured are members of the fund
2	10% of the premium for an *endowment policy if all individuals whose lives are insured are members of the fund
3	30% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been a whole of life policy had it been a separate policy

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Deductions of *complying superannuation funds	
Item	**The fund can deduct this amount:**
4	10% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been an endowment policy had it been a separate policy
5	The part of a premium that is specified in the policy as being wholly for the liability to provide certain benefits, if those benefits are benefits referred to in section 295-460
6	So much of other insurance policy premiums as are attributable to the liability to provide benefits referred to in section 295-460

Note: If the fund receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 4 in section 295-320.

(1A) If item 5 of the table applies to part, but not all, of an insurance policy premium, item 6 of the table applies to the rest of the premium as if item 5 did not apply to the premium.

(1B) For the purposes of item 6 of the table, the regulations may provide that a specified proportion of a specified insurance policy premium may be treated as being attributable to the *complying superannuation fund's liability to provide benefits referred to in section 295-460.

Note: The fund may deduct a proportion other than that specified in the regulations for the premium, but must obtain an actuary's certificate in accordance with subsection (3) in order to do so. The same applies if the insurance policy premium is not specified in the regulations.

Deductions for self-insurance

(2) A *complying superannuation fund can also deduct the amount it could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy to cover it for that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which it does not have insurance coverage. It can deduct the amount for the income year when it has the liability.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2A) For the purposes of subsection (2), the regulations may provide that a specified proportion of an amount mentioned in subsection (2B) may be treated as being the amount the fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy to cover it for its current or contingent liabilities to provide benefits referred to in section 295-460.

Example: If:

(a) an actuary certifies the amount a fund could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy; and

(b) the insurance policy covers liabilities of the fund to provide a class of total and permanent disability benefits broader than that covered by section 295-460; and

(c) the insurance policy is specified in the regulations; and

(d) the fund does not have insurance coverage for the liabilities;

the fund may deduct, under subsection (2), so much of that certified amount as is specified in the regulations.

(2B) The amount is the amount a *complying superannuation fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy specified in the regulations.

Actuary's certificate

(3) The trustee must obtain an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year in order to deduct an amount referred to in item 6 of the table or in subsection (2).

(3A) Subsection (3) does not apply to an amount referred to in item 6 of the table in relation to an insurance policy premium, if the trustee deducts, under that item, only the proportion (if any) of the premium specified in the regulations made for the purposes of subsection (1B).

Choice not to deduct amounts under this section

(4) The trustee may choose not to deduct amounts under this section for an income year and to deduct instead (under section 295-470) amounts based on the fund's future liability to pay the benefits.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(5) The choice applies also to future income years unless the Commissioner decides that it should not.

295-470 Complying funds—deductions for future liability to pay benefits

(1) A *complying superannuation fund can deduct an amount under this section for an income year if:

(a) the trustee of the fund makes a choice under subsection 295-465(4) and the choice applies to the income year; and

(b) the trustee pays:

(i) a benefit referred to in paragraph 295-460(a), (aa) or (b) for the income year in consequence of the termination of a member's employment; or

(ii) a benefit referred to in paragraph 295-460(c).

(2) The amount the fund can deduct is:

$$\text{Benefit amount} \times \frac{\text{Future service days}}{\text{Total service days}}$$

where:

benefit amount is:

(a) for a benefit that is a *superannuation lump sum—the amount of the lump sum; or

(b) for a benefit that is a *superannuation income stream—the *value of the *superannuation interest supporting the income stream; or

(c) for a benefit referred to in paragraph 295-460(c)—the total of the amounts paid during the income year.

future service days is the number of days in the period starting when:

(a) the termination happened; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) for a benefit referred to in paragraph 295-460(c)—the member became unable to engage in *gainful employment;

and ending on the member's *last retirement day.

total service days is the sum of future service days and the number of days in:

(a) for a benefit that is a *superannuation lump sum—the *service period for the superannuation lump sum; or

(b) for another benefit—the period ending on the first day of the period to which the first payment of the benefit relates and starting on the earliest of:

(i) the day on which the member joined the relevant *superannuation fund; and

(ii) the first day of the period of employment to which the benefit relates (including a qualifying period before the member could join the fund and any period when the member was not a member of the fund); and

(iii) the day applicable under subsection (3).

(3) The applicable day is the first day of the *service period for a *superannuation lump sum that is a *roll-over superannuation benefit if all or part of the *value of the other benefit is attributable to the roll-over superannuation benefit.

295-475 RSA providers—deductions for insurance premiums

An *RSA provider can deduct premiums it pays for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460 for its *RSA holders. It can deduct the amounts for the income year in which the premiums are paid.

Note: If the RSA provider receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 5 in section 295-320.

295-480 Meaning of *whole of life policy* and *endowment policy*

(1) A ***whole of life policy*** is an insurance policy:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) that includes an investment component; and
(b) the premiums for which are not dissected; and
(c) where the sum insured (and any bonuses) are payable on:
(i) the death of the individual insured; or
(ii) the earlier of the death of the individual insured and the individual attaining the age specified in the policy (being at least the age of 85).

(2) An ***endowment policy*** is an insurance policy:
(a) that includes an investment component; and
(b) the premiums for which are not dissected; and
(c) where the sum insured (and any bonuses) are payable on:
(i) a day specified in, or worked out under, the policy; or
(ii) the death of the individual insured if that happens before that day;

but does not include a *whole of life policy.

Other deductions

295-490 Other deductions

(1) An entity can deduct amounts as set out in this table.

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

Other deductions

Item	This entity:	Can deduct:	For the income year in which:
1	CSF N-CSF CADF N-CADF PST	An amount included in the entity's assessable income under Subdivision 295-C that is a *fringe benefit	The contribution is included in assessable income
2	CSF *RSA provider	Contributions made to the CSF or *RSA to the extent they have been	The notice is received

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Other deductions			
Item	**This entity:**	**Can deduct:**	**For the income year in which:**
		reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or RSA after it lodged its *income tax return for the income year in which the contributions were made, but only if the provider has *not* exercised the option mentioned in subsection 295-195(3)	
2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section)	The notice mentioned in paragraph (c) is received

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Other deductions

Item	This entity:	Can deduct:	For the income year in which:
2B	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the benefit is included in the assessable income of the CSF or RSA provider under item 2A of the table in subsection 295-190(1); and (b) the relevant contribution has been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or *RSA after it lodged its *income tax return for the income year in which the transfer occurred; and (c) the provider has *not* exercised the option mentioned in subsection 295-197(4)	The notice mentioned in paragraph (b) is received
3	CSF N-CSF CADF N-CADF	A levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993*	The levy is incurred
4	Entity that is a N-CSF and has been since 1 July 1988, or since it came into existence if that was later	An amount paid to an entity who includes it in assessable income under section 290-100	It is included in the entity's assessable income

(2) A fund cannot deduct an amount under item 3 of the table for a levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993* to the extent that:

(a) the levy is remitted; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) there is a refund or other application of an overpayment of the levy.

(3) No other provision of this Act affects a fund's *income tax liability in relation to the levy.

Certain amounts cannot be deducted

295-495 Amounts that cannot be deducted

These entities cannot deduct anything for these amounts:

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

Amounts that cannot be deducted

Item	This entity	Cannot deduct anything for:
1	CSF	*Superannuation benefits
2	N-CSF	*Superannuation benefits (except amounts paid as mentioned in item 4 of the table in section 295-490)
3	*RSA provider	*Superannuation benefits paid from, or amounts withdrawn from, *RSAs
4	*RSA provider	Amounts credited to *RSAs
5	CSF N-CSF CADF N-CADF	A repayment of a grant of financial assistance under Part 23 of the *Superannuation Industry (Supervision) Act 1993*
6	CSF N-CSF *RSA provider	An amount payable to a person under an income stream because of the person's temporary inability to engage in *gainful employment

Subdivision 295-H—Components of taxable income

Table of sections

295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

295-550 Meaning of ***non-arm's length income***
295-555 Components of taxable income—RSA providers

295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs

(1) The taxable income of a *complying superannuation entity is split into a *non-arm's length component and a *low tax component.

Note: A concessional rate applies to the low tax component, while the non-arm's length component is taxed at the highest marginal rate. The rates are set out in the *Income Tax Rates Act 1986*.

(2) The ***non-arm's length component*** for an income year is the entity's *non-arm's length income for that year less any deductions to the extent that they are attributable to that income.

(3) The ***low tax component*** is any remaining part of the entity's taxable income for the income year.

295-550 Meaning of *non-arm's length income*

(1) An amount of *ordinary income or *statutory income is ***non-arm's length income*** of a *complying superannuation entity if, as a result of a *scheme the parties to which were not dealing with each other at *arm's length in relation to the scheme, one or more of the following applies:

(a) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme;

(b) in gaining or producing the income, the entity incurs a loss, outgoing or expenditure of an amount that is less than the amount of a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme;

(c) in gaining or producing the income, the entity does not incur a loss, outgoing or expenditure that the entity might have

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme.

This subsection does not apply to an amount to which subsection (2) applies or an amount *derived by the entity in the capacity of beneficiary of a trust.

(2) An amount of *ordinary income or *statutory income is also ***non-arm's length income*** of the entity if it is:

(a) a *dividend paid to the entity by a *private company; or

(b) ordinary income or statutory income that is reasonably attributable to such a dividend;

unless the amount is consistent with an *arm's length dealing.

(3) In deciding whether an amount is consistent with an *arm's length dealing under subsection (2), have regard to:

(a) the value of *shares in the company that are assets of the entity; and

(b) the cost to the entity of the shares on which the *dividend was paid; and

(c) the rate of that dividend; and

(d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend; and

(e) whether the company has issued any shares to the entity in satisfaction of a dividend paid by the company (or part of it) and, if so, the circumstances of the issue; and

(f) any other relevant matters.

(4) Income *derived by the entity as a beneficiary of a trust, other than because of holding a fixed entitlement to the income, is ***non-arm's length income*** of the entity.

(5) Other income *derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is ***non-arm's length income*** of the entity if, as a result of a *scheme the parties to which were not dealing with each other at *arm's length in relation to the scheme, one or more of the following applies:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme;

(b) in acquiring the entitlement or in gaining or producing the income, the entity incurs a loss, outgoing or expenditure of an amount that is less than the amount of a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme;

(c) in acquiring the entitlement or in gaining or producing the income, the entity does not incur a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme.

(6) This section:

(a) applies to a *non-share equity interest in the same way as it applies to a *share; and

(b) applies to an *equity holder in a company in the same way as it applies to a shareholder in the company; and

(c) applies to a *non-share dividend in the same way as it applies to a *dividend.

(7) Paragraphs (1)(b) and (c) and (5)(b) and (c) apply to a loss, outgoing or expenditure whether or not it is of capital or of a capital nature.

295-555 Components of taxable income—RSA providers

(1) The taxable income of an *RSA provider is split into:

(a) an *RSA component; and

(c) a *standard component.

Note: The RSA component is taxed at the same concessional rate that applies to the low tax component of complying superannuation entities (see section 23 of the *Income Tax Rates Act 1986*). The standard component is taxed at the standard company rate.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) The ***RSA component*** for an income year is worked out in this way:

Method statement	
Step 1.	Add these amounts included in the provider's assessable income for the income year: (a) amounts included under Subdivision 295-C; and (b) other amounts credited during the year to *RSAs that it provides.
Step 2.	Subtract from the step 1 amount amounts paid from those *RSAs (except benefits for the RSA holders or tax).
Step 3.	The result is the ***RSA component***.

(3) However, if the *RSA component is more than the *RSA provider's taxable income:
(a) the provider's taxable income is equal to that sum; and
(b) this Act applies to the provider as if it had a *tax loss for the income year of an amount that would have been that loss if the RSA component were not *ordinary income or *statutory income.

(4) The ***standard component*** is the remaining part (if any) of the *RSA provider's taxable income for the income year after subtracting the *RSA component.

Subdivision 295-I—No-TFN contributions

Table of sections

295-605 Liability for tax on no-TFN contributions income
295-610 No-TFN contributions income
295-615 Meaning of ***quoted (for superannuation purposes)***
295-620 No reduction under Subdivision 295-D
295-625 Assessments

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

295-605 Liability for tax on no-TFN contributions income

(1) A *superannuation provider in relation to a *complying superannuation fund is liable to pay tax on the *no-TFN contributions income of the fund for an income year.

(2) A *superannuation provider in relation to a *non-complying superannuation fund is liable to pay tax on the *no-TFN contributions income of the fund for an income year.

(3) An *RSA provider is liable to pay tax on its *no-TFN contributions income for an income year.

Note 1: The tax is imposed by the *Income Tax Act 1986*.

Note 2: The no-TFN contributions income is subject to a special rate of tax under the *Income Tax Rates Act 1986.*

Note 3: The Commissioner may make an assessment of the amount of income tax on the no-TFN contributions income: see section 169 of the *Income Tax Assessment Act 1936.*

295-610 No-TFN contributions income

(1) An amount included by Subdivision 295-C in the assessable income of a *complying superannuation fund, a *non-complying superannuation fund or an *RSA provider for an income year is ***no-TFN contributions income*** for the year if:

(a) it is included by that Subdivision in the assessable income of the income year of the fund or RSA provider in which 1 July 2007 occurs, or a later income year; and

(b) it is a contribution made to the fund or *RSA on or after 1 July 2007 to provide *superannuation benefits for an individual; and

(c) by the end of the income year, the individual has not *quoted (for superannuation purposes) his or her *tax file number to the *superannuation provider.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Exception

(2) However, an amount is not ***no-TFN contributions income*** if:

(a) the contribution was made in relation to a *superannuation interest or an *RSA of the individual that existed prior to 1 July 2007; and

(b) the total contributions made in relation to the superannuation interest or RSA for the income year that are included in assessable income under Subdivision 295-C did not exceed $1,000.

295-615 Meaning of *quoted (for superannuation purposes)*

(1) An individual has ***quoted (for superannuation purposes)*** a *tax file number to an entity at a time if the individual:

(a) quotes his or her tax file number to the entity at that time; or

(b) is taken by the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997* or this Act to quote his or her tax file number to the entity at that time;

in connection with the operation or the possible future operation of one or more of the following Acts:

(c) the Superannuation Acts (within the meaning of Part 25A of the *Superannuation Industry (Supervision) Act 1993*);

(d) the *Retirement Savings Accounts Act 1997*.

(2) An individual is taken to have ***quoted (for superannuation purposes)*** a *tax file number to an entity at a time if the Commissioner gives notice of the individual's tax file number to the entity at that time.

295-620 No reduction under Subdivision 295-D

There is no reduction of the amount of *no-TFN contributions income by Subdivision 295-D.

Note: Subdivision 295-D can reduce an amount that would otherwise be included in assessable income. It does not reduce the amount of *no-TFN contributions income.* An amount is still no-TFN

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

contributions income even if, because of Subdivision 295-D, the amount (or part of it) is not included in assessable income.

295-625 Assessments

(2) If the conditions in subsection (3) are met, the Commissioner is taken to have made an assessment of a kind set out in subsection (4).

(3) The conditions are:

(a) one of the following gives the Commissioner an *income tax return for an income year on a particular day (the ***return day***):

(i) a *superannuation provider in relation to a *complying superannuation fund;

(ii) a superannuation provider in relation to a *non-complying superannuation fund;

(iii) an *RSA provider; and

(b) the return is the first income tax return given by the provider for the year; and

(c) the Commissioner has not already made an assessment of a kind set out in subsection (4) for the provider for the year.

(4) The assessment is taken to have been made for the provider for the income year on the return day, and to be an assessment, in accordance with the information stated in the return, of the amount of income tax payable on the *no-TFN contributions income (if any) of the provider (or to be an assessment that no tax is payable).

(5) The return is taken to be notice of the assessment signed by the Commissioner and given to the provider on the return day.

Note: The return may also be taken to be a notice of another assessment: see section 166A of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 295-J—Tax offset for no-TFN contributions income (TFN quoted within 5 years)

Table of sections

295-675 Entitlement to a tax offset
295-680 Amount of the tax offset

295-675 Entitlement to a tax offset

(1) A *superannuation provider in relation to a *superannuation fund or an *RSA provider is entitled to a *tax offset for an income year of the provider (the ***current year***) commencing on or after 1 July 2007 for amounts of tax that count towards the offset for the provider for the current year.

Note: In certain circumstances the superannuation provider or RSA provider can get a refund of the tax offset under Division 67.

(2) An amount of tax counts towards the offset for the provider for the current year if subsection (3), (4) or (5) applies for the provider and the tax.

Superannuation providers and RSA providers—main case

(3) This subsection applies for the provider and the tax if:

(a) the tax was payable by the provider in one of the most recent 3 income years of the provider ending before the current year; and

(b) the tax was payable on an amount of *no-TFN contributions income of the fund or *RSA provider; and

(c) the amount of no-TFN contributions income was a contribution made to the fund or provider to provide *superannuation benefits for an individual who, in the current year, has *quoted (for superannuation purposes) the individual's *tax file number to the provider for the first time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Superannuation providers of successor funds

(4) This subsection applies for the provider (the ***current provider***) and the tax if:

(a) the tax was payable on an amount of *no-TFN contributions income that:

(i) was no-TFN contributions income of another *superannuation fund (the ***previous fund***); and

(ii) was a contribution made to the previous fund to provide *superannuation benefits for an individual; and

(b) the tax was so payable by the *superannuation provider (the ***previous provider***) of the previous fund; and

(c) the tax was so payable in:

(i) one of the most recent 3 income years of the previous provider ending before the current year; or

(ii) an income year of the previous provider ending or starting in the current year; and

(d) the current provider is the superannuation provider of a *successor fund in relation to the individual and the previous fund; and

(e) the individual:

(i) never *quoted (for superannuation purposes) the individual's *tax file number to the previous provider; but

(ii) has, in the current year, done so to the current provider for the first time.

RSA providers of successor funds

(5) This subsection applies for the provider (the ***current provider***) and the tax if:

(a) the tax was payable on an amount of *no-TFN contributions income that:

(i) was no-TFN contributions income of another *RSA provider (the ***previous provider***); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) was a contribution made to the previous provider to provide *superannuation benefits for an individual; and

(b) the tax was so payable by the previous provider; and

(c) the tax was so payable in:

(i) one of the most recent 3 income years of the previous provider ending before the current year; or

(ii) an income year of the previous provider ending or starting in the current year; and

(d) the current provider is the *superannuation provider of a *successor fund in relation to the individual and an *RSA of the previous provider; and

(e) the individual:

(i) never *quoted (for superannuation purposes) the individual's *tax file number to the previous provider but

(ii) has, in the current year, done so to the current provider for the first time.

295-680 Amount of the tax offset

The amount of the *tax offset is the sum of each amount of tax that counts towards the offset for the provider for the current year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 301—Superannuation member benefits paid from complying plans etc.

Table of Subdivisions

Guide to Division 301
301-A Application
301-B Member benefits: general rules
301-C Member benefits: elements untaxed in fund
301-D Departing Australia superannuation payments
301-E Superannuation lump sum member benefits less than $200

Guide to Division 301

301-1 What this Division is about

This Division sets out the tax treatment of superannuation benefits received by members of complying plans etc. This treatment varies depending on the age of the member when they receive the benefit. This Division also sets out the tax treatment of departing Australia superannuation payments and certain payments less than $200.

Subdivision 301-A—Application

Table of sections

301-5 Division applies to superannuation member benefits paid from complying plans etc.

301-5 Division applies to superannuation member benefits paid from complying plans etc.

This Division applies to:

(a) *superannuation member benefits that are paid from a *complying superannuation plan; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) *superannuation guarantee payments; and
(c) *small superannuation account payments; and
(d) *unclaimed money payments; and
(e) *superannuation co-contribution benefit payments; and
(f) *superannuation annuity payments.

Note: For the tax treatment of superannuation death benefits paid from complying plans, see Division 302. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

Subdivision 301-B—Member benefits: general rules

Table of sections

Member benefits—recipient aged 60 or above

301-10 All superannuation benefits are tax free

Member benefits—recipient aged over preservation age and under 60

301-15 Tax free status of tax free component
301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder
301-25 Superannuation income stream—taxable component attracts 15% offset

Member benefits—recipient aged under preservation age

301-30 Tax free status of tax free component
301-35 Superannuation lump sum—taxable component taxed at 20%
301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

Member benefits—recipient aged 60 or above

301-10 All superannuation benefits are tax free

If you are 60 years or over when you receive a *superannuation benefit, the benefit is not assessable income and is not *exempt income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: If your superannuation benefit includes an element untaxed in the fund, see Subdivision 301-C.

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

Member benefits—recipient aged over preservation age and under 60

301-15 Tax free status of tax free component

If you are under 60 years but have reached your *preservation age when you receive a *superannuation benefit, the *tax free component of the benefit is not assessable income and is not *exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70).

Note 2: For ***tax free component***, see Subdivision 307-C.

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

(1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation lump sum, the *taxable component of the lump sum is assessable income.

Note 1: For ***taxable component***, see Subdivision 307-C.

Note 2: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 0%.

(3) The amount is so much of the total of the *taxable components included in your assessable income for the income year under

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

subsection (1) as does not exceed your *low rate cap amount (see section 307-345) for the income year.

(4) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 15%.

(5) The amount is so much of the total of the *taxable components included in your assessable income for an income year under subsection (1) as exceeds your *low rate cap amount for the income year.

Note: This amount will be nil if the total of the taxable components falls short of your low rate cap amount for the income year.

301-25 Superannuation income stream—taxable component attracts 15% offset

(1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation income stream benefit, the *taxable component of the benefit is assessable income.

(2) You are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Note 1: For ***taxable component***, see Subdivision 307-C.

Note 2: If your superannuation income stream benefit includes an element untaxed in the fund, see Subdivision 301-C.

Member benefits—recipient aged under preservation age

301-30 Tax free status of tax free component

If you are under your *preservation age when you receive a *superannuation benefit, the *tax free component of the benefit is not assessable income and is not *exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: For ***tax free component***, see Subdivision 307-C.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

301-35 Superannuation lump sum—taxable component taxed at 20%

(1) If you are under your *preservation age when you receive a *superannuation lump sum, the *taxable component of the lump sum is assessable income.

Note: For ***taxable component***, see Subdivision 307-C.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the *taxable component of the lump sum does not exceed 20%.

Note: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

(1) If you are under your *preservation age when you receive a *superannuation income stream benefit, the *taxable component of the benefit is assessable income.

Note: For ***taxable component***, see Subdivision 307-C.

Offset for disability benefit

(2) If the benefit is a *superannuation income stream benefit and a *disability superannuation benefit, you are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Subdivision 301-C—Member benefits: elements untaxed in fund

Table of sections

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Member benefits (element untaxed in fund)—recipient aged 60 or above

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

301-110 Superannuation income stream—element untaxed in fund is assessable income

Member benefits (element untaxed in fund)—recipient aged under preservation age

301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder

301-120 Superannuation income stream—element untaxed in fund is assessable income

Miscellaneous

301-125 Unclaimed money payments by the Commissioner

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

If you receive a *superannuation benefit that includes an *element untaxed in the fund:

(a) the *tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation benefit under Subdivision 301-B; and

(b) the *element taxed in the fund (if any) included in the benefit is treated in the same way as the taxable component of a superannuation benefit under Subdivision 301-B; and

(c) the element untaxed in the fund is treated in accordance with this Subdivision.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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

Member benefits (element untaxed in fund)—recipient aged 60 or above

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

(1) If you are 60 years or over when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 15%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

(3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

(1) If you are 60 years or over when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.

(2) You are entitled to a *tax offset equal to 10% of the *element untaxed in the fund of the benefit.

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

(1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount worked out under subsection (3) does not exceed 30%.

(3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

Note: To the extent that the element untaxed in the fund exceeds the amount worked out under this subsection, it is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

(4) If you are entitled to one or more *tax offsets under subsection (2) for *superannuation benefits that you receive in an income year, you are entitled to a tax offset that ensures that the rate of income tax on the amount worked out under subsection (5) does not exceed 15%.

(5) The amount is so much of the total of the one or more amounts worked out under subsection (3) as does not exceed your *low rate cap amount for the income year.

(6) If you are also entitled to a *tax offset under subsection 301-20(2) for the income year, reduce your *low rate cap amount for the purposes of subsection (5) of this section for the income year by the amount mentioned in subsection 301-20(3).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

301-110 Superannuation income stream—element untaxed in fund is assessable income

If you are under 60 years but have reached your *preservation age when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.

Member benefits (element untaxed in fund)—recipient aged under preservation age

301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder

(1) If you are under your *preservation age when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 30%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

(3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

301-120 Superannuation income stream—element untaxed in fund is assessable income

If you are under your *preservation age when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Miscellaneous

301-125 Unclaimed money payments by the Commissioner

For the purposes of this Subdivision, treat a *superannuation lump sum paid by the Commissioner under subsection 17(2), 20H(2), (2AA), (2A) or (3), 20QF(2), 21E(2), 22B(2) or 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* as if it were paid from a *superannuation plan.

Subdivision 301-D—Departing Australia superannuation payments

Table of sections

301-170 ***Departing Australia superannuation payments***
301-175 Treatment of departing Australia superannuation benefits

301-170 *Departing Australia superannuation payments*

(1) A *superannuation lump sum is a ***departing Australia superannuation payment*** if it:

(a) is paid to a person who has departed Australia; and

(b) is paid:

(i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are specified in regulations made 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 specified as mentioned in subparagraph (i).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) Also, a *superannuation lump sum is a ***departing Australia superannuation payment*** if it is paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(3) Despite subsection (2), a *superannuation lump sum paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* because a person has been identified in a notice under section 20C of that Act is not a ***departing Australia superannuation payment*** if, when it is paid, the Commissioner is satisfied that:

(a) the person has not been, under the *Migration Act 1958*, the holder of a temporary visa that ceased to be in effect at least 6 months ago; or

(b) the person has been the holder of such a visa but has not left Australia (within the meaning of that Act) at least 6 months ago but after starting to be the holder of the visa.

(4) Despite subsection (2), a *superannuation lump sum that is paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and is prescribed by the regulations for the purposes of this subsection is not a ***departing Australia superannuation payment***.

301-175 Treatment of departing Australia superannuation benefits

(1) Despite anything else in this Division, if you receive a *superannuation benefit that is a *departing Australia superannuation payment, the benefit is not assessable income and is not *exempt income.

(2) However, you are liable to pay income tax on that payment at the rate declared by the Parliament in respect of *departing Australia superannuation payments.

Note 1: The tax is imposed in the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* and the amount of the tax is set out in that Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

Subdivision 301-E—Superannuation lump sum member benefits less than $200

Table of sections

301-225 Superannuation lump sum member benefits less than $200 are tax free

301-225 Superannuation lump sum member benefits less than $200 are tax free

(1) Despite anything else in this Division (apart from Subdivision 301-D), a *superannuation member benefit that you receive is not assessable income and is not *exempt income if:

(a) the benefit is a *superannuation lump sum; and

(b) the amount of the benefit is less than $200; and

(c) the *value of the *superannuation interest from which the benefit is paid is nil just after the benefit is paid; and

(d) the requirements (if any) specified in the regulations in relation to the benefit are satisfied.

(2) Despite anything else in this Division (apart from Subdivision 301-D), a *superannuation member benefit that you receive is not assessable income and is not *exempt income if:

(a) the benefit is a *superannuation lump sum; and

(b) the benefit is paid to you:

(i) under subsection 20QF(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in a case covered by paragraph (d) of that subsection; or

(ia) under subsection 21E(2) of that Act in a case covered by paragraph (d) of that subsection; or

(ib) under subsection 22B(2) of that Act in a case covered by paragraph (d) of that subsection; or

(ii) under subsection 24G(2) of that Act in a case covered by paragraph (d) of that subsection; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) the amount of the benefit is less than $200.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 302—Superannuation death benefits paid from complying plans etc.

Table of Subdivisions

Guide to Division 302
302-A Application
302-B Death benefits to dependant
302-C Death benefits to non-dependant
302-D Definitions relating to dependants

Guide to Division 302

302-1 What this Division is about

This Division sets out the tax treatment of superannuation death benefits received by members of complying plans etc. This treatment varies depending on the age of the deceased when they died (and in some cases on the age of the recipient of the benefit).

Subdivision 302-A—Application

Table of sections

302-5 Division applies to superannuation death benefits paid from complying plans etc.
302-10 Superannuation death benefits paid to trustee of deceased estate

302-5 Division applies to superannuation death benefits paid from complying plans etc.

This Division applies to *superannuation death benefits that:

(a) are paid from a *complying superannuation plan; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) are *superannuation guarantee payments, *small superannuation account payments, *unclaimed money payments, *superannuation co-contribution benefit payments or *superannuation annuity payments.

Note: For the tax treatment of superannuation member benefits paid from complying plans, see Division 301. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

302-10 Superannuation death benefits paid to trustee of deceased estate

(1) This section applies to you if:
(a) you are the trustee of a deceased estate; and
(b) you receive a *superannuation death benefit in your capacity as trustee.

(2) To the extent that 1 or more beneficiaries of the estate who were *death benefits dependants of the deceased have benefited, or may be expected to benefit, from the *superannuation death benefit:
(a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and
(b) the benefit is taken to be income to which no beneficiary is presently entitled.

(3) To the extent that 1 or more beneficiaries of the estate who were *not* *death benefits dependants of the deceased have benefited, or may be expected to benefit, from the *superannuation death benefit:
(a) the benefit is treated as if it had been paid to you as a person who was *not* a death benefits dependant of the deceased; and
(b) the benefit is taken to be income to which no beneficiary is presently entitled.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 302-B—Death benefits to dependant

Table of sections

Lump sum death benefits to dependants are tax free

302-60 All of superannuation lump sum is tax free

Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above

302-65 Superannuation income stream benefits are tax free

Superannuation income stream—deceased died aged under 60 and dependant aged under 60

302-70 Superannuation income stream—tax free status of tax free component
302-75 Superannuation income stream—taxable component attracts 15% offset

Death benefits to dependant—elements untaxed in fund

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant
302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream—element untaxed in fund attracts 10% offset
302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream—element untaxed in fund is assessable income

Lump sum death benefits to dependants are tax free

302-60 All of superannuation lump sum is tax free

A *superannuation lump sum that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above

302-65 Superannuation income stream benefits are tax free

A *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income in either or both of the following cases:

(a) you are 60 years or over when you receive the benefit;

(b) the deceased died aged 60 or over.

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.

Superannuation income stream—deceased died aged under 60 and dependant aged under 60

302-70 Superannuation income stream—tax free status of tax free component

The *tax free component of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income if:

(a) you are under 60 when you receive the benefit; and

(b) the deceased died aged under 60.

Note: For ***tax free component***, see Subdivision 307-C.

302-75 Superannuation income stream—taxable component attracts 15% offset

(1) The *taxable component of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) you are under 60 when you receive the benefit; and
(b) the deceased died aged under 60.

Note: For ***taxable component***, see Subdivision 307-C.

(2) You are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Death benefits to dependant—elements untaxed in fund

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

If a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant includes an *element untaxed in the fund:

(a) the *tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation income stream benefit under section 302-65 or 302-70; and
(b) the *element taxed in the fund (if any) of the benefit is treated in the same way as the *taxable component of a superannuation income stream benefit under section 302-65 or 302-75; and
(c) the element untaxed in the fund is treated in accordance with section 302-85 or 302-90.

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

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset

(1) The *element untaxed in the fund of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income in either or both of the following cases:

(a) you are 60 years or over when you receive the benefit;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the deceased died aged 60 or above.

(2) You are entitled to a *tax offset equal to 10% of the *element untaxed in the fund of the benefit.

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

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income

The *element untaxed in the fund of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income if:

(a) you are aged under 60 when you receive the benefit; and

(b) the deceased died aged under 60.

Subdivision 302-C—Death benefits to non-dependant

Table of sections

Superannuation lump sum

302-140 Superannuation lump sum—tax free status of tax free component

302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

Superannuation lump sum

302-140 Superannuation lump sum—tax free status of tax free component

The *tax free component of a *superannuation lump sum that you receive because of the death of a person of whom you are *not* a *death benefits dependant is not assessable income and is not *exempt income.

Note: For ***tax free component***, see Subdivision 307-C.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

(1) If you receive a *superannuation lump sum because of the death of a person of whom you are *not* a *death benefits dependant, the *taxable component of the lump sum is assessable income.

Note: For ***taxable component***, see Subdivision 307-C.

(2) You are entitled to a *tax offset that ensures that the rate of income tax on the *element taxed in the fund of the lump sum does not exceed 15%.

(3) You are entitled to a *tax offset that ensures that the rate of income tax on the *element untaxed in the fund of the lump sum does not exceed 30%.

Subdivision 302-D—Definitions relating to dependants

Table of sections

302-195 Meaning of ***death benefits dependant***
302-200 What is an ***interdependency relationship***?

302-195 Meaning of *death benefits dependant*

(1) A ***death benefits dependant***, of a person who has died, is:
  (a) the deceased person's *spouse or former spouse; or
  (b) the deceased person's *child, aged less than 18; or
  (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
  (d) any other person who was a dependant of the deceased person just before he or she died.

(2) For the purposes of this Division, treat an individual who receives a *superannuation lump sum because of the death of another person as a ***death benefits dependant*** of the deceased person in relation to

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

the lump sum if the deceased person *died in the line of duty (see subsection (3)) as:

(a) a member of the Defence Force; or

(b) a member of the Australian Federal Police or the police force of a State or Territory; or

(c) a protective service officer (within the meaning of the *Australian Federal Police Act 1979*).

(3) For the purposes of subsection (2), a person ***died in the line of duty*** if the person died in the circumstances specified in the regulations.

302-200 What is an *interdependency relationship*?

(1) Two persons (whether or not related by family) have an ***interdependency relationship*** under this section if:

(a) they have a close personal relationship; and

(b) they live together; and

(c) one or each of them provides the other with financial support; and

(d) one or each of them provides the other with domestic support and personal care.

(2) In addition, 2 persons (whether or not related by family) also have an ***interdependency relationship*** under this section if:

(a) they have a close personal relationship; and

(b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and

(c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.

(3) The regulations may specify:

(a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an ***interdependency relationship*** under this section; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) circumstances in which 2 persons have, or do not have, an ***interdependency relationship*** under this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 303—Superannuation benefits paid in special circumstances

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 ***defined benefit income cap***

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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):

$$\frac{\text{The *general transfer balance cap for the *financial year}}{16}$$

(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 in respect of an amount of *defined benefit income; or

(b) would apart from this Subdivision apply to you in respect of an amount of defined benefit income;

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

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

(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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 303-B—Other special circumstances

Table of sections

303-5 Commutation of income stream if you are under 25 etc.
303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition
303-15 Payments from release authorities—general
303-20 Payments from release authorities—paying debt account discharge liability for a superannuation interest

303-5 Commutation of income stream if you are under 25 etc.

(1) A *superannuation lump sum that you receive from a *complying superannuation plan is not assessable income and is not *exempt income if:

(a) the superannuation lump sum arises from the commutation of a *superannuation income stream; and

(b) any of these conditions are satisfied:

(i) you are under 25 when you receive the superannuation lump sum;

(ii) the commutation takes place because you turn 25;

(iii) you are permanently disabled when you receive the superannuation lump sum; and

(c) you had received one or more *superannuation income stream benefits from the superannuation income stream before the commutation because of the death of a person of whom you are a *death benefits dependant.

(2) Subsection (1) applies despite Divisions 301 and 302.

303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition

(1) This section applies to a *superannuation member benefit that:

(a) is a *superannuation lump sum; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) is:

(i) paid from a *complying superannuation plan; or

(ii) a *superannuation guarantee payment, a *small superannuation account payment, an *unclaimed money payment, a *superannuation co-contribution benefit payment or a *superannuation annuity payment.

(2) The lump sum is not assessable income and is not *exempt income if a *terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*.

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 sections 304-20 and 313-20).

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

A *superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in respect of a *release entitlement you have, is not assessable income and is not *exempt income.

Note: However, payments that exceed the release entitlement are assessable: see section 304-20.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 304—Superannuation benefits in breach of legislative requirements etc.

Guide to Division 304

304-1 What this Division is about

This Division overrides the tax treatment in Divisions 301 and 302 if payments from complying superannuation plans etc. are in breach of payment and other rules.

Table of sections

Operative provisions

304-5 Application
304-10 Superannuation benefits in breach of legislative requirements etc.
304-20 Excess payments from release authorities—paying debt account discharge liability for a superannuation interest

Operative provisions

304-5 Application

This Division applies despite Divisions 301, 302 and 303.

304-10 Superannuation benefits in breach of legislative requirements etc.

(1) Include in your assessable income the amount of a *superannuation benefit if:

(a) any of the following applies:

(i) you received the benefit from a *complying superannuation fund or from a *superannuation fund that was previously a complying superannuation fund;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) the benefit is attributable to the assets of a complying superannuation fund or from a superannuation fund that was previously a complying superannuation fund; and

(b) any of the following applies:

(i) the fund was not (when you received the benefit) maintained as required by section 62 of the *Superannuation Industry (Supervision) Act 1993*;

(ii) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*.

(2) Include in your assessable income the amount of a *superannuation benefit if:

(a) any of the following applies:

(i) you received the benefit from a *complying approved deposit fund or from an *approved deposit fund that was previously a complying approved deposit fund;

(ii) the benefit is attributable to the assets of a complying approved deposit fund or from an approved deposit fund that was previously a complying approved deposit fund; and

(b) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 32(1) of the *Superannuation Industry (Supervision) Act 1993*.

(3) Include in your assessable income the amount of a *superannuation benefit you receive from an *RSA in breach of the *Retirement Savings Accounts Act 1997*, regulations under that Act or payment standards prescribed under subsection 38(2) of that Act.

(4) However, you do not have to include the amount in your assessable income to the extent that the Commissioner is satisfied that it is unreasonable that it be included having regard to:

(a) for subsection (1) or (2)—the nature of the fund; and

(b) any other matters that the Commissioner considers relevant.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(5) For the purposes of this section, treat your receipt of a benefit (other than a *superannuation benefit) out of, or attributable to, the assets of a *superannuation plan as your receipt of a superannuation benefit.

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

(1) Despite section 303-20, a *superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in respect of a *release entitlement you have, is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (2).

Note: Section 303-20 makes superannuation benefits received under a release authority non-assessable non-exempt income.

(2) The amount is the amount of the *release entitlement, reduced (but not below zero) by the amount of any *superannuation benefit that was not assessable income and not *exempt income under a previous operation of section 303-20 of this Act in relation to that release entitlement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 305—Superannuation benefits paid from non-complying superannuation plans

Table of Subdivisions

Guide to Division 305
305-A Superannuation benefits from Australian non-complying superannuation funds
305-B Superannuation benefits from foreign superannuation funds

Guide to Division 305

305-1 What this Division is about

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).

Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds

Table of sections

305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds

305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds

A *superannuation benefit that you receive from a *non-complying superannuation fund that is an *Australian superannuation fund (for the income year in which the benefit is paid) is *exempt income if:

(a) the fund:

(i) has never been a *complying superannuation fund; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) last stopped being a complying superannuation fund for the income year in which 1 July 1995 occurred or a later income year; and

(b) the fund:

(i) has never been a *foreign superannuation fund; or

(ii) last stopped being a foreign superannuation fund for the income year in which 1 July 1995 occurred or a later income year.

Subdivision 305-B—Superannuation benefits from foreign superannuation funds

Table of sections

Application of Subdivision

305-55 Restriction to lump sums received from certain foreign superannuation funds

Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

305-60 Lump sums tax free—foreign resident period

305-65 Lump sums tax free—Australian resident period

Lump sums to which sections 305-60 and 305-65 do not apply

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75 Lump sums—***applicable fund earnings***

305-80 Lump sums paid into complying superannuation plans—choice

Application of Subdivision

305-55 Restriction to lump sums received from certain foreign superannuation funds

(1) This Subdivision applies if:

(a) you receive a *superannuation lump sum from a *foreign superannuation fund; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).

(2) This Subdivision also applies if you receive a payment, other than a pension payment, from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

(a) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund; and

(b) was not established in Australia; and

(c) is not centrally managed or controlled in Australia.

(3) This Subdivision applies to a payment mentioned in subsection (2) from a scheme mentioned in that subsection in the same way as it applies to a *superannuation lump sum from a *foreign superannuation fund.

Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

305-60 Lump sums tax free—foreign resident period

A *superannuation lump sum you receive from a *foreign superannuation fund is not assessable income and is not *exempt income if:

(a) you receive it within 6 months after you become an Australian resident; and

(b) it relates only to a period:

(i) when you were not an Australian resident; or

(ii) starting after you became an Australian resident and ending before you receive the payment; and

(c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

305-65 Lump sums tax free—Australian resident period

(1) A *superannuation lump sum you receive is not assessable income and is not *exempt income if:

(a) you receive it in consequence of:

(i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or

(ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and

(b) it relates only to the period of that employment, holding of office, or engagement; and

(c) you were an Australian resident during the period of the employment, holding of office or engagement; and

(d) you receive the lump sum within 6 months after the termination; and

(e) the lump sum is not exempt from taxation under the law of the foreign country; and

(f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and

(g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, the lump sum will fall within section 305-70.

(2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:

(a) retirement from the employment, office or engagement; and

(b) cessation of the employment, office or engagement because of death.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Lump sums to which sections 305-60 and 305-65 do not apply

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

Superannuation lump sums to which section applies

(1) This section applies to a *superannuation lump sum you receive from a *foreign superannuation fund if:

(a) you are an Australian resident when you receive the lump sum; and

(b) sections 305-60 and 305-65 do not apply to the lump sum.

Assessable part

(2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:

(a) your *applicable fund earnings (worked out under section 305-75); or

(b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

Non-assessable, non-exempt part

(3) The remainder of the lump sum is not assessable income and is not *exempt income.

Amount paid into another foreign superannuation fund

(4) Any part of the lump sum that is paid into another *foreign superannuation fund is not assessable income and is not *exempt income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign superannuation fund may include an amount (***previously exempt fund earnings***) attributable to the lump sum.

305-75 Lump sums—*applicable fund earnings*

(1) This section applies if you need to work out an amount (your ***applicable fund earnings***) in relation to a *superannuation lump sum to which section 305-70 applies that you receive from a *foreign superannuation fund.

If you were an Australian resident at all times

(2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your ***applicable fund earnings*** is the amount (not less than zero) worked out as follows:

(a) work out the total of the following amounts:

(i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the ***start day***);

(ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other *foreign superannuation fund during the period;

(b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax);

(c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

If you were not an Australian resident at all times

(3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your ***applicable fund earnings*** is the amount (not less than zero) worked out as follows:

(a) work out the total of the following amounts:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) the amount in the fund that was vested in you just before the day (the ***start day***) you first became an Australian resident during the period;

(ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;

(iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other *foreign superannuation fund during the remainder of the period;

(b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax);

(c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;

(d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

Previous lump sums from the fund

(4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the ***start day*** is the day after you received the most recent such lump sum.

Previously exempt fund earnings

(5) You have an amount of ***previously exempt fund earnings*** in respect of the lump sum if:

(a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax) is attributable to the amount; and

(b) the amount is attributable to a payment received from a *foreign superannuation fund; and

(c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

section, but for the payment having been received by another foreign superannuation fund.

(6) The amount of your ***previously exempt fund earnings*** is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

305-80 Lump sums paid into complying superannuation plans—choice

(1) This section applies if:
  (a) section 305-70 applies to a *superannuation lump sum that is paid from a *foreign superannuation fund; and
  (b) you are taken to receive the lump sum under section 307-15; and
  (c) all of the lump sum is paid into a *complying superannuation fund; and
  (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a *superannuation interest in the foreign superannuation fund.

(2) You may choose for all or part of your *applicable fund earnings worked out under section 305-75 (but not exceeding the amount of the lump sum) to be included in the assessable income of the *complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.

(3) Your choice:
  (a) must be in writing; and
  (b) must comply with the requirements (if any) specified in the regulations.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 306—Roll-overs etc.

Guide to Division 306

306-1 What this Division is about

This Division sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments.

Table of sections

Operative provisions

306-5 Effect of a roll-over superannuation benefit
306-10 ***Roll-over superannuation benefit***
306-12 ***Involuntary roll-over superannuation benefit***
306-15 Tax on ***excess untaxed roll-over amounts***
306-20 Effect of payment to government of unclaimed superannuation money
306-25 Payments connected with financial claims scheme to RSAs

Operative provisions

306-5 Effect of a roll-over superannuation benefit

A *roll-over superannuation benefit that you are taken to receive under section 307-15 is not assessable income and is not *exempt income.

Note: Roll-over superannuation benefits are paid into a complying superannuation plan or are used to purchase a superannuation annuity on your behalf. However, you are taken to receive the benefit under subsection 307-15(1).

306-10 *Roll-over superannuation benefit*

A *superannuation benefit is a ***roll-over superannuation benefit*** if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) the benefit is a *superannuation lump sum and a *superannuation benefit; and

(b) the benefit is *not* a superannuation benefit of a kind specified in the regulations; and

(c) the benefit satisfies any of the following conditions:

(i) it is paid from a *complying superannuation plan;

(ii) it is an *unclaimed money payment;

(iii) it arises from the commutation of a *superannuation annuity; and

(d) the benefit satisfies any of the following conditions:

(i) it is paid to a complying superannuation plan;

(ii) it is paid to an entity to purchase a superannuation annuity from the entity.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider.

Note 2: For the treatment of amounts transferred within a superannuation plan, see subsection 307-5(8).

306-12 *Involuntary roll-over superannuation benefit*

A *roll-over superannuation benefit is an ***involuntary roll-over superannuation benefit*** if it is:

(a) a payment transferring a *superannuation interest of:

(i) a member of a *superannuation fund; or

(ii) a depositor with an *approved deposit fund; or

(iii) a holder of an *RSA;

to a *successor fund (other than a *self managed superannuation fund) without the consent of the member, depositor or holder; or

(b) a payment transferring an *accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a *complying superannuation fund to another complying superannuation fund:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(i) as a result of an election under paragraph 29SAA(1)(b) of that Act; or

(ii) under section 388 of that Act;

if:

(iii) that member becomes a member (within the meaning of that Act) of the other fund immediately after the transfer; and

(iv) the transfer happens during the period beginning on 1 July 2015 and ending on 1 July 2017; or

(c) a payment of consideration for the issue to a person of a beneficial interest in an eligible rollover fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) in accordance with an application on behalf of that person under section 243 of that Act.

306-15 Tax on *excess untaxed roll-over amounts*

(1) This section applies to a *superannuation benefit if:

(a) it is a *roll-over superannuation benefit that is paid into a *superannuation plan; and

(b) you are taken to receive the benefit under section 307-15; and

(c) the benefit consists of, or includes, an amount that is an *element untaxed in the fund; and

(d) the amount mentioned in paragraph (c) exceeds your *untaxed plan cap amount (see section 307-350), for the superannuation plan from which the benefit is paid, just before you are taken to receive the benefit.

Note: To work out your untaxed plan cap amount in relation to an unclaimed money payment from the Commissioner, see subsection 307-350(2B).

(1A) However, this section does not apply to a *roll-over superannuation benefit that is transferred from one *superannuation interest in a *superannuation plan to another superannuation interest in the same plan.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider. Such a benefit may be a roll-over superannuation benefit: see section 306-10.

Note 2: For the treatment of amounts transferred within the same superannuation plan, see subsection 307-5(8).

(2) The ***excess untaxed roll-over amount*** is the amount of the excess mentioned in paragraph (1)(d).

(3) You are liable to pay income tax on the *excess untaxed roll-over amount at the rate declared by the Parliament in respect of such amounts.

Note 1: The tax is imposed in the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, and the amount of tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

306-20 Effect of payment to government of unclaimed superannuation money

An *unclaimed money payment that you are taken to receive under section 307-15 because it is paid in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or because it is paid as mentioned in subsection 18(4) of that Act, to the Commissioner or a State or Territory authority (within the meaning of that Act) is not assessable income and is not *exempt income.

306-25 Payments connected with financial claims scheme to RSAs

(1) This section applies if:

(a) a person is the holder of an *RSA (the ***old RSA***) of which an *ADI is the *RSA provider; and

(b) an entitlement of the person arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with the old RSA; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) either:

(i) the entitlement, so far as it relates to the old RSA, is met wholly or partly by the making of a payment to another RSA (the ***new RSA***) that the person is the holder of (whether or not the new RSA was established under section 16AH of the *Banking Act 1959*); or

(ii) a liquidator of the ADI pays a distribution from the liquidation of the ADI, so far as the distribution is attributable to the old RSA, to another RSA (also the ***new RSA***) that the person is the holder of (whether or not the new RSA was established under section 16AR of the *Banking Act 1959*).

(2) This Part (except this section), and the other provisions of this Act (except this section) so far as they relate to this Part, apply in relation to the payment to the new RSA as if:

(a) the payment were made from the old RSA to the new RSA; and

(b) the entity that made the payment (rather than the *ADI) were the *RSA provider of the old RSA.

Note: The effects of this include:

(a) the payment is a superannuation member benefit of the person (because of sections 307-5 and 307-15); and

(b) the payment is a superannuation lump sum under Subdivision 307-B (unless regulations prevent this); and

(c) the payment is a roll-over superannuation benefit under section 306-10 (unless regulations prevent this); and

(d) reporting obligations (such as those in section 390-10 in Schedule 1 to the *Taxation Administration Act 1953*) apply to the entity that made the payment as if it were the RSA provider of the old RSA.

(3) However, for the purposes of section 307-125, determine the *value of the *superannuation interest, and the amount of each of the *tax free component and the *taxable component of the interest:

(a) when the entitlement arose; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) if a *superannuation income stream benefit had been paid from the old RSA before that time—at the time the relevant *superannuation income stream commenced.

(4) Subsection (3) has effect despite:

(a) subsection 307-125(3) (as it applies because of subsection (2) of this section); and

(b) paragraph 307-125(3)(a) of the *Income Tax (Transitional Provisions) Act 1997*.

(5) This section has effect despite:

(a) Division 253; and

(b) Division 21 in Schedule 1 to the *Taxation Administration Act 1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 307—Key concepts relating to superannuation benefits

Table of Subdivisions

Guide to Division 307
307-A Superannuation benefits generally
307-B Superannuation lump sums and superannuation income stream benefits
307-C Components of a superannuation benefit
307-D Superannuation interests
307-E Elements taxed and untaxed in the fund of the taxable component of superannuation benefit
307-F Low rate cap and untaxed plan cap amounts
307-G Other concepts

Guide to Division 307

307-1 What this Division is about

This Division defines concepts used in Divisions 301 to 306, such as ***superannuation benefit*****,** and the ***tax free component*** and ***taxable component*** of such benefits. To work out those components, it is often necessary to work out the corresponding components of the ***superannuation interest*** from which the benefit is paid (see Subdivision 307-D).

This Division also defines the ***element taxed in the fund*** and the ***element untaxed in the fund*** of superannuation benefits, which are relevant to superannuation benefits paid from untaxed funds etc. (see Subdivision 307-D).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 307-F defines the concessional limits used in Division 301 known as the low rate cap amount and untaxed plan cap amount.

Subdivision 307-A—Superannuation benefits generally

Table of sections

307-5 What is a ***superannuation benefit***?
307-10 Payments that are not ***superannuation benefits***
307-15 Payments for your benefit or at your direction or request

307-5 What is a *superannuation benefit*?

(1) A ***superannuation benefit*** is a payment described in the table.

Types of superannuation benefits

Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
1	***superannuation fund payment***	A payment to you from a *superannuation fund because you are a fund member.	A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.
2	***RSA payment***	A payment to you from an *RSA because you are the holder of the RSA.	A payment to you from an RSA, after another person's death, because the other person was the holder of the RSA.
3	***approved deposit fund payment***	A payment to you from an *approved deposit fund because you are a depositor with the fund.	A payment to you from an approved deposit fund after another person's death, because the other person was a depositor with the fund.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Types of superannuation benefits

Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
4	***small superannuation account payment***	A payment to you under section 63, 64, 65, 65A, 66, 67 or 67A, or subsection 76(6), of the *Small Superannuation Accounts Act 1995*. (These provisions authorise payment of money held under the Act.)	A payment to you under section 68 or subsection 76(7) of the *Small Superannuation Accounts Act 1995*. (These provisions authorise payment of money held under the Act to the legal personal representative of the deceased.)
5	***unclaimed money payment***	A payment to you: (a) under subsection 17(1), (2) or (2AB), 20F(1) or 20H(2), (2AA) or (2A), section 20QD or subsection 20QF(2) or (5), section 21C or subsection 21E(2) or (5), section 22 or subsection 22B(2) or (5), section 24E or subsection 24G(2) or (3A) or 24NA(2), (3) or (4) of the *Superannuation (Unclaimed Money and Lost*	A payment to you: (a) under subsection 17(1), (2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3), 20QF(2), (5) or (6), 21E(2), (5) or (6), 22B(2), (5) or (6) or 24G(2), (3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or (b) as mentioned in subsection 18(4) or (5) of that Act; because of another person's death.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Types of superannuation benefits

Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
		Members) Act 1999; or (b) as mentioned in subsection 18(4) or (5) of that Act; otherwise than because of another person's death.	
6	***superannuation co-contribution benefit payment***	A payment to you under paragraph 15(1)(c) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.	A payment to you under paragraph 15(1)(d) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.
7	***superannuation guarantee payment***	A payment to you under section 65A, 66 or 66A of the *Superannuation Guarantee (Administration) Act 1992*. (This provides for money collected under the Act to be paid to a person who retires because of incapacity or invalidity, or who has a terminal medical condition.)	A payment to you under section 67 of the *Superannuation Guarantee (Administration) Act 1992*. (This provides for money collected under the Act to be paid to the legal personal representative of the deceased.)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Types of superannuation benefits

Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
8	***superannuation annuity payment***	A payment to you: (a) from a *superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because you are the annuitant.	A payment to you: (a) from a superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because of the death of the annuitant.

(2) A ***superannuation member benefit*** is a payment described in column 2 of the table.

(4) A ***superannuation death benefit*** is a payment described in column 3 of the table.

(5) Subsection (6) applies if a *contributions-splitting superannuation benefit or a *family law superannuation payment is paid to you because another person is a member of a *superannuation fund, holder of an *RSA or depositor with an *approved deposit fund, or the annuitant under a *superannuation annuity.

(6) For the purposes of this section (and despite section 307-15):
  (a) treat yourself as a member of the fund, holder of the *RSA, depositor with the fund or annuitant under the *superannuation annuity; and
  (b) do not treat the other person as a member of the fund, holder of the RSA, depositor with the fund or annuitant under the superannuation annuity.

Note: This means that the benefit is a superannuation benefit for you but not for the other person.

(7) A ***family law superannuation payment*** is a payment that:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) is a payment of any of the following kinds:
  (i) a payment in accordance with Part VIIIB or VIIIC of the *Family Law Act 1975*;
  (ii) a payment in accordance with prescribed regulations made under the *Family Law Act 1975*;
  (iii) a payment in accordance with Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*;
  (iv) a payment in accordance with Part 4A of the *Retirement Savings Accounts Regulations 1997*;
  (v) a payment specified in the regulations; and
(b) satisfies the requirements (if any) specified in the regulations.

Treatment of amounts transferred within a superannuation plan

(8) If an amount is transferred from one *superannuation interest in a *superannuation plan to another superannuation interest in the same plan, treat the transfer as a payment in determining whether the transfer of the amount is a superannuation benefit or a roll-over superannuation benefit.

307-10 Payments that are not *superannuation benefits*

A payment of any of the following kinds is *not* a ***superannuation benefit***:

(a) an amount payable to a person under an income stream because of the person's temporary inability to engage in *gainful employment;
(aa) a benefit to which subsection 26AF(1) or 26AFA(1) of the *Income Tax Assessment Act 1936* applies;
(ab) an amount required by the *Bankruptcy Act 1966* to be paid to a trustee;
(b) an amount:
  (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a *constitutionally protected fund; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);

(c) an amount:

(i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and

(ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);

(d) a payment of a pension or an *annuity from a *foreign superannuation fund.

307-15 Payments for your benefit or at your direction or request

(1) This section applies for the purposes of:

(a) determining whether a payment is a ***superannuation benefit***; and

(b) determining whether a *superannuation benefit is made to you, or received by you.

(2) A payment is treated as being made to you, or received by you, if it is made:

(a) for your benefit; or

(b) to another person or to an entity at your direction or request.

Note: Paragraph (b) would cover, for example, a direction by you that a payment be rolled over from your original superannuation fund into another superannuation fund.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits

Table of sections

307-65 Meaning of ***superannuation lump sum***
307-70 Meaning of ***superannuation income stream*** and ***superannuation income stream benefit***
307-75 Meaning of ***retirement phase superannuation income stream benefit***
307-80 When a superannuation income stream is in the ***retirement phase***

307-65 Meaning of *superannuation lump sum*

(1) A ***superannuation lump sum*** is a *superannuation benefit that is not a *superannuation income stream benefit (see section 307-70).

(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).

307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit*

(1) A ***superannuation income stream benefit*** is a *superannuation benefit specified in the regulations that is paid from a *superannuation income stream.

(2) A ***superannuation income stream*** has the meaning given by the regulations.

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

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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 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:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(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);

(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

(aa) the person to whom the benefit is payable is not a reversionary beneficiary; 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.

(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.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

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.

Subdivision 307-C—Components of a superannuation benefit

Table of sections

307-120 Components of superannuation benefit
307-125 Proportioning rule
307-130 Superannuation guarantee payment consists entirely of taxable component
307-135 Superannuation co-contribution benefit payment consists entirely of tax free component
307-140 Contributions-splitting superannuation benefit consists entirely of taxable component
307-142 Components of certain unclaimed money payments
307-145 Modification for disability benefits
307-150 Modification in respect of superannuation lump sum with element untaxed in fund

307-120 Components of superannuation benefit

(1) Work out the following components of a *superannuation benefit under this Subdivision:

(a) the ***tax free component***;

(b) the ***taxable component***.

(2) Work out those components under:

(a) if the benefit is not mentioned in paragraph (b), (c), (d) or (e)—section 307-125; or

(b) if the benefit is a *superannuation guarantee payment—section 307-130; or

(c) if the benefit is a *superannuation co-contribution benefit payment—section 307-135; or

(d) if the benefit is a *contributions-splitting superannuation benefit—section 307-140; or

(e) if the benefit is a payment under subsection 17(2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3), 20QF(2), (5) or (6), 21E(2), (5) or (6), 22B(2), (5) or (6), 24G(2), (3A) or (3B) or

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Authorised Version C2022C00307 registered 22/10/2022

24NA(2), (3) or (4) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—section 307-142.

(3) Those components may be modified under sections 307-145 (which deals with certain disability benefits) and 307-150 (which deals with certain *elements untaxed in fund).

307-125 Proportioning rule

(1) The object of this section is to ensure that the *tax free component and *taxable component of a *superannuation benefit are calculated by:

(a) first, determining the proportions of the *value of the *superannuation interest that those components represent; and

(b) next, applying those proportions to the benefit.

(2) The *superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the *superannuation interest bears to the *value of the superannuation interest.

Example: The amount of a superannuation lump sum is $100. Just before the benefit is paid, the value of the superannuation interest was $1000 (of which $200 was the tax free component and $800 was the taxable component). For the lump sum, the tax free component is $20 and the taxable component is $80.

(3) For the purposes of subsection (2), determine the *value of the *superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:

(a) if the *superannuation benefit is a *superannuation income stream benefit—when the relevant *superannuation income stream commenced;

(b) if the superannuation benefit is a *superannuation lump sum—just before the benefit is paid;

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Authorised Version C2022C00307 registered 22/10/2022

(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;

(d) despite paragraphs (a) and (b), if:

(i) the superannuation benefit is an *involuntary roll-over superannuation benefit paid from a superannuation interest; and

(ii) that interest was supporting a superannuation income stream immediately before that benefit was paid;

when that superannuation income stream commenced.

(4) Subsection (2) does not apply to a *superannuation benefit if any of the following applies:

(a) the regulations specify an alternative method for determining those components of the benefit;

(b) a determination under subsection (5) specifies an alternative method for determining those components of the benefit;

(c) the Commissioner consents in writing to the use of another method for determining those components of the benefit.

If so, use that method to determine those components of the benefit.

(5) For the purposes of paragraph (4)(b), the Commissioner may determine, by legislative instrument, one or more alternative methods for determining those components of a *superannuation benefit.

(6) If the *superannuation benefit is an *unclaimed money payment or a *small superannuation account payment, for the purposes of this section:

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Authorised Version C2022C00307 registered 22/10/2022

(a) treat the benefit as a superannuation benefit paid from a *superannuation interest; and

(b) treat the amount of the benefit as the *value of that superannuation interest just before the time the benefit is paid.

307-130 Superannuation guarantee payment consists entirely of taxable component

The components of a *superannuation benefit that is a *superannuation guarantee payment are as follows:

(a) the *tax free component is nil;

(b) the *taxable component is the amount of the benefit.

307-135 Superannuation co-contribution benefit payment consists entirely of tax free component

The components of a *superannuation benefit that is a *superannuation co-contribution benefit payment are as follows:

(a) the *tax free component is the amount of the benefit;

(b) the *taxable component is nil.

307-140 Contributions-splitting superannuation benefit consists entirely of taxable component

The components of a *superannuation benefit that is a *contributions-splitting superannuation benefit are as follows:

(a) the *tax free component is nil;

(b) the *taxable component is the amount of the benefit.

307-142 Components of certain unclaimed money payments

Preliminary

(1) This section explains how to work out the *tax free component, and the *taxable component, of a *superannuation benefit that is a

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Authorised Version C2022C00307 registered 22/10/2022

payment by the Commissioner under subsection 17(2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3), 20QF(2), (5) or (6), 21E(2), (5) or (6), 22B(2), (5) or (6), 24G(2), (3A) or (3B) or 24NA(2), (3) or (4) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or by a State or Territory authority as mentioned in subsection 18(5) of that Act, in respect of a person.

Tax free component

(2) Work out the *tax free component as follows (unless subsection (3B) or (3C) applies):

Method statement

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the *superannuation benefit is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under subsection 20H(2) or (3) of that Act may be attributable to more than one unclaimed amount.

A payment under subsection 20QF(2) of that Act is attributable to a single unclaimed amount set out in item 3A of the table.

A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

A payment under subsection 22B(2) of that Act is attributable to a single unclaimed amount set out in item 3C of the table.

A payment made under subsection 24G(2) of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

A payment under subsection 24NA(2) or (3) of that Act may be attributable to more than one unclaimed amount.

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Authorised Version C2022C00307 registered 22/10/2022

Step 2.	Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.
Step 3.	The *tax free component of the *superannuation benefit consists of so much of the superannuation benefit as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

Tax free component

Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Tax free component of claimed equivalent
1	an amount paid, on or after 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act; in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

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Authorised Version C2022C00307 registered 22/10/2022

Tax free component

Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Tax free component of claimed equivalent
2	an amount paid, before 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act; in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the *Income Tax Assessment Act 1936*, as in force just before 1 July 2007)	the total of the components, of that eligible termination payment, referred to in subsection 307-225(2) of this Act
3	an amount paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person (other than an amount referred to in section 65AA of the *Superannuation Guarantee (Administration) Act 199*2)	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
3A	an amount paid to the Commissioner under section 20QD of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
3B	an amount paid to the Commissioner under	a *superannuation benefit paid from a	the *tax free component of that superannuation

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Authorised Version C2022C00307 registered 22/10/2022

Tax free component			
Item	**Column 1** **Unclaimed amount**	**Column 2** **Claimed equivalent**	**Column 3** **Tax free component of claimed equivalent**
	section 21C of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	*superannuation plan	benefit
3C	an amount paid to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
4	an amount paid to the Commissioner under section 24E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the taxable component includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the taxable component includes so much of the superannuation benefit as is attributable to such interest.

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Authorised Version C2022C00307 registered 22/10/2022

(3A) Treat the amount set out in column 3 of an item of the table in subsection (3) as being nil, if:

(a) the unclaimed amount set out in column 1 of the item is an amount paid to the Commissioner by a State or Territory authority (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*) in the circumstances mentioned in section 18AA, 20JA, 20QH or 24HA of that Act; and

(b) the Commissioner does not have sufficient information to work out the amount set out in column 3 of the item.

(3B) The *tax free component is the amount of the benefit, if the *superannuation benefit is paid under subsection 17(2AB) or (2AC), 20H(2AA), 20QF(5) or (6), 21E(5) or (6), 22B(5) or (6), 24G(3A) or (3B) or 24NA(4) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest).

(3C) Despite subsection (3B), the *tax free component is nil, if the *superannuation benefit is paid under subsection 20H(2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest) in respect of a person who:

(a) is a former temporary resident (within the meaning of that Act) when the payment is made; or

(b) if the person died before the payment is made—was a former temporary resident just before dying.

Taxable component

(4) The *taxable component is so much (if any) of the *superannuation benefit as is not the *tax free component.

307-145 Modification for disability benefits

(1) Work out the ***tax free component*** of the *superannuation benefit under subsection (2) if the benefit is a *superannuation lump sum and a *disability superannuation benefit.

Note: This section does not apply to an unclaimed money payment.

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Authorised Version C2022C00307 registered 22/10/2022

(2) The ***tax free component*** is the sum of:

(a) the *tax free component of the benefit worked out apart from this section; and

(b) the amount worked out under subsection (3).

However, the tax free component cannot exceed the amount of the benefit.

(3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

where:

days to retirement is the number of days from the day on which the person stopped being capable of being *gainfully employed to his or her *last retirement day.

service days is the number of days in the *service period for the lump sum.

(4) The balance of the *superannuation benefit is the ***taxable component*** of the benefit.

307-150 Modification in respect of superannuation lump sum with element untaxed in fund

(1) This section applies to a *superannuation lump sum if:

(a) it is not a *roll-over superannuation benefit; or

(b) it is a roll-over superannuation benefit that includes an *element untaxed in the fund, all or part of which will be included in the assessable income of the *superannuation provider in relation to the *superannuation fund into which the benefit is paid.

(2) However, this section applies to the *superannuation lump sum only to the extent that it is attributable to a *superannuation interest that existed just before 1 July 2007.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) If the *superannuation lump sum includes an *element untaxed in the fund:

(a) increase the *tax free component of the benefit by the amount that is the lesser of these amounts:

(i) the amount worked out under subsection (4); and

(ii) the amount of the element untaxed in the fund (apart from this section); and

(b) reduce the element untaxed in the fund by the lesser of those amounts.

(4) Work out the amount by applying the following formula:

$$\text{Original tax free component and untaxed element} \times \frac{\text{Number of days in the *service period for the lump sum that occurred before 1 July 1983}}{\text{Number of days in the *service period for the lump sum}}$$

where:

original tax free component and untaxed element is the sum of:

(a) the *tax free component of the *superannuation benefit (apart from this section); and

(b) the *element untaxed in the fund of the superannuation benefit (apart from this section).

(5) If the benefit is in part attributable to a *crystallised pre-July 83 amount, in working out the *tax free component of the *superannuation benefit (apart from this section) for the purposes of subsection (4), disregard the amount of the benefit that is attributable to the *crystallised segment of the *superannuation interest from which the benefit is paid.

Subdivision 307-D—Superannuation interests

Table of sections

307-200 Regulations relating to meaning of superannuation interests
307-205 ***Value*** of superannuation interest

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

307-210 ***Tax free component*** of superannuation interest
307-215 ***Taxable component*** of superannuation interest
307-220 What is the ***contributions segment***?
307-225 What is the ***crystallised segment***?
307-230 Total superannuation balance
307-231 Limited recourse borrowing arrangements

307-200 Regulations relating to meaning of superannuation interests

(1) In the circumstances specified in the regulations, treat a ***superannuation interest*** as two or more superannuation interests in the way specified in the regulations.

(2) In the circumstances specified in the regulations, treat 2 or more ***superannuation interests*** as one superannuation interest in the way specified in the regulations.

(3) Regulations for the purposes of this section may specify a way of treating a *superannuation interest in relation to one or more of the following aspects of the interest:

(a) the *tax free component (and the *contributions segment and *crystallised segment relating to that component);

(b) the *taxable component;

(c) the *element taxed in the fund of the taxable component;

(d) the *element untaxed in the fund of the taxable component.

(4) Regulations for the purposes of subsection (1) may specify a way of allocating an amount relating to a *superannuation interest treated as two or more superannuation interests in accordance with those regulations to those interests.

(5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

307-205 *Value* of superannuation interest

(1) The ***value*** of a *superannuation interest at a particular time is:

(a) if the regulations specify a method for determining the value of the superannuation interest—that value; or

(b) otherwise—the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

(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.

307-210 *Tax free component* of superannuation interest

(1) The ***tax free component*** of a *superannuation interest is so much of the *value of the interest as consists of:

(a) the *contributions segment of the interest; and

(b) the *crystallised segment of the interest.

Tax free component reduces if a benefit is paid

(2) If a *superannuation benefit is paid from the *superannuation interest:

(a) the *crystallised segment of the interest is reduced (but not below zero) by an amount equal to the *tax free component of the benefit; and

(b) if any of that amount remains, the *contributions segment of the interest is reduced (but not below zero) by that remaining amount.

Note: This has the effect of reducing the interest's tax free component by the amount of the benefit's tax free component.

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Authorised Version C2022C00307 registered 22/10/2022

307-215 *Taxable component* of superannuation interest

The ***taxable component*** of a *superannuation interest is the *value of the interest less the *tax free component of the interest.

307-220 What is the *contributions segment*?

(1) The ***contributions segment*** of a *superannuation interest is the total amount of the contributions to the interest:

(a) that were made after 30 June 2007; and

(b) to the extent that they have not been and will not be included in the assessable income of the *superannuation provider in relation to the *superannuation plan in which the interest is held.

This section has effect subject to subsection 307-210(2).

Note: This segment may be reduced if a superannuation benefit is paid from the superannuation interest: see subsection 307-210(2).

(2) For the purposes of this section:

(a) in determining whether contributions are included in the contributions segment under subsection (1):

(i) disregard the *taxable component of a *roll-over superannuation benefit paid into the interest; and

(ia) disregard the *tax free component of an *involuntary roll-over superannuation benefit paid into the interest from another superannuation interest (the ***earlier interest***) (other than an earlier interest that was supporting a *superannuation income stream immediately before that benefit was paid); and

(ib) if subparagraph (ia) applies—include as a contribution an amount equal to the amount referred to in subsection (5); and

(ii) for a *superannuation plan that is a *constitutionally protected fund—treat the superannuation plan as if it were not a constitutionally protected fund; and

(b) disregard section 295-180 and Subdivision 295-D.

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Authorised Version C2022C00307 registered 22/10/2022

(3) For the purposes of subparagraph (2)(a)(i), treat the *excess untaxed roll-over amount (if any) of the *roll-over superannuation benefit as part of the *tax free component of the benefit instead of the *taxable component of the benefit.

(4) Subparagraph (2)(a)(i) does not apply to a *roll-over superannuation benefit that is a *departing Australia superannuation payment made under subsection 20H(2), (2AA) or (2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Note 1: The whole departing Australia superannuation payment is included in the contributions segment of the superannuation interest, as none of the payment has been or will be included in the superannuation provider's assessable income.

Note 2: Including the whole payment in that segment, and thus the tax free component, of the superannuation interest ensures that the amount of the payment, which is taxed by the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*, does not attract more tax when paid as a superannuation benefit from the interest.

(5) For the purposes of subparagraph (2)(a)(ib), the amount is:

(a) if the *involuntary roll-over superannuation benefit is covered by paragraph 306-12(a) or (c)—the sum of the contributions segment, and crystallised segment, of the earlier interest immediately before the benefit was paid; or

(b) if the benefit is covered by paragraph 306-12(b)—the proportion of that sum that the benefit was to the *value of the earlier interest immediately before the benefit was paid.

307-225 What is the *crystallised segment*?

(1) To work out the ***crystallised segment*** of a *superannuation interest, first assume that:

(a) an eligible termination payment had been made in respect of the holder of the interest just before 1 July 2007; and

(b) the amount of the eligible termination payment had been equal to the *value of the interest at that time.

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Authorised Version C2022C00307 registered 22/10/2022

(2) The ***crystallised segment*** of the *superannuation interest is the total amount of the following components of the eligible termination payment:

(a) the concessional component;

(b) the post-June 1994 invalidity component;

(c) the undeducted contributions;

(d) the CGT exempt component;

(e) the pre-July 83 component.

This section has effect subject to subsection 307-210(2).

Note: This segment may be reduced if a superannuation benefit is paid from the superannuation interest: see subsection 307-210(2).

(3) For the purposes of paragraph (2)(e), disregard the *value of the interest just before 1 July 2007 to the extent that it would consist, apart from this subsection, of the *element untaxed in the fund of the *taxable component of a *superannuation benefit constituted by the eligible termination payment.

(4) In this section, the following terms have the same meaning as in subsection 27A(1) of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007):

(a) ***concessional component***;

(b) ***post-June 1994 invalidity component***;

(c) ***undeducted contributions***;

(d) ***CGT exempt component***;

(e) ***pre-July 83 component***;

(f) ***eligible termination payment***.

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;

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Authorised Version C2022C00307 registered 22/10/2022

(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);

(d) if you have an LRBA amount under section 307-231 (about limited recourse borrowing arrangements) in relation to one or more *regulated superannuation funds—the LRBA amounts for each such regulated superannuation fund.

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)—

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Authorised Version C2022C00307 registered 22/10/2022

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*).

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Authorised Version C2022C00307 registered 22/10/2022

307-231 Limited recourse borrowing arrangements

(1) You have an amount under this section (an ***LRBA amount***), in relation to a *regulated superannuation fund in which you have one or more *superannuation interests, if:

(a) the *superannuation provider in relation to the fund has 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) the borrowing has not been repaid at the time of working out your *total superannuation balance; and

(c) at that time, the asset or assets that secure the borrowing support, to an extent, a superannuation interest of yours; and

(d) the fund is a *small superannuation fund at that time; and

(e) either:

(i) you have satisfied (whether at or before that time) a condition of release specified in paragraph 307-80(2)(c); or

(ii) the lender is an *associate of the superannuation provider.

Note: Subsection 318(3) of the *Income Tax Assessment Act 1936* sets out when an entity is an associate of a trustee.

(2) The amount of your LRBA amount in relation to the *regulated superannuation fund is the sum of the amounts worked out under subsection (3) for:

(a) if subparagraph (1)(e)(i) applies—each *borrowing that satisfies paragraphs (1)(a), (b) and (c); or

(b) if subparagraph (1)(e)(i) does not apply—each borrowing that satisfies paragraphs (1)(a), (b) and (c) and subparagraph (1)(e)(ii).

(3) The amount under this subsection, in respect of a *borrowing, is worked out using the following formula:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

$$\text{Outstanding balance} \times \frac{\text{Value of your supported super interests}}{\text{Value of all supported super interests}}$$

where:

outstanding balance means the outstanding balance on the *borrowing at the time of working out your *total superannuation balance.

value of all supported super interests means the sum of the *values at that time of all *superannuation interests in the *regulated superannuation fund that are supported by the asset or assets that secure the *borrowing.

value of your supported super interests means the sum of the *values at that time of each *superannuation interest of yours that is supported by the asset or assets that secure the *borrowing.

Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit

Table of sections

307-275 ***Element taxed in the fund*** and ***element untaxed in the fund*** of superannuation benefits
307-280 Superannuation benefits from constitutionally protected funds etc.
307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund
307-290 Taxed and untaxed elements of death benefit superannuation lump sums
307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element
307-297 Public sector superannuation schemes—elements set by regulations
307-300 Certain unclaimed money payments

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

307-275 *Element taxed in the fund* and *element untaxed in the fund* of superannuation benefits

(1) The *taxable component of a *superannuation benefit consists of an ***element taxed in the fund*** or an ***element untaxed in the fund***, or both.

(2) The *taxable component of a *superannuation benefit consists wholly of an ***element taxed in the fund*** except as provided in a later section of this Subdivision.

(3) Despite subsection (2), the *taxable component of any of the following kinds of *superannuation benefit consists wholly of an ***element untaxed in the fund***:

(a) a *small superannuation account payment;

(b) a *superannuation guarantee payment.

307-280 Superannuation benefits from constitutionally protected funds etc.

(1) The *taxable component of a *superannuation benefit paid from a *superannuation fund that is a *constitutionally protected fund consists wholly of an ***element untaxed in the fund***.

(2) Despite subsection (1), if:

(a) the benefit is a *superannuation lump sum; and

(b) the benefit is attributable to one or more *roll-over superannuation benefits that consisted of, or included, an *element taxed in the fund;

the *taxable component of the benefit has an ***element taxed in the fund*** equal to the total of those elements taxed in the fund.

(3) The *taxable component of a *superannuation income stream benefit consists wholly of an ***element untaxed in the fund*** if it is paid from a *superannuation fund that was a *constitutionally protected fund on the first day of the period to which the *superannuation income stream relates.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund

(1) If:

(a) you receive a *superannuation benefit from a *public sector superannuation scheme; and

(b) the trustee of the scheme gives you written notice specifying an amount as the *element untaxed in the fund of the *taxable component of the benefit; and

(c) the notice is given within the time and in the manner approved by the Commissioner in writing; and

(d) the scheme came into operation on or before 5 September 2006;

the taxable component consists of an ***element untaxed in the fund*** equal to the specified amount.

(2) The trustee of the scheme can give only one notice under subsection (1) in relation to a particular *superannuation lump sum.

307-290 Taxed and untaxed elements of death benefit superannuation lump sums

(1) This section applies to a *superannuation death benefit that is a *superannuation lump sum, in relation to which a deduction has been, or is to be, claimed under section 295-465 or 295-470.

Note 1: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

Note 2: Deductions made under former section 279 or 279B of the *Income Tax Assessment Act 1936* are treated for the purposes of this section as having been made under section 295-465 or 295-470 (see section 307-290 of the *Income Tax (Transitional Provisions) Act 1997*).

(2) The *taxable component of the *superannuation lump sum includes an ***element taxed in the fund*** worked out as follows:

(a) first, work out the amount under the formula in subsection (3);

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) next, reduce that amount (but not below zero) by the *tax free component (if any) of the superannuation lump sum.

(3) For the purposes of paragraph (2)(a), the formula is:

$$\text{Amount of } {}^{*}\text{superannuation lump sum} \times \frac{\text{Service days}}{\text{Service days} + \text{Days to retirement}}$$

where:

days to retirement is the number of days from the day on which the deceased died to the deceased's *last retirement day.

service days is the number of days in the *service period for the lump sum.

(4) The ***element untaxed in the fund*** of the *taxable component is the balance of the taxable component.

307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element

(1) This section applies to a *superannuation benefit that is paid from a *public sector superannuation scheme that is not a *constitutionally protected fund.

(2) If the *superannuation benefit paid is not sourced to any extent from contributions made into a *superannuation fund or earnings on such contributions, the *taxable component of the superannuation benefit consists wholly of an ***element untaxed in the fund***.

(3) If the benefit is a *superannuation lump sum that is partly sourced from contributions made into a *superannuation fund or earnings on such contributions, the ***element taxed in the fund*** and the ***element untaxed in the fund*** of the *taxable component of the benefit are worked out as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Method statement

Step 1. Subdivide the *taxable component of the *superannuation lump sum (the ***original benefit***) into 2 notional superannuation lump sums as follows:

(a) the amount sourced from contributions made into a *superannuation fund or earnings on such contributions (the ***fund benefit***);

(b) the remainder of the taxable component of the lump sum (the ***non-fund benefit***).

Step 2. The fund benefit consists of an ***element taxed in the fund***, an ***element untaxed in the fund***, or both, as worked out under this Subdivision.

Step 3. The non-fund benefit consists wholly of an ***element untaxed in the fund***.

Step 4. The ***element taxed in the fund*** of the original benefit equals the element taxed in the fund of the fund benefit.

Step 5. The ***element untaxed in the fund*** of the original benefit is the sum of the elements untaxed in the fund worked out under steps 2 and 3.

307-297 Public sector superannuation schemes—elements set by regulations

(1) This section applies to a *superannuation benefit that is paid from a *public sector superannuation scheme that is not a *constitutionally protected fund.

(2) Despite any other provision of this Subdivision, the *taxable component of the *superannuation benefit consists of an ***element untaxed in the fund*** equal to the amount (if any) specified by the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

regulations in relation to the benefit for the purposes of this section.

(3) The amount specified must not be less than the amount that would be the *element untaxed in the fund under the other provisions of this Subdivision.

307-300 Certain unclaimed money payments

Preliminary

(1) This section explains how to work out the *element taxed in the fund, and the *element untaxed in the fund, of the *taxable component of a *superannuation benefit that is a payment by the Commissioner under subsection 17(2), 20H(2), (2AA), (2A) or (3), 20QF(2), 21E(2), 22B(2), 24G(2) or 24NA(2) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Element taxed in the fund

(2) Work out the ***element taxed in the fund*** as follows (unless subsection (3A) applies):

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Method statement

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the *taxable component is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under subsection 20H(2) or (3) of that Act may be attributable to more than one unclaimed amount.

A payment under subsection 20QF(2) of that Act is attributable to a single unclaimed amount set out in item 3A of the table.

A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

A payment under subsection 22B(2) of that Act is attributable to a single unclaimed amount set out in item 3C of the table.

A payment made under subsection 24G(2) of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

A payment under subsection 24NA(2) or (3) of that Act may be attributable to more than one unclaimed amount.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Step 3.	The ***element taxed in the fund*** of the *taxable component consists of so much of the taxable component as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

Element taxed in the fund

Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Taxed element of claimed equivalent
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the *Income Tax Assessment Act 1936*, as in force just before 1 July 2007)	the taxed element of the post-June 83 component of that eligible termination payment under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*, as in force just before 1 July 2007

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Element taxed in the fund			
Item	**Column 1** **Unclaimed amount**	**Column 2** **Claimed equivalent**	**Column 3** **Taxed element of claimed equivalent**
3	an amount paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person (other than an amount referred to in section 65AA of the *Superannuation Guarantee (Administration) Act 1992*)	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
3A	an amount paid to the Commissioner under section 20QD of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
3B	an amount paid to the Commissioner under section 21C of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
3C	an amount paid to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Element taxed in the fund			
Item	**Column 1** **Unclaimed amount**	**Column 2** **Claimed equivalent**	**Column 3** **Taxed element of claimed equivalent**
4	an amount paid to the Commissioner under section 24E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the element untaxed in the fund includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the element untaxed in the fund of the taxable component includes so much of the superannuation benefit as is attributable to such interest.

(3A) The ***element taxed in the fund*** is nil, if the *superannuation benefit is paid under subsection 20H(2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest).

Note: The taxable component of a superannuation benefit paid by the Commissioner under subsection 17(2AB) or (2AC), 20QF(5) or (6), 21E(5) or (6), 22B(5) or (6) or 24G(3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or under subsection 20H(2AA) in respect of a person who is not a former temporary resident, is nil: see subsections 307-142(3B) and (4) of this Act.

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Authorised Version C2022C00307 registered 22/10/2022

Element untaxed in the fund

(4) The ***element untaxed in the fund*** of the *taxable component is so much (if any) of the taxable component as is not the element taxed in the fund.

Subdivision 307-F—Low rate cap and untaxed plan cap amounts

Table of sections

307-345 ***Low rate cap amount***
307-350 ***Untaxed plan cap amount***

307-345 *Low rate cap amount*

Starting amount

(1) Your ***low rate cap amount*** for the 2007-2008 income year is $140,000.

Note: However, if you became entitled to a rebate under the corresponding provision of the *Income Tax Assessment Act 1936*, see section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*.

Reductions and increases

(2) If you receive one or more *superannuation member benefits that are *superannuation lump sums in an income year, reduce your ***low rate cap amount*** for the next income year (but not below zero) by the total of the amounts that:

(a) are included in your assessable income for the first year in respect of those lump sums; and

(b) are counted towards your entitlement to a *tax offset under subsection 301-20(2) or 301-105(4) for the first year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(3) At the start of each income year after the 2007-2008 income year, increase your ***low rate cap amount*** by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.

(4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is $140,000. The index amount is then indexed annually.

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

307-350 *Untaxed plan cap amount*

(1) Your ***untaxed plan cap amount*** for a *superannuation plan at the start of the 2007-2008 income year is $1,000,000.

Reductions and increases

(1A) Subsection (2) applies if:

(a) you receive one or more *superannuation member benefits from a *superannuation plan at a time; and

(b) the benefit, or one or more of the benefits:

(i) is a *superannuation lump sum; and

(ii) includes an *element untaxed in the fund.

(2) Reduce your ***untaxed plan cap amount*** just after that time:

(a) if the total of the *elements untaxed in the fund of the *superannuation member benefits to which paragraph (1A)(b) applies falls short of your untaxed plan cap amount at that time—by that total; or

(b) otherwise—to nil.

(2A) For the purposes of subsections (1A) and (2), disregard subsection 307-5(8).

(2B) For the purposes of the application of this section in relation to *superannuation lump sums paid by the Commissioner under

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Authorised Version C2022C00307 registered 22/10/2022

subsections 17(2), 20H(2), (2AA), (2A) and (3), 20QF(2), 21E(2), 22B(2) and 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, treat all such lump sums as if they were paid from a single *superannuation plan.

(3) At the start of each income year after the 2007-2008 income year, increase your ***untaxed plan cap amount*** for the *superannuation plan by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.

(4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is $1,000,000. The index amount is then indexed annually.

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 307-G—Other concepts

Table of sections

307-400 Meaning of ***service period*** for a superannuation lump sum

307-400 Meaning of *service period* for a superannuation lump sum

(1) The ***service period*** for a *superannuation lump sum consists of each day that is in the period worked out under the table or a period covered by subsection (2).

Service period for superannuation lump sum types

Item	For this superannuation lump sum type:	The *service period* includes:
1	*Superannuation fund payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, a member of the *superannuation fund—the period of membership; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.
2	*approved deposit fund payment	The period starting when you or the deceased first made a deposit to the *approved deposit fund and ending when the payment is made.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Service period for superannuation lump sum types		
Item	**For this superannuation lump sum type:**	**The *service period* includes:**
3	*RSA payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, the holder of the *RSA—the period during which you were, or the deceased was, the holder of the RSA; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.

(2) The ***service period*** for the *superannuation lump sum (the ***later lump sum***) also includes each day that is in the *service period for an earlier superannuation lump sum if some or all of the later lump sum is attributable, directly or indirectly, to some or all of the earlier lump sum through the payment of one or more *roll-over superannuation benefits.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 310—Loss relief for merging superannuation funds

Table of Subdivisions

Guide to Division 310
310-A Object of this Division
310-B Choice to transfer losses
310-C Consequences of choosing to transfer losses
310-D Choice for assets roll-over
310-E Consequences of choosing assets roll-over
310-F Choices

Guide to Division 310

310-1 What this Division is about

This Division sets out special rules for certain merging superannuation funds. These rules relate to the transfer of losses, the treatment of CGT events related to the merger and the treatment of assets related to the merger.

Note: This Division applies to mergers happening between 24 December 2008 and 30 June 2011 (or, in certain cases, 30 September 2011), or mergers happening on or after 1 October 2011 (see Part 3 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*).

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Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

Subdivision 310-A—Object of this Division

310-5 Object

The main object of this Division is to facilitate the consolidation of the superannuation industry by allowing certain merging *superannuation funds to retain the value, for income tax purposes, of certain losses that might otherwise cease to be able to be utilised as a result of the merger.

Subdivision 310-B—Choice to transfer losses

Table of sections

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts
310-15 Original fund's assets include a complying superannuation life insurance policy
310-20 Original fund's assets include units in a pooled superannuation trust

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts

(1) A trustee of:

(a) a *complying superannuation fund (other than a *self managed superannuation fund) (the ***transferring entity*** or the ***original fund***); or

(b) a *complying approved deposit fund (the ***transferring entity*** or the ***original fund***);

can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Transferring entity's assets include other assets

(2) The first condition is satisfied if, just before the *arrangement was made, the transferring entity's assets included assets other than:

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Authorised Version C2022C00307 registered 22/10/2022

(a) a *complying superannuation life insurance policy; or
(b) units in a *pooled superannuation trust.

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the transferring entity holds a complying superannuation life insurance policy or units in a pooled superannuation trust.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:
(a) the transferring entity ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and
(b) the individuals who cease to be members (within the meaning of that Act) of the transferring entity become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:
(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or
(b) the following subparagraphs apply:
(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

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Authorised Version C2022C00307 registered 22/10/2022

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

310-15 Original fund's assets include a complying superannuation life insurance policy

(1) A *life insurance company (the ***transferring entity***) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Original fund holds a complying superannuation life insurance policy

(2) The first condition is satisfied if, just before the *arrangement was made, a *complying superannuation life insurance policy issued by the transferring entity was held by:

(a) a *complying superannuation fund (the ***original fund***); or

(b) a *complying approved deposit fund (the ***original fund***).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:

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Authorised Version C2022C00307 registered 22/10/2022

(a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and

(b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:

(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

(b) the following subparagraphs apply:

(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;

(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

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Authorised Version C2022C00307 registered 22/10/2022

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

310-20 Original fund's assets include units in a pooled superannuation trust

(1) A trustee of a *pooled superannuation trust (the ***transferring entity***) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Units in the trust were held by the original fund

(2) The first condition is satisfied if, just before the *arrangement was made, units in the transferring entity were held by:

(a) a *complying superannuation fund (the ***original fund***); or

(b) a *complying approved deposit fund (the ***original fund***).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

(3) The second condition is satisfied if, under the *arrangement:

(a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the ***completion time***); and

(b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the ***continuing funds***).

Continuing funds will usually not be able to be small funds

(4) The third condition is satisfied if either:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

(b) the following subparagraphs apply:

(i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;

(ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

(iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;

(v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

(5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

Subdivision 310-C—Consequences of choosing to transfer losses

Table of sections

310-25 Who losses can be transferred to

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

310-30 Losses that can be transferred
310-35 Effect of transferring a net capital loss
310-40 Effect of transferring a tax loss

310-25 Who losses can be transferred to

An entity choosing under Subdivision 310-B to transfer losses can choose to transfer any or all of the transferring entity's losses set out in section 310-30, in whole or in part, to one or more of the following entities (a ***receiving entity***):

(a) a continuing fund for the choice;

(b) a *pooled superannuation trust in which units are held by a continuing fund for the choice just after the completion time;

(c) a *life insurance company with which a *complying superannuation life insurance policy is held by a continuing fund for the choice just after the completion time.

310-30 Losses that can be transferred

(1) The transferring entity's losses that can be transferred are:

(a) any of its *net capital losses for income years earlier than the income year for the transferring entity that includes the completion time (the ***transfer year***), to the extent that it was not *utilised before the completion time (an ***earlier year net capital loss***); and

(b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time (a ***transfer year net capital loss***); and

(c) any of its *tax losses for income years earlier than the transfer year, to the extent that it was not utilised before the completion time (an ***earlier year tax loss***); and

(d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time (a ***transfer year tax loss***);

worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over under Subdivision 310-D for the same arrangement, none of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

transfer events for the roll-over will contribute towards a loss transferred under this Subdivision (see subsections 310-55(1), 310-60(3), 310-65(1) and 310-70(1)).

(2) For a choice under section 310-15 (life insurance companies), work out those losses by only considering the following to the extent that they relate to assets reasonably attributable to a *complying superannuation life insurance policy issued by the transferring entity and held by the original fund:

(a) *capital gains from *complying superannuation assets;

(b) *capital losses from complying superannuation assets;

(c) assessable income covered by subsection 320-137(2) (about complying superannuation assets);

(d) deductions covered by subsection 320-137(4) (about complying superannuation assets).

(3) For a choice under section 310-20 (pooled superannuation trusts), work out those losses by only considering *capital gains, *capital losses, assessable income and deductions to the extent that they relate to assets reasonably attributable to units in the transferring entity held by the original fund.

310-35 Effect of transferring a net capital loss

(1) To the extent that an earlier year net capital loss is transferred to a receiving entity:

(a) the transferring entity is taken not to have made the loss for that earlier income year; and

(b) an amount equal to the transferred amount is taken to be:

(i) if the receiving entity is a *life insurance company—a *capital loss from *complying superannuation assets made by the receiving entity for the transfer year; and

(ii) otherwise—a capital loss made by the receiving entity for the transfer year.

(2) To the extent that a transfer year net capital loss is transferred to a receiving entity:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(a) if the transferring entity is a *life insurance company—the sum of the transferring entity's *capital losses from *complying superannuation assets for the transfer year is reduced by an amount equal to the transferred amount; and

(b) if the transferring entity is not a life insurance company—the sum of the transferring entity's capital losses for the transfer year is reduced by an amount equal to the transferred amount; and

(c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation assets made by the receiving entity for the transfer year; and

(d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity for the transfer year.

310-40 Effect of transferring a tax loss

(1) To the extent that an earlier year tax loss is transferred to a receiving entity:

(a) the transferring entity is taken not to have incurred the loss for that earlier income year; and

(b) for the purposes of section 36-15, an amount equal to the transferred amount is taken to be:

(i) if the receiving entity is a *life insurance company—a *tax loss of the *complying superannuation class incurred by the receiving entity for the income year immediately prior to the transfer year; and

(ii) otherwise—a tax loss incurred by the receiving entity for the income year immediately prior to the transfer year; and

(c) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:

(i) if the receiving entity is a life insurance company—a tax loss of the complying superannuation class incurred by the receiving entity for the transfer year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) otherwise—a tax loss incurred by the receiving entity for the transfer year.

(2) To the extent that a transfer year tax loss is transferred to a receiving entity:

(a) if the transferring entity is a *life insurance company—the sum of the transferring entity's deductions covered by subsection 320-137(4) (about complying superannuation assets) for the transfer year is reduced by an amount equal to the transferred amount; and

(b) if the transferring entity is not a life insurance company—the sum of the transferring entity's deductions for the transfer year is reduced by an amount equal to the transferred amount; and

(c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a *tax loss of the *complying superannuation class incurred by the receiving entity for the transfer year; and

(d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a tax loss incurred by the receiving entity for the transfer year.

Subdivision 310-D—Choice for assets roll-over

Table of sections

310-45 Choosing the assets roll-over
310-50 Choosing the form of the assets roll-over

310-45 Choosing the assets roll-over

(1) An entity can choose a roll-over under this Subdivision if:

(a) the entity makes or could make a choice under Subdivision 310-B (the ***losses choice***) to transfer the losses of an entity (the ***transferring entity***); and

(b) the conditions in this section are satisfied for the *arrangement to which the losses choice relates.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) The first condition is that, under the *arrangement, one or more *CGT events (the ***transfer events***) happen in relation to the following assets (the ***original assets***) of the transferring entity with the result that it ceases to own those assets:

(a) for a losses choice under section 310-10 (original funds)—all of its *CGT assets;

(b) for a losses choice under section 310-15 (life insurance companies)—all of its CGT assets reasonably attributable to the *complying superannuation life insurance policy held by the original fund for the losses choice just before the arrangement was made;

(c) for a losses choice under section 310-20 (pooled superannuation trusts)—all of its CGT assets reasonably attributable to the units in that entity held by the original fund for the losses choice just before the arrangement was made.

(3) The second condition is that the transfer events all happen in the income year (the ***transfer year***) for the transferring entity that includes the completion time for the losses choice.

(4) The third condition is that, for each transfer event, an asset (the ***received asset***) becomes an asset of one of the following (the ***receiving entity***) as a result of the event:

(a) a continuing fund for the losses choice;

(b) a *pooled superannuation trust in which units are held by a continuing fund for the losses choice just after the completion time;

(c) a *life insurance company with which a *complying superannuation life insurance policy is held by a continuing fund for the losses choice just after the completion time.

(5) For the purposes of subsection (2), ignore any *CGT assets retained by the transferring entity:

(a) to pay its existing or expected debts relating to the *arrangement; or

(b) to meet its liabilities relating to individuals who have remained members (within the meaning of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Superannuation Industry (Supervision) Act 1993) of the original fund because of circumstances beyond the control of the trustee of that fund.

310-50 Choosing the form of the assets roll-over

(1) An entity that chooses a roll-over under this Subdivision must choose the form of the roll-over that applies to each of the following:

(a) the original assets that are not *revenue assets;

(b) the original assets that are revenue assets.

(2) In respect of original assets that are not *revenue assets, the entity choosing the roll-over must choose either section 310-55 (global asset approach) or 310-60 (individual asset approach) to apply to the original assets and the corresponding received assets.

(3) In respect of original assets that are *revenue assets, the entity choosing the roll-over must choose either section 310-65 (global asset approach) or 310-70 (individual asset approach) to apply to the original assets and the corresponding received assets.

Note: The entity choosing the form of the roll-over may choose different forms of roll-over for its CGT assets and revenue assets.

Subdivision 310-E—Consequences of choosing assets roll-over

Table of sections

310-55 CGT assets—if global asset approach chosen
310-60 CGT assets—individual asset approach
310-65 Revenue assets—if global asset approach chosen
310-70 Revenue assets—individual asset approach
310-75 Further consequences for roll-overs involving life insurance companies

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

310-55 CGT assets—if global asset approach chosen

Consequences for transferring entity

(1) For each of the original assets to which this section applies, the transferring entity's *capital proceeds from the relevant transfer event are taken to be an amount equal to:

(a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or

(b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

Consequences for receiving entity

(2) For each of the received assets to which this section applies, the first element of the *cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the corresponding original asset just before the relevant transfer event.

(3) For each of the received assets to which this section applies, the first element of the *reduced cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the corresponding original asset just before the relevant transfer event.

310-60 CGT assets—individual asset approach

Consequences for transferring entity

(1) The transferring entity may disregard any *capital gain or *capital loss for a transfer event relating to an original asset to which this section applies.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(2) Subsections (3), (4) and (5) apply if under subsection (1) the transferring entity disregards a *capital gain or *capital loss for a transfer event relating to an original asset.

(3) The transferring entity's *capital proceeds from the transfer event are taken to be an amount equal to:

(a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or

(b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

Consequences for receiving entity

(4) The first element of the *cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the original asset just before the event.

(5) The first element of the *reduced cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the original asset just before the event.

310-65 Revenue assets—if global asset approach chosen

Consequences for transferring entity

(1) For each of the original assets to which this section applies, the transferring entity's gross proceeds for the relevant transfer event are taken to be the amount (the ***deemed proceeds***) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

Consequences for receiving entity

(2) For each of the received assets to which this section applies, the receiving entity is taken, for the purposes of this Act, to have paid

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

an amount for that asset at the time of the transfer event that is equal to the deemed proceeds for the corresponding original asset.

310-70 Revenue assets—individual asset approach

Consequences for transferring entity

(1) If the transferring entity derives assessable income (other than a *capital gain) or incurs a *tax loss for a transfer event relating to an original asset to which this section applies, the entity choosing the roll-over can choose for the transferring entity's gross proceeds for the event to be taken to be the amount (the ***deemed proceeds***) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

Consequences for receiving entity

(2) If a choice is made under subsection (1), the receiving entity is taken to have paid an amount for the corresponding received asset at the time of the transfer event that is equal to the deemed proceeds for the event.

310-75 Further consequences for roll-overs involving life insurance companies

(1) Section 320-200 (about consequences of transferring assets to or from a complying superannuation asset pool) does not apply for a transfer event for the roll-over if either the transferring entity or the receiving entity is a *life insurance company.

(2) If the receiving entity for the roll-over is a *life insurance company, each received asset of that entity is taken:
   (a) to be a *complying superannuation asset of that entity; and
   (b) not to be, in whole or in part, a *life insurance premium.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 310-F—Choices

Table of sections

310-85 Choices

310-85 Choices

(1) A choice under this Division must be made:

(a) by the day the transferring entity's *income tax return is lodged for the transfer year for the entity; or

(b) within a further time allowed by the Commissioner.

(2) The way the transferring entity's *income tax return is prepared is sufficient evidence of the making of the choice.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 312—Trans-Tasman portability of retirement savings

Table of Subdivisions

Guide to Division 312
312-A Preliminary
312-B Amounts contributed to complying superannuation funds from KiwiSaver schemes
312-C Superannuation benefits paid to KiwiSaver scheme providers

Guide to Division 312

312-1 What this Division is about

This Division deals with amounts transferred between KiwiSaver schemes and complying superannuation funds. This Division also deals with amounts paid by the Commissioner to KiwiSaver schemes.

Subdivision 312-A—Preliminary

Table of sections

312-5 Division implements Arrangement with New Zealand

312-5 Division implements Arrangement with New Zealand

This Division, together with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and regulations made under the *Superannuation Industry (Supervision) Act 1993*, implement the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 312-B—Amounts contributed to complying superannuation funds from KiwiSaver schemes

Table of sections

312-10 Amounts contributed to complying superannuation funds from KiwiSaver schemes

312-10 Amounts contributed to complying superannuation funds from KiwiSaver schemes

Treat amount as a contribution

(1) An amount transferred from a *KiwiSaver scheme to a *complying superannuation fund in relation to you is treated as being a contribution you made to the complying superannuation fund for the purpose of providing *superannuation benefits for yourself.

Note 1: The contribution will not be included in the assessable income of the trustee of the complying superannuation fund: see Division 295.

Note 2: The contribution is not included in your concessional contributions: see section 291-25. Some of the contribution may be included in your non-concessional contributions: see subsection (3) of this section.

(2) Division 290 (Contributions to superannuation funds), section 295-200 (Transfers from foreign superannuation funds) and Subdivision 305-B (Superannuation benefits from foreign superannuation funds) do not apply to the contribution.

Australian-sourced amount and returning New Zealand-sourced amount not non-concessional

(3) For the purposes of Subdivision 292-C (Excess non-concessional contributions tax), disregard so much of the contribution as you or the *KiwiSaver scheme provider informs, in accordance with the regulations mentioned in section 312-5, the trustee of the *complying superannuation fund is:

(a) an *Australian-sourced amount; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(b) a *returning New Zealand-sourced amount.

Note: The effect of subsection (3) is that the amounts mentioned in paragraphs (3)(a) and (b) are not included in your non-concessional contributions. The rest of the contribution is included in your non-concessional contributions: see subsection 292-90(2).

Assessable income and capital gains

(4) The contribution is not assessable income of yours and is not *exempt income of yours.

(5) Section 118-305 (capital gain or capital loss disregarded) applies in relation to the amount transferred as if the *KiwiSaver scheme were a *superannuation fund.

Tax free and taxable components of superannuation interest

(6) Section 307-220 (Contributions segment) only applies to so much (if any) of the contribution as you or the *KiwiSaver scheme provider inform, in accordance with the regulations mentioned in section 312-5, the trustee of the *complying superannuation fund is:

(a) a *New Zealand-sourced amount; or

(b) the *tax free component of an *Australian-sourced amount.

Note: So much of the value of an interest in the fund as consists of the amounts mentioned in paragraphs (6)(a) and (b) is included in the contributions segment and tax free component of the interest. So much of the value of that interest as consists of the rest of the contribution is not included in the contributions segment of the interest and is included in the taxable component of the interest. (The value of the interest may also consist of amounts other than the contribution.)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 312-C—Superannuation benefits paid to KiwiSaver scheme providers

Table of sections

312-15 Superannuation benefits paid from complying superannuation funds to KiwiSaver schemes
312-20 Superannuation benefits paid by Commissioner to KiwiSaver schemes

312-15 Superannuation benefits paid from complying superannuation funds to KiwiSaver schemes

A *superannuation benefit paid to a *KiwiSaver scheme provider by the trustee of a *complying superannuation fund in respect of you is not assessable income of yours and is not *exempt income of yours.

312-20 Superannuation benefits paid by Commissioner to KiwiSaver schemes

An *unclaimed money payment that you are taken to receive under section 307-15 because it is paid to a KiwiSaver scheme provider by the Commissioner in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is not assessable income and is not *exempt income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Division 313—First home super saver scheme

Table of Subdivisions

Guide to Division 313
313-A Preliminary
313-B Assessable income and tax offset
313-C Purchasing or constructing a residential premises
313-D Contributing amounts to superannuation
313-E First home super saver tax
313-F Review of decisions

Guide to Division 313

313-1 What this Division is about

If an amount is released from your superannuation interests under the first home super saver scheme, an amount may be included in your assessable income and you may become entitled to a tax offset.

You also have a limited period within which to enter into a contract to purchase or construct a residential premises or re-contribute an amount to your superannuation. If you do not notify the Commissioner that you have done one of those things, you become liable for tax.

Subdivision 313-A—Preliminary

Table of sections

Operative provisions

313-5 Object of this Division
313-10 Application of this Division

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

313-5 Object of this Division

The object of this Division is to provide an individual with concessional tax treatment for amounts released from superannuation for the purposes of purchasing or constructing the individual's first home.

313-10 Application of this Division

This Division applies to you if one or more amounts (the ***FHSS released amounts***) are paid in response to a release authority issued under Division 131 in Schedule 1 to the *Taxation Administration Act 1953* in relation to a *first home super saver determination made in relation to you.

Subdivision 313-B—Assessable income and tax offset

Guide to Subdivision 313-B

313-15 What this Subdivision is about

An amount is included in your assessable income, and you are entitled to a tax offset, if an amount is paid in response to a release authority issued in respect of you.

The amount included in your assessable income relates to the concessional contributions and total associated earnings that are stated in the relevant first home super saver determination.

Table of sections

Operative provisions

313-20 Amount included in assessable income
313-25 Amount of the tax offset

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

313-20 Amount included in assessable income

(1) Your assessable income, for the income year that corresponds to the *financial year for which you requested the release authority, includes an amount that is equal to the sum of the following amounts stated in the *first home super saver determination:

(a) your *concessional contributions;

(b) your associated earnings.

(2) However, if the sum of the *FHSS released amounts is less than the *FHSS maximum release amount stated in the determination, the amount included in your assessable income for the income year is:

(a) the amount worked out under subsection (1); less

(b) the difference between the FHSS maximum release amount and the sum of the FHSS released amounts.

(3) If the amount worked out under subsection (2) is negative, the amount included in your assessable income for the income year is nil.

Note 1: The release authorities are issued under Division 131 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).

313-25 Amount of the tax offset

You are entitled, for the income year mentioned in section 313-20, to a *tax offset that is equal to 30% of your *assessable FHSS released amount for the income year.

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

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 313-C—Purchasing or constructing a residential premises

Guide to Subdivision 313-C

313-30 What this Subdivision is about

If an amount is released from your superannuation interests under the first home super saver scheme, and you enter into a contract within a particular period to purchase or construct a residential premises, you must notify the Commissioner of that contract.

Table of sections

Operative provisions

313-35 Purchasing or constructing a residential premises
313-40 Notifying Commissioner

Operative provisions

313-35 Purchasing or constructing a residential premises

(1) Section 313-40 applies to you if:

(a) a *first home super saver determination is made in relation to you; and

(b) you make a valid request under section 131-5 in Schedule 1 to the *Taxation Administration Act 1953* in relation to that determination that is your first such request; and

(c) you enter into a contract to purchase or construct a *CGT asset that is a *residential premises in Australia within the period:

(i) beginning 14 days before the day you make the valid request; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(ii) ending 12 months (or if extended under subsection (2), that longer period) after the day you make the valid request; and

(d) the price for the purchase or construction of the premises is at least equal to the total amount to be released that is stated in the valid request; and

(e) you have occupied the premises, or intend to occupy the premises as soon as practicable; and

(f) you intend to occupy the premises for at least 6 months of the first 12 months after it is practicable to occupy the premises.

(2) The Commissioner may extend the period for entering into a contract by up to 12 months.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this section (see section 313-85).

313-40 Notifying Commissioner

(1) You must notify the Commissioner in the *approved form of the matters set out in paragraphs 313-35(1)(a) to (f).

(2) The notification must be made within 28 days, or such longer period as the Commissioner allows, after you enter into the contract to purchase or construct the *residential premises.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this subsection (see section 313-85).

(3) Subsection (1) does not limit the information that the *approved form may require the notification to contain.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Subdivision 313-D—Contributing amounts to superannuation

Guide to Subdivision 313-D

313-45 What this Subdivision is about

If an amount is released from your superannuation interests under the first home super saver scheme, and you do not enter into a contract within a particular period to purchase or construct a residential premises, you may make one or more non-concessional contributions. If you do not notify the Commissioner that you have made the contributions, you may be liable for tax under Subdivision 313-E.

Table of sections

Operative provisions

313-50 Contributing amounts to superannuation

Operative provisions

313-50 Contributing amounts to superannuation

(1) This section applies to you if:

(a) you do not notify the Commissioner in accordance with section 313-40 (about purchasing or constructing a *residential premises); and

(b) you make one or more *non-concessional contributions the sum of which is at least equal to:

(i) your *assessable FHSS released amount for an income year; less

(ii) the amount withheld by the Commissioner from your *FHSS released amounts under section 12-460 in Schedule 1 to the *Taxation Administration Act 1953*; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

(c) you make the contributions within the period mentioned in paragraph 313-35(1)(c).

Note: Paragraph 313-35(1)(c) sets out the period in which you must have entered into a contract to purchase or construct a residential premises.

(2) You may notify the Commissioner in the *approved form that you have made the contributions mentioned in paragraph (1)(b).

Note 1: If you notify the Commissioner, you cannot deduct the contribution (see section 290-168).

Note 2: If you do not notify the Commissioner, you may be liable for tax (see Subdivision 313-E).

(3) The notification must be made within the period mentioned in paragraph 313-35(1)(c) or such longer period as the Commissioner allows under this subsection.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this subsection (see section 313-85).

(4) Subsection (2) does not limit the information that the *approved form may require the notification to contain.

Subdivision 313-E—First home super saver tax

Guide to Subdivision 313-E

313-55 What this Subdivision is about

If an amount is released from your superannuation interests under the first home super saver scheme, you are liable for tax if you do not, within a particular period, do either of the following:

(a) enter into a contract to purchase or construct a residential premises, and notify the Commissioner of that contract;

(b) make one or more non-concessional contributions, and notify the Commissioner of the contributions.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Table of sections

Operative provisions

313-60 First home super saver tax
313-65 When tax is payable—original assessments
313-70 When tax is payable—amended assessments
313-75 General interest charge

Operative provisions

313-60 First home super saver tax

You are liable to pay *first home super saver tax if:

(a) neither of section 313-40 or 313-50 applies to you; or

(b) section 313-40 applies to you and you do not notify the Commissioner in accordance with that section; or

(c) section 313-50 applies to you and you do not notify the Commissioner in accordance with that section.

Note 1: The amount of the tax is set out in the *First Home Super Saver Tax Act 2017*.

Note 2: Section 313-40 is about purchasing or constructing a residential premises. Section 313-50 is about making one or more non-concessional contributions.

313-65 When tax is payable—original assessments

Your *assessed first home super saver 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 *first home super saver tax.

Note: For assessments of first home super saver tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

313-70 When tax is payable—amended assessments

If the Commissioner amends your assessment, any extra *assessed first home super saver tax resulting from the amendment is due and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

payable 21 days after the day the Commissioner gives you notice of the amended assessment.

313-75 General interest charge

If an amount of *assessed first home super saver 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 first home super saver tax;

(ii) general interest charge on any of the assessed first home super saver tax.

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

Subdivision 313-F—Review of decisions

Guide to Subdivision 313-F

313-80 What this Subdivision is about

You may object against particular decisions made under this Division.

Table of sections

Operative provisions

313-85 Review rights for decisions made under this Division

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022

Operative provisions

313-85 Review rights for decisions made under this Division

(1) If:

(a) you requested the Commissioner to allow a longer period under:

(i) subsection 313-35(2) (for entering into a contract to purchase or construct a *residential premises); or

(ii) subsection 313-40(2) or 313-50(3) (for notifying the Commissioner of matters); and

(b) you are dissatisfied with:

(i) a decision under that subsection 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*.

(2) To avoid doubt, for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a decision under a subsection mentioned in paragraph (1)(a) 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.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Authorised Version C2022C00307 registered 22/10/2022