EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Income Tax Assessment Act 1936

Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), section 200 of the *Retirement Savings Accounts Act 1997* (RSA Act) and section 266 of the *Income Tax Assessment Act 1936* (ITAA 1936) provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015* (the Regulation) is to:

- amend the release authority provisions in the *Superannuation Industry (Supervision) Regulations 1994* (SISR) and the *Retirement Savings Accounts Regulations 1997* (RSAR) to enable amounts to be paid from an individual's superannuation or income stream to meet tax liabilities arising from certain superannuation contributions;
- amend the SISR and RSAR to correct minor technical and typographical errors in relation to the commutation of income streams and conditions of release for temporary residents; and
- extend the period for amendments of assessments of income tax for individuals that elect to release an amount of non-concessional contributions.

<u>Amendments to the release authority provisions</u>

The Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 will amend the taxation laws so that individuals who exceed their non-concessional contributions cap in the 2013-14 or later financial years can elect to release from superannuation an amount equal to their contributions in excess of the cap plus 85 per cent of an associated earnings amount. Excess non-concessional contributions that are released from superannuation will not attract excess non-concessional contributions tax.

The Regulation amends the SISR and RSAR to enable superannuation providers to release amounts to individuals that make an election to release non-concessional contributions.

The Regulation also amends the SISR and RSAR to allow payments under release authorities to meet certain tax liabilities for temporary residents.

Minor technical corrections - commutation of income streams and conditions of release for temporary residents

The *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* made errors in amending the standards for pension and annuity contracts and the definition of ‘non-commutable allocated annuity’ and non-commutable allocated pension’ to allow these products to make payments under a release authority. It also mistakenly provided an additional condition of release for temporary residents.

A number of minor technical corrections are required as a result of these amendments. The Regulation amends the SISR and RSAR to make these corrections.

Extended period for amendments of assessments

The standard period for the Commissioner of Taxation to amend an assessment of income tax for individuals is two years. In some circumstances a two year period for amendments would not allow the Commissioner enough time to properly take into account changes in a taxpayer’s liability that can arise where an individual makes an election to release non-concessional contributions from superannuation.

The Regulation amends the *Income Tax Regulations 1936* (ITR) to prescribe the making of an election to release an amount from superannuation as a circumstance that extends the standard period of amendment to four years.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement’s assessment is that the measures in the Regulation are compatible with human rights. A copy of the Statement is at Attachment B.

The changes made by this regulation are minor in nature and have a low additional compliance cost.

The amendments made by the Regulation have a nil impact on revenue over the forward estimates.

Conditions and commencement

The Principal Acts do not specify any conditions that need to be met before the power to make the Regulation can be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

The Regulation commences on the day after registration. Items 2, 8 and 10 apply from 17 December 2013. Item 13 applies to assessments issued for the 2013-14 income year onwards.

These amendments do not affect the rights of individual’s such that they are disadvantaged and do not impose liabilities on affected individuals before the date of registration for the purposes of the *Legislative Instrument Act 2003.*

Items 2, 8 and 10 apply from 17 December 2013 to correct errors that arose from the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013*. Without retrospectivity any superannuation entity that has actioned a release authority for excess concessional contributions may not technically have been able to release the money from the superannuation fund.

Item 13 applies to assessments issued for the 2013-14 income year to correspond with amendments to be made in Schedule 1 of the *Taxation and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014*.

All other amendments apply from the day after registration.

ATTACHMENT A

Details of the *Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Section 3 – Authority

This section provides that the Regulation is made under the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997* and the *Income Tax Assessment Act 1936*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to the proposed Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Amendments to the release authority provisions

The Tax and Superannuation Laws Amendment (2014 Measures No.7) Bill 2014 will amend the *Taxation Administration Act 1953* (TAA) to allow individuals who exceed their non-concessional contributions cap to elect to release an amount equal to those excess contributions plus 85 per cent of an associated earnings amount from superannuation. Excess contributions not released from superannuation attract excess non-concessional contributions tax at the top marginal tax rate.

The *Superannuation Industry (Supervision) Regulations 1994* (SISR) and the *Retirement Savings Account Regulations 1997* (RSAR) contain restrictions on the payment of superannuation benefits from superannuation entities.

Superannuation benefits that are preserved or have restricted access can only be paid from a superannuation entity if a condition of release and any applicable cashing restrictions are satisfied.

Where an individual makes an election to release excess non-concessional contributions, the Commissioner of Taxation will be required to issue one or more release authorities to a superannuation provider that holds a superannuation interest for an individual. Each release will state the amount to be released by the provider. This release authority will be issued under new section 96-12 of Schedule 1 to the TAA.

Items 17 and 18 of the Regulation will expand existing conditions of release in the SISR, and item 15 will expand an existing condition of release in the RSAR, to enable superannuation providers to release amounts to individuals that make an election to release non-concessional contributions.

Items 2, 8 and 10 will amend the SISR and RSAR to allow payment under release authorities to meet certain tax liabilities for temporary residents under Division 96 and 135 of Schedule 1 of the TAA.

Items 3, 11 and 12 make typographical corrections to delete an incorrect reference to subsection 96-10(1) of Schedule 1 to the TAA in items 111C of Part 1 and 208C of Part 2 of Schedule 1 of the SISR, and item 111C in Schedule 2 of the RSAR.

<u>Minor technical corrections - commutation of income streams and conditions of release for temporary residents</u>

The *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* made errors in amending the standards for pension and annuity contracts and the definition of 'non-commutable allocated annuity' and non-commutable allocated pension' to allow these products to make payments under a release authority. It also mistakenly provided an additional condition of release for temporary residents.

A number of minor technical corrections are required as a result of these amendments.

Items 1, 4, 5, 6, 7 and 9 amend the SISR and RSAR to make these corrections. These amendments make stylistic changes that do not change the effect of the law and remove the condition of release for temporary residents.

<u>Extended period for amendments of assessments</u>

Subsection 170(1) of the *Income Tax Assessment Act 1936* limits the time period for the Commissioner to amend an income tax assessment of an individual. The standard period for the Commissioner to amend an assessment of income tax for an individual is two years. This period can be extended to four years in circumstances prescribed by the *Income Tax Regulations 1936 (ITR)*.

In some circumstances the standard period for amendments would not allow the Commissioner enough time to properly take into account changes in a taxpayer's liability that can arise where an individual makes an election to release non-concessional contributions from superannuation.

Item 13 of the Regulation amends the ITR to prescribe the making of an election to release non-concessional contributions under paragraphs 96-7(1)(a) and (b) of Schedule 1 to the TAA a circumstance that extends the standard period of amendment to four years.

<u>Commencement provisions</u>

Items 14, 16 and 19 insert commencement provisions into the ITR, RSAR and SISR.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Tax and Superannuation Laws Amendment (2015 Measures No. 1 – release conditions for non-concessional contributions) Regulation 2015* (the Regulation) amends the *Superannuation Industry (Supervision) Regulations 1994* (SISR) and the *Retirement Savings Account Regulations 1997* (RSAR) to facilitate the operation of release authorities that are given to superannuation providers under Division 96 of the *Taxation Administration Act 1953*. The Regulation also amends the SISR and RSAR to allow payment under release authorities for temporary residents. The amendments ensure that superannuation providers that receive these release authorities can pay an amount from an individual's superannuation interest despite the normal restrictions on such payments.

The provisions relating to release authorities do not engage with any applicable human rights or freedoms. These merely make consequential amendments to ensure that the release authority arrangements set out in the principal legislation do not conflict with other regulatory requirements regarding payments from superannuation interests.

The Regulation also amends the SISR and RSAR to make minor technical and typographical corrections that arose from the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013.* These amendments do not engage any applicable human rights or freedoms as they are minor changes that give effect to arrangements already in place.

The Regulation will amend the *Income Tax Regulations 1936* (ITR) to prescribe the making of an election to release an amount from superannuation a circumstance that extends the standard period of amendment to four years. This amendment is a machinery change that does not engage any applicable human rights or freedoms.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.