EXPOSURE DRAFT (12/03/2014)

Inserts for

Tax and Superannuation Laws Amendment (2014 Measures No. 2) Regulation 2014: Calculating defined benefit contributions—final arrangements from 1 July 2013

Schedule 1—Amendments

Income Tax Assessment Regulations 1997

1 After Subdivision 293-D

Insert:

Subdivision 293-DA—Further modifications for defined benefit interests

293-115.05 Preliminary

(1) This Subdivision:

(a) is made for subsection 293-115(1) of the Act; and

(b) applies in relation to the 2013-14 financial year and later financial years.

(2) In this Subdivision:

accruing member, of a superannuation fund for a financial year, means a defined benefit member of the fund who is not a non-accruing member of the fund for the financial year.

non-accruing member, of a superannuation fund for a financial year, means a defined benefit member who is a non-accruing member of the fund for the whole of the financial year within the meaning of subregulation 292-170.04(4) or (5), as if a reference in those subregulations to a member included a reference to a member of a constitutionally protected fund.

293-115.10 Defined benefit contributions—non-accruing members

(1) This regulation applies if you are a non-accruing member of a superannuation fund for a financial year.

(2) Your ***defined benefit contributions*** for the financial year in respect of your defined benefit interest in the fund is nil.

293-115.15 Defined benefit contributions—accruing members with funded benefit interests

(1) This regulation applies if:

(a) you are an accruing member of a superannuation fund for the financial year; and

(b) your defined benefit interest in the fund for the financial year is a funded benefit interest.

(2) The interest is a ***funded benefit interest*** if:

(a) the interest is in a complying superannuation fund that is not a constitutionally protected fund; and

(b) if the interest is in a public sector superannuation scheme:

(i) the fund trustee has certified, for the financial year, that the fund trustee considers that the scheme will only ever pay superannuation benefits from contributions made to the scheme or earnings from the contributions; and

(ii) the fund trustee has not chosen, under section 295-180 of the Act, to have contributions made by you, or on your behalf, excluded from the assessable income of the scheme for the financial year.

(3) Your ***defined benefit contributions*** for the financial year in respect of the interest is your notional taxed contributions for the year in respect of the interest.

Note: For ***notional taxed contributions***, see section 291-170 of the Act and Subdivision 292-D of these regulations.

(4) In working out your notional taxed contributions for the purposes of subregulation (3), disregard Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*.

293-115.20 Defined benefit contributions—accruing members with other interests

(1) This regulation applies if:

(a) you are an accruing member of a superannuation fund for the financial year; and

(b) your defined benefit interest in the fund for the financial year is an interest other than a funded benefit interest.

(2) Your ***defined benefit contributions*** for the financial year in respect of the interest is the amount worked out using the method in Schedule 1AA.

2 Subregulation 995-1.01(1)

Insert:

accruing member has, for the purposes of Subdivision 293-DA and Schedule 1AA, the meaning given by subregulation 293-115.05(2).

funded benefit interest has the meaning given by subregulation 293-115.15(2).

3 Subregulation 995-1.01(1) (definition of *new entrant rate*)

Repeal the definition.

4 Subregulation 995-1.01(1)

Insert:

non-accruing member has, for the purposes of Subdivision 293-DA, the meaning given by subregulation 293-115.05(2).

5 Clause 2.3 of Schedule 1A (example)

Omit “0.6%”, substitute “10.6%”.

6 After Schedule 1A

Insert:

Schedule 1AA—Working out defined benefit contributions

Note: See subregulation 293-115.20(2).

Part 1—Preliminary

1 Meaning of *accruing member*

An ***accruing member*** of a superannuation fund for a financial year, is an accruing member within the meaning given by subregulation 293-115.05(2).

2 Meaning of *benefit category*

(1) A ***benefit category*** is a category of membership of a defined benefit fund as certified by an actuary.

(2) An actuary must not certify a category of membership to be a benefit category unless the actuary is satisfied that:

(a) each hypothetical new entrant to the benefit category with the same entry age would accrue retirement benefits on substantially the same basis; or

(b) if any 2 hypothetical new entrants to the benefit category accrued retirement benefits on a different basis, the new entrant rates for each member calculated under Parts 2 and 3 would be equal.

3 Accruing member must not belong to more than one benefit category at the same time unless certified by an actuary

(1) An accruing member must not belong to more than one benefit category of the same defined benefit fund on the same day unless certified by an actuary.

(2) An actuary must not certify that a member belongs to more than one benefit category on the same day unless the actuary is satisfied that the amount of defined benefit contributions to be reported will not be materially different from the amount of defined benefit contributions that would have been reported had the member belonged to only one benefit category on each relevant day.

Note: An accruing member would be ordinarily expected to belong to only one benefit category at a time. However, there might be circumstances in certain funds where it is materially more practical for the purpose of calculating the total amount of defined benefit contributions to deem that some members belong to more than one benefit category from time to time.

4 Method for determining amount of defined benefit contributions

(1) The ***defined benefit contributions*** for an accruing member for a financial year is the amount worked out as follows:

$$\left(\text{BC} - \text{NTC}\right) \times 0.85 + \text{NTC}$$

where, for the financial year:

BC is the notional employer contribution calculated for the member under subclause (2).

NTC is the notional taxed contributions calculated for the member for the financial year under Schedule 1A to these Regulations, disregarding Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*. If ***NTC*** has not been calculated for the member for the financial year because the member is a member of a constitutionally protected fund, ***NTC*** is zero.

Note 1: Section 291-160 of the Act excludes superannuation interests in constitutionally protected schemes from the provisions which explain how notional taxed contributions are to be calculated for defined benefit interests.

Note 2: Salary packaged contributions which do not contribute towards funding the defined benefit interest are included in the amount calculated under Step 1 of the method statement set out in section 293-105 of the Act and do not form any part of the method of determining defined benefit contributions.

(2) The ***notional employer contribution*** for an accruing member for a financial year is the amount worked out as follows:

$$T + \left(1.2 \times \left(W + X + Y + Z\right)\right)$$

where, for the financial year:

T is the sum of the amounts of notional employer financed contributions for each benefit category that the member belongs to during the financial year calculated under subclause (3).

W is an amount worked out on advice from an actuary under Part 4.

X is an amount worked out on advice from an actuary under Part 5.

Y is an amount worked out on advice from an actuary under Part 6.

Z is an amount worked out on advice from an actuary under Part 7.

(3) The ***notional employer financed contributions*** for an accruing member for a benefit category of a defined benefit fund for a financial year is the amount worked out as follows:

$$1.2 \times \left(\text{New entrant rate} \times S \times \frac{D}{365} - M\right)$$

where, for the financial year:

D is the number of days during the financial year that the member was an accruing member of the benefit category.

M is the amount of member contributions:

(a) paid by or on behalf of the member in respect of the member's defined benefit interest in the fund during that part of the financial year that the member was an accruing member of the benefit category; and

(b) which are not assessable income of the fund;

but excluding any amounts which are not assessable income of the fund because of:

(c) item 5.3 of the table in section 50-25 of the Act; or

(d) a choice made under section 295-180 of the Act.

new entrant rate is the new entrant rate for the benefit category worked out by an actuary under Parts 2 and 3.

S is the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the scheme.

Part 2—New entrant rate

5 Method of working out new entrant rate for a benefit category

(1) The new entrant rate for a benefit category is the rate calculated under this Part and using the assumptions set out in Part 3.

(2) The new entrant rate for a benefit category is the rate that represents the long-term cost, expressed as a percentage of superannuation salary, of providing the benefits payable on a voluntary exit to a hypothetical new entrant to the benefit category.

(3) The new entrant rate is calculated as the present value of the benefits payable on voluntary exit (resignation, early retirement, or retirement) under the rules of the defined benefit fund which are applicable to a new entrant to the benefit category divided by the present value of future superannuation salaries payable to the new entrant.

(4) The present value of the benefits payable is to be calculated having regard to the rules and practice of the defined benefit fund including benefit structure, caps, member options, reasonably expected discretions and member contributions, and using the economic, decrement and other assumptions set out in Part 3.

6 New entrant rate to be based on period of membership needed to reach maximum benefit accrual

(1) If the rules of the defined benefit fund applicable to the benefit category provide for a maximum benefit accrual, the new entrant rate is to be calculated on the basis that the benefit is funded over the period to when maximum accrual is attained.

(2) For practical purposes this means that, for the purpose of calculating the present value of future salaries payable to the new entrant, the superannuation salary is to be assumed to be zero at those ages after reaching maximum benefit accrual.

Example*:* If maximum accrual is attained after 20 years of membership, the superannuation salary for a 30-year-old new entrant will be assumed to be zero at age 50 and above for the purpose of calculating the present value of future salaries payable to the new entrant.

7 New entrant rate to be rounded down

The new entrant rate is to be rounded down to the lower 1 percentage point.

Example: 10.6% would be rounded down to 10%.

8 No allowance for administration expenses or income tax on assessable contributions

The new entrant rate is to be calculated ignoring:

(a) administration expenses; and

(b) income tax on assessable contributions.

Note: These items are allowed for in the formula in subclause 4(3) by multiplying by 1.2.

9 Certain discretions to be allowed for

(1) The new entrant rate is to be calculated assuming that certain discretions are always exercised.

(2) Subject to subclause (3), if the fund rules provide a discretion to pay, on voluntary exit, a benefit that is higher than the standard benefit, the actuary must assume that a higher benefit is always paid on voluntary exit on or after age 55.

(3) If the higher benefit mentioned in subclause (2) exceeds the accrued retirement benefit, the actuary may assume that the benefit is an amount:

(a) greater than or equal to the accrued retirement benefit; and

(b) less than or equal to the higher benefit.

(4) If the actuary believes that there is a reasonable expectation that a higher benefit than either the standard benefit or the accrued retirement benefit will be paid, then the actuary should assume that the benefit paid on voluntary exit on or after age 55 is always equal to the benefit reasonably expected to be paid.

Note: In considering whether there is a reasonable expectation that a higher benefit will be paid, it would generally not be appropriate to assume payment unless such an assumption was adopted in the most recent actuarial review.

Part 3—Valuation parameters

10 Application of economic, decrement and other parameters

For the purpose of working out the new entrant rate for a benefit category mentioned in Part 1 or 2, the actuary is to apply the economic, decrement and other parameters set out in this Part.

11 Discount rate

(1) The discount rate to be used to discount projected future benefits and salaries is 8% per year.

(2) The discount rate is not to be adjusted for investment expenses or investment-related taxation or for any other reason.

12 Fund earning rate and crediting rate

(1) If necessary, the fund earning rate to be assumed is 8% per year.

(2) If necessary, the assumed crediting rate is to be based on the assumed fund earning rate.

13 Rate of future salary or wages growth

(1) The rate of salary or wages growth to be applied is 4.5% per year.

(2) This rate is to be used:

(a) to project the value of future salary or wages; and

(b) to project benefits that increase in accordance with a general wage index (for example, average weekly earnings).

14 Rate of increase in price indices

If a benefit is linked to an increase in a price index (for example, the Consumer Price Index), the rate of increase in the price index to be applied is 2.5% per year.

15 New entrant age

(1) The age of new entrants to be assumed is based on the average age of entry to the fund of the persons who were defined benefit members of the fund at 1 July 2007.

(2) The following table sets out the age of new entrants that is to be assumed.

New entrant ages

Average age last birthday at commencement in fund of defined benefit members of the fund at 1 July 2007	New entrant age to be assumed
<30	25
30-34	30
35-39	35
40-44	40
45-49	45
50+	50

(3) If:

(a) there has been a transfer of defined benefit members from a predecessor fund into the fund, or a sub-fund of the fund; and

(b) the actuary considers it reasonable to do so;

the actuary may determine a new entrant age for the fund or sub-fund taking account of the average age of entry used for or relevant for those members in the predecessor fund.

(4) In this clause, ***defined benefit member*** does not include a person who:

(a) is receiving only a pension benefit from the fund; or

(b) has deferred his or her benefit entitlement in the fund.

(5) If the actuary believes that there is insufficient information available to calculate the average age of entry, the actuary is to assume that the age of a new entrant is 40.

16 Exit rates

(1) The following table sets out the rates of voluntary exit from the fund that are to be assumed.

Voluntary exit rates	
Age Band	**Exit rate**
<40	0.05
40-44	0.04
45-49	0.04
50-54	0.04
55-59	0.08
60	0.12
61-64	0.10
65	1.00

(2) The rate of involuntary exit (including by redundancy, death or invalidity) to be assumed is zero.

17 Pensions

(1) If the benefit is a single life pension, the pension is to be valued using the assumptions set out in this Part.

(2) If the benefit is a reversionary pension, the value of the pension is to be taken as the value of the pension assuming it is a single life pension, increased by 10%.

18 Mortality of pensioners

The following table sets out the rates of pensioner mortality (***qx***) that are to be assumed.

Pensioner mortality rates	
Age	**qx**
35-49	0.003
50-54	0.004
55	0.005
56	0.006
57	0.006
58	0.007

Pensioner mortality rates	
Age	**qx**
59	0.008
60	0.008
61	0.009
62	0.010
63	0.012
64	0.013
65	0.014
66	0.016
67	0.017
68	0.019
69	0.021
70	0.023
71	0.026
72	0.029
73	0.032
74	0.035
75	0.039
76	0.043
77	0.048
78	0.053
79	0.059
80	0.064
81	0.070
82	0.077
83	0.085
84	0.095
85	0.106
86	0.116
87	0.128
88	0.139
89	0.149
90	0.159
91	0.168

Pensioner mortality rates	
Age	**qx**
92	0.176
93	0.184
94	0.193
95	0.202
96	0.211
97	0.219
98	0.228
99	0.236
100	1.000

19 Other assumptions to be set by the actuary

(1) Any other assumptions which may be necessary are to be set by the actuary responsible for calculating the new entrant rate.

(2) The assumptions are to be based on the assumptions used in the most recent actuarial valuation of the fund, unless the actuary believes, having regard to the expected future experience of the fund, that they are no longer appropriate.

(3) If the actuary believes that the assumptions used in the most recent actuarial valuation are no longer appropriate, the assumptions should be set on a best estimate basis.

Part 4—Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate

20 Method of working out *W* in the formula in subclause 4(2)

(1) If a discretion is exercised to pay a benefit upon:

(a) voluntary exit; or

(b) redundancy that is not bona fide;

which is greater than the benefit assumed in calculating the new entrant rate, the excess of the actual benefit paid over the amount of the assumed benefit at the time the actual benefit is paid (***W***) forms part of the amount of notional employer contributions for the member for the financial year in which the benefit is paid.

(2) For the formula in subclause 4(2):

(a) in a financial year in which the trustee does not exercise a discretion to pay a benefit to the member which is greater than the assumed benefit—***W*** equals zero; and

(b) in any other financial year—***W*** equals an amount worked out on advice from an actuary that represents the excess of the actual benefit paid to the member over the amount of the assumed benefit at the time the actual benefit is paid.

Part 5—Member has changed benefit category

21 Method of working out *X* in the formula in subclause 4(2)

(1) If a member's accrued retirement benefit increases during a financial year as a result of a change of benefit category or as a result of an exercise of discretion, an additional amount (***X***) may need to be included in the amount of notional employer contributions for the financial year.

(2) For the formula in subclause 4(2):

(a) in a financial year in which the member's accrued retirement benefit does not increase as a result of a change in benefit category or as a result of an exercise of discretion—***X*** equals zero; and

(b) in any other financial year—***X*** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in benefit category or as a result of the exercise of the discretion.

(3) The economic and other assumptions to be used are set out in Part 3.

Part 6—Governing rules have changed

22 Method of working out *Y* in the formula in subclause 4(2)

(1) If:

(a) the governing rules of the defined benefit fund are amended in a way that may result in an increase in a member's benefit; and

(b) the amendment is made for a reason other than to satisfy a legislative requirement;

an additional amount (***Y***) may need to be included in the amount of notional employer contributions for the financial year.

(2) For the formula in subclause 4(2):

(a) in a financial year in which the fund rules are not changed in a way that may result in an increase in a member's benefit—***Y*** equals zero; and

(b) in any other financial year:

(i) if the reason for the change in fund rules is to satisfy a legislative requirement—***Y*** equals zero; and

(ii) if the change is for any other reason—***Y*** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in fund rules.

(3) The economic and other assumptions to be used are set out in Part 3.

Part 7—Non-arm's length increase in superannuation salary

23 Method of working out *Z* in the formula in subclause 4(2)

(1) If a member's superannuation salary is increased in a non-arm's length way with the primary purpose being to achieve an increase in superannuation benefit, an additional amount (***Z***) may need to be included in the amount of notional employer contributions for the financial year.

(2) For the formula in subclause 4(2):

(a) in a financial year where the member's superannuation salary is not increased in a non-arm's length way—***Z*** equals zero; and

(b) in any other financial year—***Z*** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in superannuation salary.

(3) The economic and other assumptions to be used are set out in Part 3.