

## **DRAFT EXPLANATORY MATERIAL**

Issued by the authority of the Minister for Financial Services and Superannuation

*Income Tax Assessment Act 1997*

*Income Tax Assessment Amendment Regulation 2012 (No. )*

Section 909-1 of the *Income Tax Assessment Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters that the Act requires or permits to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulation is to give effect to the Government's announced measure to allow the income tax exemption in respect of earnings on assets that were supporting a superannuation income stream to continue following the death of the member who was receiving the income stream until their benefits have been cashed (subject to the benefits being cashed as soon as practicable).

The Act, inter alia, sets out the income taxation arrangements applying to the income of superannuation funds. A feature of these arrangements is that, broadly, a complying superannuation fund is entitled to an exemption for so much of its income as is supporting its current liabilities in respect of superannuation income stream benefits payable by the fund at the particular time (the earnings tax exemption). The term *superannuation income stream benefit* is defined with reference to the *Income Tax Assessment Regulations 1997* (ITAR).

The Regulation expands the meaning of the term *superannuation income stream benefit* in the ITAR for the purposes of the earnings tax exemption. The expanded meaning of this term will ensure that, where a superannuation fund member who was receiving a superannuation income stream has died, the superannuation fund will continue to be entitled to the earnings tax exemption in the period from the member's death until their benefits are cashed by the fund (subject to the benefits being cashed as soon as practicable).

Details of the amendments are set out in the Attachment. A statement of compatibility with human rights for the amendments is also provided.

The Act specifies no conditions that need to be met before the power to make the Regulation may be exercised.

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

The Regulation is taken to have commenced on 1 July 2012 and the amendments expanding the meaning of *superannuation income stream benefit* apply in relation to the 2012-13 and later income years. As the effect of the Regulation is to extend the scope of an existing tax exemption, its retrospective application will not disadvantage taxpayers.

Authority: Section 909-1 of the *Income Tax Assessment Act 1997*.

**ATTACHMENT****Details of *Income Tax Assessment Amendment Regulation 2012* (No. )**

**Section 1** specifies the name of the Regulation as the *Income Tax Assessment Amendment Regulation 2012* (No. ).

**Section 2** provides that the Regulation is taken to have commenced on 1 July 2012.

**Section 3** provides that Schedule 1 amends the *Income Tax Assessment Regulations 1997* (the ITAR).

**Schedule 1 Amendments**

Broadly, sections 295-385 and 295-390 of the Act provide an income tax exemption for so much of the income of a complying superannuation fund as is supporting its current liabilities in respect of superannuation income stream benefits payable by the fund at the particular time (the earnings tax exemption). Section 320-246 of the Act, in effect, provides an equivalent exemption for life insurance companies. The Act defines *superannuation income stream benefit* with reference to the ITAR. The meaning of *superannuation income stream benefit* is set out in Regulation 995-1.01 of the ITAR.

Item 3 of Schedule 1 expands the meaning of *superannuation income stream benefit* in Regulation 995-1.01 for the purposes of sections 295-385, 295-390 and 320-246 of the Act (see new subregulations 995-1.01(2), (3) and (4)). The effect of the expanded meaning of this term is that where a complying superannuation fund member who was receiving a superannuation income stream has died, and that income stream did not automatically revert to another person on the member's death, an amount paid as a superannuation death benefit lump sum or applied to commence a new superannuation income stream from the superannuation interest that, immediately before the member's death, was supporting their income stream is taken to be a superannuation income stream benefit payable by the fund for a specified period. The specified period is from the death of the member until as soon as it was practicable to pay the lump sum or commence the new superannuation income stream.

This will mean that the superannuation fund will continue to be entitled to the earnings tax exemption in relation to such an amount during this period.

The amendments expanding the meaning of *superannuation income stream benefit* apply in relation to the 2012-13 and later income years.

## **Statement of Compatibility with Human Rights**

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

### **Income Tax Assessment Amendment Regulation 2012 (No. )**

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 the proposed Regulation is to give effect to the Government's announced measure to allow the income tax exemption in respect of earnings on assets that were supporting a superannuation income stream to continue following the death of the member who was receiving the income stream until the deceased member's benefits have been cashed (subject to the benefits being cashed as soon as practicable).

#### **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.