

**DRAFT WORKING DOCUMENT**

**EXPLANATORY MEMORANDUM**

Minute No. \_\_\_\_\_ of 2012 - Minister for Financial Services and Superannuation

Subject - *Superannuation Industry (Supervision) Regulations 1994*  
*Superannuation Industry (Supervision) Amendment Regulation 2012*  
(No. )

Subsection 292-420(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the Commissioner of Taxation (the Commissioner) may issue a release authority to a superannuation provider for an amount in relation to the refund of excess concessional contributions (the refund) determination made in accordance with subsection 292-467(1) of ITAA 1997.

These amendments will insert additional provisions into the *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994). Similar amendments will insert additional provisions into the *Retirement Savings Accounts Regulations 1997* (RSAR 1997).

The purpose of these amendments is to enable superannuation providers to comply with the refund release authority issued by the Commissioner and removing the effect of some of the cashing restrictions that would otherwise apply to the payment.

The Government announced the refund of excess concessional contributions measure in the 2011-12 Budget. This measure is designed to give eligible individuals the option to have excess concessional contributions of \$10,000 or less effectively refunded to them. The excess concessional contributions will be assessed as income at their marginal tax rate, rather than incurring excess contributions tax.

If all of the following conditions are met, the Commissioner may issue an individual with the notice of offer for a refund:

- the Commissioner is satisfied that the individual has excess concessional contributions for a financial year commencing on or after 1 July 2011;
- the amount of those excess concessional contributions is \$10,000 or less;
- the individual does not have excess concessional contributions for an earlier financial year starting from 1 July 2011 (disregarding any previous application of this measure); and
- the individual has lodged an income tax return for the income year that corresponds to the financial year within 12 months of the end of that year, or within such longer period as the Commissioner allows.

If the individual accepts the refund offer, the Commissioner will make a written determination that the individual's excess concessional contributions for the financial year are to be disregarded (for the purposes of the provisions in the income tax law dealing with excess contributions tax). The amount of the excess will be included in the individual's assessable income for the corresponding income year.

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The Commissioner will issue a release authority to a superannuation provider. The release authority will generally state an amount equal to 85% of the amount of the excess concessional contributions (unless an amount has already been released under a previous release authority in relation to excess concessional contributions for the individual for the relevant financial year).

The superannuation provider must comply with the release authority, by paying the amount stated in the release authority to the Commissioner within 30 days of it issuing (and providing a statement in the approved form advising the Commissioner of the payment), unless certain conditions exist as specified in the law that remove their obligation to comply.

The refund measure is given effect by Schedule 4 of the *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012*.

Details of the amendments to the SISR 1994 are set out in Attachment.

The ITAA 1997 specifies no conditions that need to be met before the power to make the Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulation would commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Minute recommends that Regulation be made in the form proposed.

Authority: Subsection 292-420(1) of the  
*Income Tax Assessment Act 1997*.

[Minister's initials]

**Details of the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. )***

**Section 1 – Name of Regulation**

This section specifies that the title of the Regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. )*.

**Section 2 – Commencement**

This section provides for the Regulation to commence on the day after it is registered.

**Section 3 – Amendment of *Superannuation Industry (Supervision) Regulations 1994***

This section provides that Schedule 1 to the proposed Regulation amends the *Superannuation Industry (Supervision) Regulations 1994*.

**Schedule 1 – Amendments**

**Items [1]**

This item will insert the new items 112A and 209A. Inserting these items will enable superannuation providers to pay the amount specified in a release authority issued under subsection 292-420(1) of the ITAA 1997 to the Commissioner in respect of a temporary resident.

**Items [2] and [3]**

These items will amend paragraphs 6.22(4)(a) and 6.26(2)(a) to include reference to section 292-420 of the ITAA 1997. These amendments will remove the limitation on superannuation providers when cashing benefits in favour of persons other than the member or their legal personal representative. These amendments will enable, where the trustee has received a release authority under subsection 292-420(1) of the ITAA 1997, the benefits to be cashed in favour of the Commissioner in accordance with the authority.

**Item [4]**

This item will amend paragraph 6.27(b) to include reference to section 292-420 of the ITAA 1997. This will remove the limitation on approved deposit funds cashing benefits of less than \$500, if a member's benefits are cashed to give effect to a release authority given by the Commissioner under subsection 292-420(1) of the ITAA 1997.

**Items [5] and [6]**

These items will insert new items 112A and 209A to Schedule 1. Schedule 1 sets out the 'conditions of release' that must be satisfied for the payment of a member's benefits in a fund and the 'cashing restrictions' that apply to each condition to enable

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superannuation providers to pay the amount stated in the release authority to the Commissioner. These new items will allow the giving of a release authority to a superannuation provider under subsection 292-420(1) of the ITAA 1997 to be a prescribed 'condition of release', subject to the restrictions in subsections 292-420(4), (5) and (7) of the ITAA 1997.

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