DRAFT EXPLANATORY STATEMENT

Taxation Administration Act 1953

Sustaining the Superannuation Contribution Concession (Meaning of End Benefit) Instrument 2013

Subsection 133-130(2) in Schedule 1 to the *Taxation Administration Act 1953* (the Act) provides that the Minister may, by legislative instrument, specify a superannuation benefit that is not an end benefit.

The purpose of this instrument is to ensure that family law superannuation payments and benefits payable to an individual who is permanently incapacitated do not trigger an individual's liability to pay deferred tax under section 133-130 in Schedule 1 to the Act.

The *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* (the Amending Act)[1] amended the *Income Tax Assessment Act 1997* (ITAA 1997) and the Act to give effect to the Sustaining the Superannuation Contribution Concession measure.

It did this by imposing tax on certain superannuation contributions (taxable contributions) of individuals whose income broadly exceeds $300,000 at 15 per cent to ensure that the tax concession received by such individuals is more closely aligned with the concession received by average income earners.

Special arrangements apply to contributions in respect of a defined benefit interest. The tax on these contributions is deferred to a debt account until the payment of the first superannuation benefit (the **end benefit**) from the relevant interest.

Certain benefits are excluded from being end benefits, including benefits specified by legislative instrument.

This instrument specifies that family law superannuation payments and benefits that are payable because the member satisfies the condition of release for permanent incapacity are not end benefits.

Family law superannuation payments are defined in subsection 307-5(7) of the ITAA 1997 as payments in accordance with Part VIIIB of the *Family Law Act 1975*, the *Family Law (Superannuation) Regulations 2001*, Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*, Part 4A of the *Retirement Savings Accounts Regulations 1997* or as specified in the regulations.

Broadly, family law superannuation payments arise in the context of property settlements following the end of relationships. In this situation, individuals have not in substance received a benefit from their superannuation and even if in some cases these payments may be treated as a superannuation benefit, it would not be appropriate to treat these benefits as an end benefit.

Item 103 of the table in Part 1 and item 203 of the table in Part 2 in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* provide that permanent incapacity is a condition of release of benefits from a regulated superannuation fund

[1] The Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013 has been introduced to Parliament. This exposure draft explanatory statement has been written on the basis that this Bill has received Royal Assent.

and an approved deposit fund respectively. For this purpose, permanent incapacity is defined in the *Superannuation Industry (Supervision) Regulations 1994.*

Similarly, item 103 of the table in Schedule 2 of the *Retirement Savings Accounts Regulations 1997* provides that permanent incapacity is a condition of release of benefits from a retirement savings account. These payments are excluded from the definition of end benefit to avoid imposing a taxation debt at the time an individual becomes permanently incapacitated.

The instrument applies from 1 July 2012. The retrospective operation of the instrument benefits affected individuals as it ensures they are not liable to pay their debt account as a consequence of an event that would otherwise constitute receiving an end benefit in relation to a defined benefit interest. However, to the extent this retrospectivity may adversely affect an individual, subsection 133-130(3) of the Act permits the proposed commencement despite subsection 12(2) of the *Legislative Instruments Act 2003*.

The Act does not specify any conditions that must be satisfied before this instrument is made.

The Regulations commenced on 1 July 2012.

Statement of Compatibility with Human Rights

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

Sustaining the Superannuation Contribution Concession (Meaning of End Benefit) Instrument 2013

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 purpose of this instrument is to specify that superannuation benefits that are family law superannuation payments or benefits payable because a member satisfies the condition of release for permanent incapacity, do not trigger an individual’s liability to pay deferred tax under the section 133-130 in Schedule 1 to the Act.

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 as it does not raise any human rights issues.