

# EXPOSURE-DRAFT

1 Inserts for  
2 **Tax Laws Amendment (Sustaining the**  
3 **Superannuation Contribution**  
4 **Concession) Bill 2013: Main amendments**  
5

6 **EXPOSURE DRAFT**

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## Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1	The day this Act receives the Royal Assent.	
2.		
3.		

7

8 **Contents**

9 **Schedule 1—Sustaining the superannuation contribution**  
10 **concession** 2

11 Part 1—Main amendments 2

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## Schedule 1—Sustaining the superannuation contribution concession

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

#### 1 After Division 292

Insert:

### Division 293—Sustaining the superannuation contribution concession

#### Table of Subdivisions

Guide to Division 293

293-A Object of this Division

293-B Superannuation concession reduction

293-C When tax is payable

293-D Modifications for defined benefit interests

293-E Modifications for constitutionally protected State higher level office holders

293-F Modifications for Commonwealth justices

293-G Modifications for temporary residents who depart Australia

#### Guide to Division 293

#### 293-1 What this Division is about

This Division reduces the concessional tax treatment of certain superannuation contributions made for very high income individuals.

The high income threshold is \$300,000.

There are special rules for defined benefit interests, constitutionally protected State higher level office holders, certain Commonwealth justices and temporary residents who depart Australia.

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Note: Part 3-20 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about the administration of the Division 293 tax.

## Subdivision 293-A—Object of this Division

### Table of sections

#### Operative provisions

293-5 Object of this Division

### Operative provisions

#### 293-5 Object of this Division

The object of this Division is to reduce the concessional tax treatment of superannuation contributions for very high income individuals.

## Subdivision 293-B—Sustaining the superannuation contribution concession

### Guide to Subdivision 293-B

#### 293-10 What this Subdivision is about

This Subdivision reduces the superannuation tax concession for very high income earners.

An individual's income is added to certain superannuation contributions and compared to the high income threshold of \$300,000. A tax is payable on the excess, or on the superannuation contributions (whichever is less).

The tax is not payable in respect of excess concessional contributions that have been taxed under Division 292 (or refunded under section 292-467).

### Table of sections

#### Liability for tax

293-15 Liability for tax

293-20 Your *Division 293 taxable contributions*

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1	<b>Low tax contributions</b>
2	293-25 Your <i>low tax contributions</i>
3	293-30 Low tax contributed amounts
4	293-35 Effect of determination relating to refunded excess concessional
5	contributions

## 6 **Liability for tax**

### 7 **293-15 Liability for tax**

8 You are liable to pay tax under this section if you have  
9 \*Division 293 taxable contributions for an income year.

10 Note: The amount of the tax is set out in the *Superannuation (Sustaining the*  
11 *Superannuation Contribution Concession) Imposition Act 2013.*

### 12 **293-20 Your Division 293 taxable contributions**

- 13 (1) If the sum of:
- 14 (a) your \*income for surcharge purposes for an income year  
15 (disregarding your \*reportable superannuation contributions);  
16 and
  - 17 (b) your \*low tax contributions for the corresponding \*financial  
18 year;
- 19 exceeds \$300,000, you have *Division 293 taxable contributions*  
20 for the income year equal to the lesser of the low tax contributions  
21 and the amount of the excess.
- 22 (2) However, you do not have *Division 293 taxable contributions* for  
23 an income year if the amount of your \*low tax contributions is nil.

## 24 **Low tax contributions**

### 25 **293-25 Your low tax contributions**

26 The amount of your *low tax contributions* for a \*financial year is:

- 27 (a) the low tax contributed amounts covered by section 293-30  
28 for the financial year; less
- 29 (b) your \*excess concessional contributions for the financial year  
30 (if any).

31 Note: Low tax contributions are modified for:

- 32 (a) defined benefit interests (see Subdivision 293-D); and
- 33 (b) constitutionally protected State higher level office holders (see  
34 Subdivision 293-E); and
- 35 (c) Commonwealth justices (see Subdivision 293-F).

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## 293-30 Low tax contributed amounts

- 1
- 2 (1) The low tax contributed amounts covered by this section for a  
3 \*financial year are the sum of the contributions covered by  
4 subsection (2) and the amounts covered by subsection (5) for the  
5 financial year.

### *Contributions to complying superannuation plans*

- 6
- 7 (2) A contribution is covered under this section for a \*financial year if:  
8 (a) it is made in the financial year to a \*complying  
9 superannuation plan in respect of you; and  
10 (b) it is included:  
11 (i) in the assessable income of the \*superannuation  
12 provider in relation to the plan; or  
13 (ii) by way of a \*roll-over superannuation benefit, in the  
14 assessable income of a \*complying superannuation fund  
15 or \*RSA provider in the circumstances mentioned in  
16 subsection 290-170(5) (about successor funds).
- 17 (3) For the purposes of paragraph (2)(b), disregard:  
18 (a) table item 5.3 in section 50-25 (about income tax exemption  
19 for constitutionally protected funds); and  
20 (b) Subdivision 295-D (about excluded contributions).

### *Exceptions*

- 21
- 22 (4) Despite subsection (2), a contribution is not covered under this  
23 section if it is any of the following:  
24 (a) an amount mentioned in subsection 295-200(2) (about  
25 amounts transferred from foreign superannuation funds);  
26 (b) an amount mentioned in item 2 of the table in  
27 subsection 295-190(1) (about certain roll-over  
28 superannuation benefits).

### *Amounts allocated in relation to a complying superannuation plan*

- 29
- 30 (5) An amount in a \*complying superannuation plan is covered under  
31 this section if it is allocated by the \*superannuation provider in  
32 relation to the plan for you for the year in accordance with  
33 conditions specified by a regulation made for the purposes of  
34 subsection 292-25(3).

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## 293-35 Effect of determination relating to refunded excess concessional contributions

Disregard any determination made by the Commissioner under section 292-467 (about refunded excess concessional contributions) in working out, for the purposes of section 293-25, the amount of your \*excess concessional contributions for a \*financial year.

Note: Disregarding a section 292-467 determination stops refunded excess concessional contributions from being taxed under this Division.

## Subdivision 293-C—When tax is payable

### Guide to Subdivision 293-C

#### 293-60 What this Subdivision is about

This Subdivision has rules about payment of Division 293 tax.

#### Table of sections

##### Operative provisions

293-65	When Division 293 tax is payable—original assessments
293-70	When Division 293 tax is payable—amended assessments
293-75	General interest charge

#### Operative provisions

##### 293-65 When Division 293 tax is payable—original assessments

- (1) Your \*assessed Division 293 tax for an income year is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the \*Division 293 tax.

Note 1: For assessments of Division 293 tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: A release authority allows money to be released from a superannuation plan to pay this amount: see item 1 of the table in section 135-10 in Schedule 1 to the *Taxation Administration Act 1953*.

##### *Exception for deferred Division 293 tax*

- (2) However, subsection (1) does not apply to so much of your \*assessed Division 293 tax for an income year as is stated in a

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determination under section 133-60 in Schedule 1 to the *Taxation Administration Act 1953* to be \*deferred Division 293 tax.

Note 1: Division 133 in Schedule 1 to the *Taxation Administration Act 1953* provides for deferred payment of some Division 293 tax liabilities that are attributable to defined benefit interests.

Note 2: A release authority allows money to be released from a superannuation plan to pay deferred Division 293 tax: see item 3 of the table in section 135-10 in Schedule 1 to the *Taxation Administration Act 1953*.

## 293-70 When Division 293 tax is payable—amended assessments

- (1) If the Commissioner amends your assessment, any extra \*assessed Division 293 tax resulting from the amendment is due and payable 21 days after the day on which the Commissioner gives you notice of the amended assessment.

Note: A release authority allows money to be released from a superannuation plan to pay this amount: see item 2 of the table in section 135-10 in Schedule 1 to the *Taxation Administration Act 1953*.

### *Exception for deferred Division 293 tax*

- (2) However, subsection (1) does not apply to so much of your extra \*assessed Division 293 tax for an income year as is stated in a determination under section 133-60 in Schedule 1 to the *Taxation Administration Act 1953* to be \*deferred Division 293 tax.

Note 1: Division 133 in Schedule 1 to the *Taxation Administration Act 1953* provides for deferred payment of some Division 293 tax liabilities that are attributable to defined benefit interests.

Note 2: A release authority allows money to be released from a superannuation plan to pay this amount: see item 4 of the table in section 135-10 in Schedule 1 to the *Taxation Administration Act 1953*.

## 293-75 General interest charge

If an amount of \*assessed Division 293 tax or \*shortfall interest charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the amount was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the assessed Division 293 tax or the shortfall interest charge;

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(ii) general interest charge on any of the assessed  
Division 293 tax or the shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the  
*Taxation Administration Act 1953*.

Note 2: Shortfall interest charge is worked out under Division 280 in  
Schedule 1 to that Act.

Note 3: See section 5-10 of this Act for when the amount of shortfall interest  
charge becomes due and payable.

## Subdivision 293-D—Modifications for defined benefit interests

### Guide to Subdivision 293-D

#### 293-100 What this Subdivision is about

This Subdivision modifies the meaning of *low tax contributions*  
for individuals who have a defined benefit interest or interests in a  
financial year.

#### Table of sections

##### Operative provisions

293-105 Your *low tax contributions*—modification for defined benefit interests

293-110 Effect of determination relating to refunded excess concessional  
contributions

293-115 Your *defined benefit contributions*

#### Operative provisions

##### 293-105 Your *low tax contributions*—modification for defined benefit interests

Despite section 293-25, if you have a \*defined benefit interest or  
interests in a \*financial year, the amount of your *low tax*  
*contributions* for the financial year is worked out as follows:

##### *Method statement*

Step 1. Start with the low tax contributed amounts covered by  
section 293-30, to the extent to which they do *not* relate  
to the \*defined benefit interest or interests.

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1 Step 2. Subtract your \*excess concessional contributions for the  
2 \*financial year (if any).

3 Note: The result of step 2 could be nil, or a negative amount.

4 Step 3. Add your \*defined benefit contributions for the \*financial  
5 year in respect of the \*defined benefit interest or interests.

6 The result (but not less than nil) is the amount of your  
7 ***low tax contributions*** for the financial year.

8 Note: Low tax contributions are modified for:

- 9 (a) constitutionally protected State higher level office holders (see  
10 Subdivision 293-E); and  
11 (b) Commonwealth justices (see Subdivision 293-F).

## 12 **293-110 Effect of determination relating to refunded excess** 13 **concessional contributions**

14 Disregard any determination made by the Commissioner under  
15 section 292-467 (about refunded excess concessional  
16 contributions) in working out, for the purposes of section 293-105,  
17 the amount of your \*excess concessional contributions for a  
18 \*financial year.

19 Note: Disregarding a section 292-467 determination stops refunded excess  
20 concessional contributions from being taxed under this Division.

## 21 **293-115 Your *defined benefit contributions***

- 22 (1) ***Defined benefit contributions***, for a \*financial year in respect of a  
23 \*defined benefit interest, has the meaning given by regulation.
- 24 (2) A regulation made for the purposes of subsection (1) may provide  
25 for a method of determining the amount of the ***defined benefit***  
26 ***contributions***.
- 27 (3) A regulation made for the purposes of subsection (1) may define  
28 the \*defined benefit contributions, and the amount of defined  
29 benefit contributions, in different ways depending on any of the  
30 following matters:
- 31 (a) the person who has the \*superannuation interest that is or  
32 includes the \*defined benefit interest;
- 33 (b) the \*superannuation plan in which the superannuation interest  
34 exists;

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- 1 (c) the \*superannuation provider in relation to the  
2 superannuation plan;  
3 (d) any other matter.
- 4 (4) A regulation made for the purposes of subsection (1) may specify  
5 circumstances in which the amount of \*defined benefit  
6 contributions for a \*financial year is nil.
- 7 (5) Subsections (2), (3) and (4) do not limit a regulation that may be  
8 made for the purposes of this section.
- 9 (6) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a  
10 regulation made for the purposes of subsection (1) may be  
11 expressed to take effect from any time on or after 1 July 2012.

## 12 **Subdivision 293-E—Modifications for constitutionally** 13 **protected State higher level office holders**

### 14 **Guide to Subdivision 293-E**

#### 15 **293-140 What this Subdivision is about**

16 Constitutionally protected State higher level office holders do not  
17 pay Division 293 tax in respect of contributions to constitutionally  
18 protected funds, unless the contributions are made as part of a  
19 salary package.

#### 20 **Table of sections**

##### 21 **Operative provisions**

22	293-145	Who this Subdivision applies to
23	293-150	<i>Low tax contributions</i> —modification for CPFs
24	293-155	High income threshold—effect of modification
25	293-160	Salary packaged contributions

#### 26 **Operative provisions**

##### 27 **293-145 Who this Subdivision applies to**

- 28 (1) This Subdivision applies to an individual for an income year if:  
29 (a) the individual has a \*superannuation interest in a  
30 \*constitutionally protected fund in the corresponding  
31 \*financial year; and

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1 (b) at any time in the income year, the individual is declared by  
2 regulation to be an individual to which this Subdivision  
3 applies.

4 (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a  
5 regulation made for the purposes of paragraph (1)(b) may be  
6 expressed to take effect from any time on or after 1 July 2012.

7 (3) Nothing in this Subdivision limits section 6 of the *Superannuation*  
8 *(Sustaining the Superannuation Contribution Concession)*  
9 *Imposition Act 2013*.

10 Note: Section 6 of the *Superannuation (Sustaining the Superannuation*  
11 *Contribution Concession) Imposition Act 2013* provides that  
12 Division 293 tax is not imposed in relation to a person if the  
13 imposition would exceed the legislative power of the Commonwealth.

## 14 **293-150 Low tax contributions—modification for CPFs**

15 (1) This section applies for the purpose of working out the amount of  
16 the individual's **low tax contributions** for the \*financial year  
17 corresponding to the income year.

18 *Contributions to CPFs disregarded, unless salary packaged*

19 (2) The low tax contributed amounts covered by section 293-30 for the  
20 \*financial year are treated as not including any contributions to a  
21 \*constitutionally protected fund, other than contributions covered  
22 by section 293-160 (about salary packaged contributions).

23 (3) The \*defined benefit contributions for the \*financial year for a  
24 \*defined benefit interest in a \*constitutionally protected fund are  
25 treated as being equal to:

26 (a) unless paragraph (b) applies—nil; or

27 (b) if, having regard to subsection (2) of this section, the low tax  
28 contributed amounts covered by section 293-30 for the year  
29 include contributions in respect of the defined benefit  
30 interest—the amount of those contributions.

## 31 **293-155 High income threshold—effect of modification**

32 (1) For the purpose of working out the extent (if any) to which the sum  
33 mentioned in subsection 293-20(1) for the individual exceeds the  
34 \$300,000 threshold mentioned in that subsection, disregard  
35 section 293-150.

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- 1 (2) To avoid doubt, the effect of subsection (1) is that the amount of  
2 the individual's \*Division 293 taxable contributions is the lesser of:  
3 (a) the excess (if any) mentioned in subsection 293-20(1)  
4 (worked out disregarding section 293-150); and  
5 (b) the individual's \*low tax contributions for the \*financial year  
6 (worked out having regard to section 293-150).

## 7 **293-160 Salary packaged contributions**

- 8 (1) A contribution made to a \*complying superannuation plan in  
9 respect of an individual is covered by this section if it is made  
10 because the individual agreed with an entity, or an \*associate of an  
11 entity:  
12 (a) for the contribution to be made; and  
13 (b) in return, for the \*withholding payments covered by  
14 subsection (2) that are to be made to the individual by the  
15 entity to be reduced (including to nil).
- 16 (2) This subsection covers a \*withholding payment covered by any of  
17 the provisions in Schedule 1 to the *Taxation Administration Act*  
18 *1953* listed in the table.

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### **Withholding payments covered**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-55	Voluntary agreement to withhold
5	Section 12-60	Payment under labour hire arrangement, or specified by regulations

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## 1 Subdivision 293-F—Modifications for Commonwealth justices

### 2 Guide to Subdivision 293-F

#### 3 293-170 What this Subdivision is about

4 Division 293 tax is not payable by Commonwealth justices and  
5 judges in respect of contributions to a defined benefit interest  
6 established under the *Judges' Pensions Act 1968*.

#### 7 Table of sections

##### 8 Operative provisions

9 293-175 Who this Subdivision applies to

10 293-180 *Low tax contributions*—modifications for contributions made by the  
11 Commonwealth

12 293-185 High income threshold—effect of modification

#### 13 Operative provisions

##### 14 293-175 Who this Subdivision applies to

15 (1) This Subdivision applies to an individual if the individual is a  
16 Justice of the High Court, or a judge or justice of a court created by  
17 the Parliament, at any time on or after the start of the individual's  
18 2012-13 income year.

19 (2) Nothing in this Subdivision limits section 6 of the *Superannuation*  
20 *(Sustaining the Superannuation Contribution Concession)*  
21 *Imposition Act 2013*.

22 Note: Section 6 of the *Superannuation (Sustaining the Superannuation*  
23 *Contribution Concession) Imposition Act 2013* provides that  
24 Division 293 tax is not imposed in relation to a person if the  
25 imposition would exceed the legislative power of the Commonwealth.

##### 26 293-180 *Low tax contributions*—modified treatment of contributions 27 under the *Judges' Pensions Act 1968*

28 (1) This section applies for the purpose of working out the amount of  
29 the individual's *low tax contributions* for any \*financial year.

30 (2) The \*defined benefit contributions for a \*financial year for a  
31 \*defined benefit interest in a \*superannuation fund established

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1 under the *Judges' Pensions Act 1968* are treated as being equal to  
2 nil.

## 3 **293-185 High income threshold—effect of modification**

- 4 (1) For the purpose of working out the extent (if any) to which the sum  
5 mentioned in subsection 293-20(1) for the individual exceeds the  
6 \$300,000 threshold mentioned in that subsection, disregard  
7 section 293-180.
- 8 (2) To avoid doubt, the effect of subsection (1) is that the amount of  
9 the individual's \*Division 293 taxable contributions is the lesser of:
- 10 (a) the excess (if any) mentioned in subsection 293-20(1)  
11 (worked out disregarding section 293-180); and
- 12 (b) the individual's \*low tax contributions for the financial year  
13 (worked out having regard to section 293-180).

## 14 **Subdivision 293-G—Modifications for temporary residents who** 15 **depart Australia**

### 16 **Guide to Subdivision 293-G**

#### 17 **293-190 What this Subdivision is about**

18 If you receive a departing Australia superannuation payment, you  
19 are entitled to a refund of any Division 293 tax you have paid.

#### 20 **Table of sections**

##### 21 **Operative provisions**

22	293-195	Who is entitled to a refund
23	293-200	Amount of the refund
24	293-205	Entitlement to refund stops all Division 293 tax liabilities

#### 25 **Operative provisions**

##### 26 **293-195 Who is entitled to a refund**

27 You are entitled to a refund if:

- 28 (a) you have made payments of any of the following:
- 29 (i) \*assessed Division 293 tax;

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- 1 (ii) a voluntary payment made under section 134-20 in  
2 Schedule 1 to the *Taxation Administration Act 1953* for  
3 the purpose of reducing the amount by which a debt  
4 account for a \*superannuation interest is in debit;  
5 (iii) \*debt for deferred Division 293 tax; and  
6 (b) you receive a \*departing Australia superannuation payment;  
7 and  
8 (c) you apply to the Commissioner in the \*approved form for the  
9 refund.

10 Note: How the refund is applied is set out in Part IIB of the *Taxation*  
11 *Administration Act 1953*.

## 12 **293-200 Amount of the refund**

- 13 (1) The amount of the refund to which you are entitled is the sum of  
14 the payments mentioned in paragraph 293-195(a) that you have  
15 made.  
16 (2) However, the amount of the refund is reduced by the amount of  
17 any refunds to which you are entitled under a previous application  
18 of this Subdivision.

19 *Exception—Division 293 tax attributable to period when you are*  
20 *an Australian resident*

- 21 (3) Despite subsection (1), if:  
22 (a) at any time in your 2012-13 income year, or a later income  
23 year, you are an Australian resident (but not a \*temporary  
24 resident); and  
25 (b) a payment mentioned in paragraph 293-195(a) that you have  
26 made relates, or is reasonably attributable, to that income  
27 year;  
28 the payment is to be disregarded in working out under  
29 subsection (1) of this section the amount of the refund to which  
30 you are entitled.

## 31 **293-205 Entitlement to refund stops all Division 293 tax liabilities**

- 32 (1) If you become entitled to a refund under section 293-195, the  
33 Commissioner may decide to do one or more of the following:  
34 (a) release you from any existing or future liability to pay  
35 \*Division 293 tax or \*debt for deferred Division 293 tax;

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1 (b) extinguish a debt account the Commissioner keeps for you  
2 under Division 134 in Schedule 1 to the *Taxation*  
3 *Administration Act 1953*.

4 (2) The Commissioner may take such action as is necessary to give  
5 effect to a decision under subsection (1).

## 6 *Taxation Administration Act 1953*

### 7 **2 At the end of Chapter 3 in Schedule 1**

8 Add:

## 9 **Part 3-20—Sustaining the superannuation** 10 **contribution concession**

### 11 **Division 133—Deferred payment of Division 293 tax**

#### 12 **Table of Subdivisions**

13	Guide to Division 133
14	133-A When you have deferred Division 293 tax
15	133-B Determination of your deferred Division 293 tax

#### 16 **Guide to Division 133**

##### 17 **133-1 What this Division is about**

18 Payment of Division 293 tax is deferred to the extent to which the  
19 tax is attributable to defined benefit interests from which no  
20 superannuation benefit has yet become payable.

21 This reflects the fact that money generally cannot be released from  
22 defined benefit interests until a superannuation benefit is paid,  
23 generally upon retirement.

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## 1 Subdivision 133-A—When you have deferred Division 293 tax

### 2 Guide to Subdivision 133-A

#### 3 133-5 What this Subdivision is about

4 Subdivision 133-A works out whether deferred payment applies to  
5 any of your assessed Division 293 tax.

6 Subdivision 133-A also works out the extent to which deferred tax  
7 is attributable to particular defined benefit interests. This allows a  
8 debt account to be created for each interest to which deferred tax is  
9 attributable.

10 Your Division 293 tax is attributable to defined benefit interests to  
11 the extent your Division 293 taxable contributions are attributable  
12 to defined benefit contributions.

13 If contributions are subtracted or reduced in working out the  
14 Division 293 taxable contributions, the attribution assumes:

- 15 (a) excess concessional contributions are subtracted  
16 first from contributions to interests other than  
17 defined benefit interests; and
- 18 (b) if it is necessary to reduce low tax contributions to  
19 work out Division 293 taxable contributions,  
20 defined benefit contributions are reduced first.

21 Note 1: Excess concessional contributions are subtracted under step 2 of the  
22 method statement in section 293-105 of the *Income Tax Assessment*  
23 *Act 1997*.

24 Note 2: Division 293 taxable contributions may be less than low tax  
25 contributions because of the \$300,000 threshold in  
26 subsection 293-20(1) of that Act.

#### 27 Table of sections

##### 28 Operative provisions

29 133-10 When your assessed Division 293 tax is *deferred Division 293 tax*

30 133-15 When deferred payment applies to a superannuation interest

31 133-20 *Defined benefit Division 293 tax*

32 133-25 How to attribute the defined benefit Division 293 tax to defined benefit  
33 interests

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1	133-30	Modification for constitutionally protected State higher level office holders
2	133-35	Modification for Commonwealth justices

## 3 Operative provisions

### 4 **133-10 When your assessed Division 293 tax is *deferred Division 293*** 5 ***tax***

- 6 (1) Your \*assessed Division 293 tax for an income year is ***deferred***  
7 ***Division 293 tax*** for the income year to the extent:  
8 (a) the assessed Division 293 tax is \*defined benefit  
9 Division 293 tax; and  
10 (b) the defined benefit Division 293 tax is attributable to one or  
11 more \*superannuation interests to which deferred payment  
12 applies at the time the assessment is made.

13 Note: For when assessed Division 293 tax that is not deferred Division 293  
14 tax is due and payable, see sections 293-65 and 293-70 of the *Income*  
15 *Tax Assessment Act 1997*.

- 16 (2) Your \*deferred Division 293 tax is attributable to a  
17 \*superannuation interest to the extent that the \*defined benefit  
18 Division 293 tax is attributable to the interest.

19 Note: For how to attribute defined benefit Division 293 tax to  
20 superannuation interests, see section 133-25.

### 21 **133-15 When deferred payment applies to a superannuation interest**

22 For the purposes of section 133-10, deferred payment applies to a  
23 \*superannuation interest at a time if:

- 24 (a) the superannuation interest is or includes a \*defined benefit  
25 interest; and  
26 (b) at that time, the \*Division 293 end benefit for the interest has  
27 not yet become payable.

28 Note: For the meaning of *Division 293 end benefit*, see  
29 subsection 134-60(2).

### 30 **133-20 Defined benefit Division 293 tax**

- 31 (1) If you have a \*defined benefit interest or interests in a \*financial  
32 year, the extent (if any) to which your \*Division 293 tax for the  
33 corresponding income year is ***defined benefit Division 293 tax*** is  
34 worked out under this section.

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- 1 (2) If the result of step 2 of the method statement in section 293-105 of  
2 the *Income Tax Assessment Act 1997* for the \*financial year is nil,  
3 or a negative amount, all of your \*Division 293 tax for the  
4 corresponding income year is ***defined benefit Division 293 tax***.

5 Note: A nil or negative result at step 2 of that method statement means all  
6 the low tax contributions are attributable to defined benefit  
7 contributions added under step 3.

- 8 (3) If subsection (2) does not apply, the amount of your ***defined***  
9 ***benefit Division 293 tax*** for the income year is worked out as  
10 follows:

11 *Method statement*

12 Step 1. Start with your \*defined benefit contributions for the  
13 corresponding \*financial year in respect of the \*defined  
14 benefit interest or interests.

15 Step 2. Subtract the difference (if any) between:

16 (a) your \*Division 293 taxable contributions for the  
17 income year; and

18 (b) your \*low tax contributions for the corresponding  
19 \*financial year.

20 Note: A difference may exist because of the \$300,000 high  
21 income threshold: see subsection 293-20(1) of the  
22 *Income Tax Assessment Act 1997*.

23 Step 3. Multiply the result of step 2 by the rate of tax set out in  
24 section 5 of the *Superannuation (Sustaining the*  
25 *Superannuation Contribution Concession) Imposition Act*  
26 *2013*.

27 The resulting amount is the amount of your ***defined***  
28 ***benefit Division 293 tax*** for the income year. However, if  
29 the result is nil or a negative amount, you do not have  
30 ***defined benefit Division 293 tax***.

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## 133-25 How to attribute the defined benefit Division 293 tax to defined benefit interests

Work out the extent to which your \*defined benefit Division 293 tax for an income year is attributable to a \*superannuation interest by:

- (a) identifying each \*defined benefit interest you have in the corresponding \*financial year in respect of which your \*defined benefit contributions for the year were greater than nil; and
- (b) in relation to each such interest, applying the formula:

$$\text{*Defined benefit Division 293 tax} \times \frac{\text{Defined benefit contributions for the superannuation interest}}{\text{Total defined benefit contributions}}$$

where:

***defined benefit contributions for the superannuation interest***

means the amount of your \*defined benefit contributions for the \*financial year in respect of the \*defined benefit interest.

***total defined benefit contributions*** means the total amount of your

\*defined benefit contributions for the \*financial year in respect of all \*defined benefit interests you have in the year.

## 133-30 Modification for constitutionally protected State higher level office holders

- (1) This section applies in relation to an individual if:
  - (a) Subdivision 293-E of the *Income Tax Assessment Act 1997* applies to the individual for an income year; and
  - (b) the individual has a \*defined benefit interest in a \*constitutionally protected fund in the corresponding \*financial year.
- (2) Subsection 293-150(3) of that Act applies for the purposes of this Subdivision in relation to the \*financial year.

Note: Subsection 293-150(3) of that Act treats defined benefit contributions for a defined benefit interest in a constitutionally protected fund as including only salary packaged contributions.

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## 133-35 Modification for Commonwealth justices

(1) This section applies in relation to an individual to whom Subdivision 293-F of the *Income Tax Assessment Act 1997* applies.

(2) Subsection 293-180(3) of that Act applies for the purposes of this Subdivision.

Note: Subsection 293-180(3) of that Act treats contributions to a defined benefit interest established under the *Judges' Pensions Act 1968* as being equal to nil.

## Subdivision 133-B—Determination of your deferred Division 293 tax

### Guide to Subdivision 133-B

#### 133-55 What this Subdivision is about

Subdivision 133-B provides for the Commissioner to make a determination of your deferred Division 293 tax.

The determination has 2 functions.

Firstly, it fixes the amount of assessed Division 293 tax that is deferred Division 293 tax (and so not due and payable).

Secondly, it fixes the amount by which the debt account for a superannuation interest is to be debited or credited for deferred Division 293 tax.

#### Table of sections

##### Operative provisions

133-60	Determination of your deferred Division 293 tax
133-65	Review

#### Operative provisions

#### 133-60 Determination of your deferred Division 293 tax

(1) The Commissioner must make a determination under this section as soon as practicable after:

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- 
- 1 (a) making an assessment of your \*Division 293 tax payable for  
2 an income year for which you have \*deferred Division 293  
3 tax; or  
4 (b) amending an assessment of your Division 293 tax payable for  
5 an income year, if the amendment results in:  
6 (i) extra \*assessed Division 293 tax that is deferred  
7 Division 293 tax; or  
8 (ii) reduced assessed Division 293 tax that is deferred  
9 Division 293 tax.

10 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
11 *Interpretation Act 1901*.

- 12 (2) The determination must:  
13 (a) state the extent to which the \*assessed Division 293 tax, the  
14 extra assessed Division 293 tax or the reduced assessed  
15 Division 293 tax (as the case requires) is \*deferred  
16 Division 293 tax; and  
17 (b) identify each \*superannuation interest to which that deferred  
18 Division 293 tax is attributable; and  
19 (c) state the extent to which that deferred Division 293 tax is  
20 attributable to each such interest.
- 21 (3) The Commissioner must give you notice in writing of the  
22 determination as soon as practicable after making the  
23 determination.
- 24 (4) The Commissioner:  
25 (a) may include 2 or more determinations under this section in  
26 the same notice; and  
27 (b) may include a notice under this section in a notice of an  
28 assessment under this Act.
- 29 (5) The validity of the determination is not affected because any of the  
30 provisions of this Act have not been complied with.

## 31 **133-65 Review**

- 32 (1) If you are dissatisfied with a determination made under  
33 section 133-60 in relation to you, you may object against the  
34 determination in the manner set out in Part IVC.
- 35 (2) If you are dissatisfied with a decision the Commissioner makes not  
36 to make a determination under section 133-60:

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- 
- 1 (a) you may object against the decision in the manner set out in  
2 Part IVC; and  
3 (b) for the purpose of working out the period within which the  
4 objection must be lodged, notice of the decision is taken to  
5 have been served on you on the day notice of the assessment  
6 mentioned in paragraph 133-60(1)(a) or (b) (as the case  
7 requires) is given to you.

8 Note: For the period within which objections must be lodged, see  
9 section 14ZW.

## 10 **Division 134—Debt accounts for deferred Division 293 tax**

### 11 **Table of Subdivisions**

12 Guide to Division 134

13 134-A Keeping of debt account for deferred Division 293 tax

14 134-B Compulsory payment of deferred Division 293 tax liability

15 134-C Notices

### 16 **Guide to Division 134**

#### 17 **134-1 What this Division is about**

18 This Division provides for the keeping and payment of debt  
19 accounts for deferred Division 293 tax.

#### 20 **Subdivision 134-A—Keeping of debt account for deferred** 21 **Division 293 tax**

### 22 **Guide to Subdivision 134-A**

#### 23 **134-5 What this Subdivision is about**

24 The Commissioner keeps debt accounts for deferred Division 293  
25 tax.

26 A debt account is kept for each superannuation interest to which  
27 deferred Division 293 tax is attributable.

28 You can make voluntary payments of the debt account.

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## 1 Table of sections

### 2 Operative provisions

- 3 134-10 Debt account to be kept for deferred Division 293 tax
- 4 134-15 Interest on debt account balance
- 5 134-20 Voluntary payments
- 6 134-25 How the Commissioner applies voluntary payments
- 7 134-30 When the debt account is extinguished

## 8 Operative provisions

### 9 134-10 Debt account to be kept for deferred Division 293 tax

#### 10 *Accounts to be kept*

- 11 (1) The Commissioner is to keep a debt account for \*Division 293 tax  
12 for you for a \*superannuation interest, if a determination under  
13 section 133-60 states that your \*deferred Division 293 tax is  
14 attributable, to an extent, to the superannuation interest.

#### 15 *Account to be debited (and credited) for Division 293 tax*

- 16 (2) The Commissioner must debit, and credit (if required), the debt  
17 account in accordance with the table.

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#### Debiting and crediting of debt account

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Item	Column 1 If the determination is made after making ...	Column 2 the Commissioner must ...	Column 3 by the amount stated in the determination to be the extent to which ...
1	an assessment (other than an amended assessment) of *Division 293 tax payable	debit the debt account	the *assessed Division 293 tax is *deferred Division 293 tax that is attributable to the *superannuation interest
2	an amended assessment that results in extra *assessed Division 293 tax	debit the debt account	the extra assessed Division 293 tax is *deferred Division 293 tax that is attributable to the *superannuation interest
3	an amended assessment that results in reduced *assessed Division 293 tax	credit the debt account	the reduced assessed Division 293 tax is *deferred Division 293 tax that is attributable to the

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## Debiting and crediting of debt account

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Item	Column 1 If the determination is made after making ...	Column 2 the Commissioner must ...	Column 3 by the amount stated in the determination to be the extent to which ...
			*superannuation interest

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Note: The Commissioner also debits the debt account for interest (see subsection 134-15(1)), and credits it for voluntary payments (see section 134-25).

5

### 134-15 Interest on debt account balance

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*Interest to be debited at end of financial year*

7

- (1) If a debt account of yours is in debit at the end of a \*financial year, the Commissioner is to debit the account for interest on the amount by which the account is in debit, calculated at the \*long term bond rate for that financial year.

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*Remission of interest—reduced deferred Division 293 tax*

12

- (2) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, from a debt account under subsection (1) if:

13

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15

- (a) the debt account is credited:

16

17

- (i) in accordance with item 3 of the table in subsection 134-10(2); or

18

19

- (ii) because of a variation or revocation of a determination under section 133-60; and

20

21

- (b) the Commissioner is satisfied that, because of that credit, it would be fair and reasonable to do so.

22

*Remission of interest—special circumstances*

23

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26

- (3) The Commissioner may remit the whole or any part of an amount of interest debited, or to be debited, to a debt account under subsection (1) if the Commissioner is satisfied that, because special circumstances exist, it would be fair and reasonable to do so.

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## 134-20 Voluntary payments

You may make payments to the Commissioner for the purpose of reducing the amount by which a debt account for a \*superannuation interest is in debit.

## 134-25 How the Commissioner applies voluntary payments

If you make a payment under section 134-20, the Commissioner is to:

- (a) acknowledge receipt of the payment to you; and
- (b) credit the payment to the debt account; and
- (c) notify you of the revised balance of the debt account.

The credit mentioned in paragraph (b) is to be made when the payment is received.

## 134-30 When the debt account is extinguished

The Commissioner is to extinguish the debt account when you become liable to pay your \*debt for deferred Division 293 tax.

## Subdivision 134-B—Compulsory payment of deferred Division 293 tax liability

### Guide to Subdivision 134-B

#### 134-55 What this Subdivision is about

The debt account must be paid when a superannuation benefit becomes payable from the superannuation interest.

In some cases, the amount that must be paid is capped.

### Table of sections

#### Operative provisions

134-60	Liability to pay deferred amounts
134-65	Your <i>debt for deferred Division 293 tax</i>
134-70	When debt for deferred Division 293 tax must be paid
134-75	General interest charge

# EXPOSURE-DRAFT

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## 1 Operative provisions

### 2 134-60 Liability to pay deferred amounts

3 (1) If:

4 (a) the Commissioner keeps a debt account for you for a  
5 \*superannuation interest; and

6 (b) the \*Division 293 end benefit for the interest becomes  
7 payable;

8 you are liable to pay the amount of your \*debt for deferred  
9 Division 293 tax for the interest.

10 Note: A release authority allows money to be released from the  
11 superannuation plan to pay this amount: see item 5 of the table in  
12 section 135-10.

#### 13 *Meaning of Division 293 end benefit*

14 (2) A \*superannuation benefit is the *Division 293 end benefit* for a  
15 \*superannuation interest if it is the first superannuation benefit to  
16 become payable from the interest, disregarding a benefit that is any  
17 of the following:

18 (a) a \*roll-over superannuation benefit paid to a \*complying  
19 superannuation plan that is a \*successor fund;

20 (b) a benefit that becomes payable under the condition of release  
21 specified in item 105 of the table in Schedule 1 to the  
22 *Superannuation Industry (Supervisory) Regulations 1994*  
23 (about severe financial hardship);

24 (c) a benefit that becomes payable under the condition of release  
25 specified in item 107 of that table (about compassionate  
26 ground);

27 (d) a superannuation benefit paid in relation to a release authority  
28 issued to you in accordance with Subdivision 135-A.

### 29 134-65 Your debt for deferred Division 293 tax

30 (1) Your *debt for deferred Division 293 tax* for a \*superannuation  
31 interest for which the Commissioner keeps a debt account for you  
32 is the lesser of:

33 (a) the amount by which the debt account is in debit at the earlier  
34 of:

35 (i) the time the \*Division 293 end benefit for the  
36 superannuation interest is paid; and

37 (ii) the time a notice under section 134-120 is made; and

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1 (b) the amount (the *end benefit cap*) that is 15% of the  
2 employer-financed component of any part of the \*value of the  
3 superannuation interest that accrued after 1 July 2012.

4 (2) For the purposes of paragraph (1)(b), the \*value of the  
5 \*superannuation interest is to be worked out at the end of the  
6 \*financial year before the financial year in which the \*Division 293  
7 end benefit becomes payable.

8 (3) If requested by the Commissioner, the \*superannuation provider in  
9 relation to a \*superannuation interest must give the Commissioner  
10 notice of the end benefit cap for the interest:

11 (a) in the \*approved form; and

12 (b) within 7 days of the Commissioner making the request.

13 Note: A person may make a complaint to the Superannuation Complaints  
14 Tribunal under section 15CA of the *Superannuation (Resolution of  
15 Complaints) Act 1993* if the person is dissatisfied with notice given to  
16 the Commissioner under this subsection.

## 17 **134-70 When debt for deferred Division 293 tax must be paid**

18 The amount of your \*debt for deferred Division 293 tax for a  
19 \*superannuation interest is due and payable at the end of 21 days  
20 after the day on which the \*Division 293 end benefit is paid.

## 21 **134-75 General interest charge**

22 If your \*debt for deferred Division 293 tax remains unpaid after the  
23 time by which it is due and payable, you are liable to pay the  
24 \*general interest charge on the unpaid amount for each day in the  
25 period that:

26 (a) starts at the beginning of the day on which the debt for  
27 deferred Division 293 tax was due to be paid; and

28 (b) ends at the end of the last day on which, at the end of the day,  
29 any of the following remains unpaid:

30 (i) the debt for deferred Division 293 tax;

31 (ii) general interest charge on any of the debt for deferred  
32 Division 293 tax.

33 Note: The general interest charge is worked out under Part IIA of this Act.

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## 1 Subdivision 134-C—Notices

### 2 Guide to Subdivision 134-C

#### 3 134-100 What this Subdivision is about

4 This Subdivision provides for the giving of notices in relation to  
5 the debt account.

#### 6 Table of sections

##### 7 Notice upon creation of debt account

8 134-105 Commissioner must notify superannuation provider of debt account

##### 9 Notifying Commissioner of request for final superannuation benefit

10 134-110 You must notify Commissioner

11 134-115 Superannuation provider must notify Commissioner

##### 12 Notice of your debt for deferred Division 293 tax

13 134-120 Notice of debt for deferred Division 293 tax

#### 14 Notice upon creation of debt account

##### 15 134-105 Commissioner must notify superannuation provider of debt 16 account

17 If the Commissioner starts to keep a debt account for \*Division 293  
18 tax for you for a \*superannuation interest, the Commissioner must  
19 give the \*superannuation provider in relation to the superannuation  
20 interest a notice saying so.

##### 21 Notifying Commissioner of request for final superannuation 22 benefit

##### 23 134-110 You must notify Commissioner

24 (1) If:

- 25 (a) you request a \*superannuation provider to pay a  
26 \*superannuation benefit from a \*superannuation interest held  
27 for you; and  
28 (b) the Commissioner keeps a debt account in relation to the  
29 superannuation interest; and

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1 (c) if that benefit were to become payable, it would be the  
2 \*Division 293 end benefit for the superannuation interest;  
3 you must give the Commissioner a notice stating that you have  
4 requested the superannuation benefit.

5 (2) The notice must be given:

6 (a) in the \*approved form; and

7 (b) on or before the day the \*Division 293 end benefit for the  
8 \*superannuation interest becomes payable.

9 (3) If you become aware of a material change or material omission in  
10 any information given to the Commissioner in a notice under  
11 subsection (1), you must:

12 (a) tell the Commissioner of the change in the \*approved form;  
13 or

14 (b) give the omitted information to the Commissioner in the  
15 approved form.

16 (4) Information required by subsection (3) must be given no later than  
17 7 days after you become aware of the change or omission.

## 18 **134-115 Superannuation provider must notify Commissioner**

19 (1) If:

20 (a) an individual requests a \*superannuation provider to pay a  
21 \*superannuation benefit from a \*superannuation interest held  
22 for the individual; and

23 (b) the Commissioner has given the superannuation provider a  
24 notice under section 134-105, saying that the Commissioner  
25 has started to keep a debt account in relation to the  
26 superannuation interest; and

27 (c) if that benefit were to become payable, it would be the  
28 \*Division 293 end benefit for the superannuation interest;  
29 the superannuation provider must give the Commissioner a notice  
30 under this section.

31 (2) The notice must state:

32 (a) that the individual has requested the \*superannuation benefit;  
33 and

34 (b) the amount of the end benefit cap mentioned in  
35 paragraph 134-65(1)(b) for the \*superannuation interest; and

36 (c) the expected date of payment of the benefit.

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1 Note: A person may make a complaint to the Superannuation Complaints  
2 Tribunal under section 15CA of the *Superannuation (Resolution of*  
3 *Complaints) Act 1993* if the person is dissatisfied with notice given to  
4 the Commissioner under this section.

- 5 (3) The notice must be given:
- 6 (a) in the \*approved form; and
- 7 (b) within 14 days of the \*superannuation provider receiving the  
8 request to pay the \*superannuation benefit.
- 9 (4) If the \*superannuation provider becomes aware of a material  
10 change or material omission in any information given to the  
11 Commissioner in a notice under subsection (1), the superannuation  
12 provider must:
- 13 (a) tell the Commissioner of the change in the \*approved form;  
14 or
- 15 (b) give the omitted information to the Commissioner in the  
16 approved form.
- 17 (5) Information required by subsection (4) must be given no later than  
18 7 days after the \*superannuation provider becomes aware of the  
19 change or omission.

## 20 **Notice of your debt for deferred Division 293 tax**

### 21 **134-120 Notice of debt for deferred Division 293 tax**

- 22 (1) If the \*Division 293 end benefit becomes payable from a  
23 \*superannuation interest for which the Commissioner keeps a debt  
24 account for you, the Commissioner must give you a notice under  
25 this section.
- 26 (2) The notice must state that you are liable to pay your \*debt for  
27 deferred Division 293 tax and specify:
- 28 (a) the amount of your debt for deferred Division 293 tax; and
- 29 (b) the day on which your debt for deferred Division 293 tax is  
30 due and payable; and
- 31 (c) whether the amount of your debt for deferred Division 293  
32 tax is:
- 33 (i) the amount by which the debt account is in debit at the  
34 time mentioned in paragraph 134-65(1)(a); or
- 35 (ii) the end benefit cap.

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1 (3) If you are dissatisfied with a notice given under this section in  
2 relation to you, you may object against it in the manner set out in  
3 Part IVC of this Act.

4 (4) However, you cannot object under subsection (3) of this section  
5 against a notice stating that the amount you are liable to pay is the  
6 amount by which the debt account is in debit, unless you are  
7 seeking to be liable to pay the end benefit cap.

## 8 **Division 135—Releasing money from superannuation to** 9 **pay Division 293 tax amounts**

### 10 **Table of Subdivisions**

11 Guide to Division 135

12 135-A When the Commissioner must issue a release authority

13 135-B When a release authority can be given to a superannuation  
14 provider

15 135-C Release of superannuation money under a release authority

### 16 **Guide to Division 135**

#### 17 **135-1 What this Division is about**

18 This Division contains rules about release authorities, which allow  
19 money to be released from a superannuation plan to pay amounts  
20 relating to the Division 293 tax.

#### 21 **Subdivision 135-A—When the Commissioner must issue a** 22 **release authority**

### 23 **Guide to Subdivision 135-A**

#### 24 **135-5 What this Subdivision is about**

25 The Commissioner must issue you with a release authority to allow  
26 money to be released from a superannuation plan to:

- 27 (a) pay assessed Division 293 tax that is due and  
28 payable (items 1 and 2 of the table in  
29 section 135-10); and

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	(b) make voluntary payments in reduction of a debt account (items 3 and 4 of the table); and
	(c) pay your debt for deferred Division 293 tax (item 5 of the table).

## Table of sections

### Operative provisions

- 135-10 Release authority for Division 293 tax
- 135-15 Requirements for release authority
- 135-20 Commissioner may issue another release authority

## Operative provisions

### 135-10 Release authority for Division 293 tax

(1) The Commissioner must issue you with a release authority in accordance with the table as soon as practicable after the event mentioned in column 1 of the table.

#### Release authorities for Division 293 tax

Item	Column 1 If this event occurs ...	Column 2 the Commissioner must issue ...	Column 3 for this amount (the issued amount):
1	an assessment (other than an amended assessment) of an amount of *Division 293 tax payable is made	a release authority	so much of the *assessed Division 293 tax as is due and payable in accordance with subsection 293-65(1) of the <i>Income Tax Assessment Act 1997</i> .
2	an amended assessment resulting in extra *assessed Division 293 tax is made	a release authority	so much of the extra *assessed Division 293 tax as is due and payable in accordance with subsection 293-70(1) of the <i>Income Tax Assessment Act 1997</i> .
3	a determination under section 133-60 (about deferred Division 293 tax)	one release authority for each *superannuation	so much of the *assessed Division 293 tax as is stated in the determination

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**Release authorities for Division 293 tax**

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<b>Item</b>	<b>Column 1 If this event occurs ...</b>	<b>Column 2 the Commissioner must issue ...</b>	<b>Column 3 for this amount (the issued amount):</b>
	is made, after making an assessment (other than an amended assessment) of an amount of *Division 293 tax payable	interest identified in the determination	to be *deferred Division 293 tax that is attributable to the *superannuation interest.
4	a determination under section 133-60 (about deferred Division 293 tax) is made, after making an amended assessment that results in extra *assessed Division 293 tax	one release authority for each *superannuation interest to which the *deferred Division 293 tax is stated to be attributable	so much of the extra *assessed Division 293 tax as is stated in the determination to be *deferred Division 293 tax that is attributable to the *superannuation interest.
5	a notice under section 134-120 (about notice of debt for deferred Division 293 tax) is given	a release authority	the amount of your debt for deferred Division 293 tax specified in the notice.

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Note: A release authority issued under item 5 of the table can only be given to the superannuation provider that holds the superannuation interest to which the debt account relates: see subsection 135-50(3).

5

- (2) However, the Commissioner is not required to issue a release authority if the issued amount of the release authority mentioned in column 3 of the table in subsection (1) would be nil.

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## **135-15 Requirements for release authority**

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A release authority must:

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- (a) state the issued amount of the release authority mentioned in column 3 of the table in subsection 135-10(1); and

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- (b) be dated; and

13

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- (c) contain any other information that the Commissioner considers relevant.

15

## **135-20 Commissioner may issue another release authority**

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- (1) The Commissioner may issue another release authority to an individual to whom a release authority was previously issued, if the

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1 Commissioner is satisfied that it is reasonable in the circumstances  
2 to do so.

3 (2) The release authority:

4 (a) may be identical to, or different from, the previous release  
5 authority; and

6 (b) may be dated with the date of the previous release authority,  
7 or with a different date; and

8 (c) may be issued for the same amount as, or a lesser amount  
9 than, the previous release authority.

10 (3) If the release authority is issued for a lesser amount than the  
11 previous release authority:

12 (a) section 135-95 (about the amount to be paid under a release  
13 authority) has effect as if that lesser amount was the issued  
14 amount of the release authority mentioned in column 3 of the  
15 table in subsection 135-10(1); and

16 (b) section 304-20 of the *Income Tax Assessment Act 1997*  
17 (about income tax treatment of excess payments from release  
18 authorities) has effect as if the greater original amount was  
19 the issued amount of the release authority mentioned in  
20 column 3 of that table.

## 21 **Subdivision 135-B—When a release authority can be given to a** 22 **superannuation provider**

### 23 **Guide to Subdivision 135-B**

#### 24 **135-45 What this Subdivision is about**

25 You may give a release authority to a superannuation provider  
26 within 120 days of being issued with it.

27 The Commissioner may give the release authority to a  
28 superannuation provider if you fail to pay assessed Division 293  
29 tax that is due and payable within 120 days of the release authority  
30 being issued.

### 31 **Table of sections**

#### 32 **Operative provisions**

33 135-50 When you may give release authority to superannuation provider

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135-55 When Commissioner may give release authority to superannuation provider

## Operative provisions

### 135-50 When you may give release authority to superannuation provider

- (1) You may give the release authority to a \*superannuation provider that holds a \*superannuation interest for you within 120 days after the date of the release authority.

Note 1: No payment may be made from a defined benefit interest unless the release authority is issued under item 5 of the table in subsection 135-10(1) (about debt for deferred Division 293 tax): see section 135-105.

Note 2: If excess amounts are paid in relation to a release authority:

- (a) the excess is assessable income (see section 304-20 of the *Income Tax Assessment Act 1997*); and
- (b) you are liable to an administrative penalty (see section 288-100 in this Schedule).

- (2) You may request the \*superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note: For the amount that the provider pays under a release authority, see section 135-95.

- (3) However, you may only give a release authority issued under item 5 of the table in subsection 135-10(1) (for debt for deferred Division 293 tax) to the \*superannuation provider that holds the \*superannuation interest to which the debt account relates.

### 135-55 When Commissioner may give release authority to superannuation provider

- (1) The Commissioner may, at any time, give a release authority issued under item 1 or 2 of the table in subsection 135-10(1) to one or more \*superannuation providers that hold a \*superannuation interest for you, if at the end of 120 days after the date of the release authority:

(a) some or all of the \*assessed Division 293 tax that is due and payable in accordance with subsection 293-65(1) or 293-70(1) (as the case requires) is unpaid; and

(b) the Commissioner reasonably believes any of the following:

(i) that you have not given the release authority to a superannuation provider that holds a superannuation interest for you in accordance with section 135-50;

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- 1 (ii) that you have given the release authority to one or more  
2 superannuation providers in accordance with that  
3 section, but that the sum of the amounts to be paid by  
4 the providers under those release authorities falls short  
5 of the amount of your assessed Division 293 tax;
- 6 (iii) that the total of the \*values of every superannuation  
7 interest (other than a \*defined benefit interest) held for  
8 you by superannuation providers to which the release  
9 authority has been given falls short of the amount of  
10 your assessed Division 293 tax.

11 Note: No payment may be made from a defined benefit interest: see  
12 section 135-105.

- 13 (2) The Commissioner may request the \*superannuation provider, in  
14 writing, to pay a specified amount in relation to the release  
15 authority.

16 Note: For the amount that the provider pays under a release authority, see  
17 section 135-95.

## 18 **Subdivision 135-C—Release of superannuation money under a** 19 **release authority**

### 20 **Guide to Subdivision 135-C**

#### 21 **135-80 What this Subdivision is about**

22 This Subdivision sets out a general requirement for a  
23 superannuation provider to comply with a release authority.

24 The Subdivision also includes provisions about how much must be  
25 paid, who it must be paid to, which interest it is to be paid from,  
26 and how the payments are treated by the Commissioner.

#### 27 **Table of sections**

28 <b>Operative provisions</b>	
29 135-85	Requirement for superannuation provider to release money
30 135-90	Compensation for acquisition of property
31 135-95	Release amount
32 135-100	How the Commissioner applies amounts received under a release authority
33 135-105	Modification for defined benefit interests
34 135-110	Income tax treatment of amounts released—proportioning rule does not 35 apply

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## Operative provisions

### 135-85 Requirement for superannuation provider to release money

(1) If:

(a) a \*superannuation provider has been given a release authority in accordance with Subdivision 135-B; and

(b) the amount mentioned in section 135-95 (the *release amount*) is greater than nil;

the superannuation provider must pay the release amount within 30 days after receiving the release authority.

*Who superannuation provider pays the amount to*

(2) The release amount must be paid to the Commissioner.

(3) However, if the release authority was:

(a) issued under item 1 or 2 of the table in section 135-10 (about assessment of Division 293 tax); and

(b) given to the \*superannuation provider by the individual under section 135-50;

the release amount may be paid to the individual.

Note 1: Section 288-95 provides for an administrative penalty for failing to comply with this section.

Note 2: For the taxation treatment of the payment, see sections 303-20 and 304-20 of the *Income Tax Assessment Act 1997*.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in this Schedule.

*Which superannuation interest the amount is to be paid from*

(4) The payment must be made out of one or more \*superannuation interests held by the \*superannuation provider for the individual.

Note: There is a modification for defined benefit interests: see section 135-105.

### 135-90 Compensation for acquisition of property

(1) If the operation of section 135-85 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from an entity otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the entity.

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- 1 (2) If the Commonwealth and the entity do not agree on the amount of  
2 the compensation, the entity may institute proceedings in a court of  
3 competent jurisdiction for the recovery from the Commonwealth of  
4 such reasonable amount of compensation as the court determines.

## 5 **135-95 Release amount**

- 6 (1) The amount is the least of the following amounts:  
7 (a) the issued amount of the release authority mentioned in  
8 column 3 of the table in subsection 135-10(1);  
9 (b) if the individual or Commissioner requests the  
10 \*superannuation provider, in writing, to pay a specified  
11 amount in relation to the release authority—that amount;  
12 (c) the sum of the amounts covered by subsection (2) for each  
13 \*superannuation interest held by the superannuation provider  
14 for the individual in a \*superannuation plan.

15 Note: Paragraph (c) generally does not include the value of defined benefit  
16 interests: see section 135-105.

- 17 (2) The amount covered by this subsection for a \*superannuation  
18 interest at a particular time is the total amount of all the  
19 \*superannuation lump sums that could be payable from the interest  
20 at that time.

## 21 **135-100 How the Commissioner applies amounts received under a** 22 **release authority**

- 23 (1) If the Commissioner receives a payment under a release authority,  
24 it is taken for the purposes of Part IIB to have been received in  
25 respect of a current or anticipated tax debt of the individual.

26 Note: Part IIB is about running balance accounts and the application of  
27 payments and credits.

### 28 *Exception for voluntary payments of Division 293 tax debt account*

- 29 (2) However, if the Commissioner receives the payment under a  
30 release authority issued under item 3 or 4 of the table in  
31 subsection 135-10(1) in respect of a \*superannuation interest, the  
32 payment is to be treated in the same way as a payment made by the  
33 individual for the purpose of reducing the amount by which the  
34 debt account for that superannuation interest is in debit.

35 Note: For how the Commissioner treats such payments, see sections 134-20  
36 and 134-25.

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*Commissioner to notify individual if payment received*

- (3) If:
- (a) the release authority was given by the Commissioner in accordance with section 135-55; and
  - (b) the payment is made to the Commissioner;
- the Commissioner must, as soon as possible, give the individual written notice that the payment has been made.

## **135-105 Modification for defined benefit interests**

*No payment from defined benefit interest*

- (1) Despite subsection 135-85(4) and section 135-95:
- (a) the payment is not to be made out of a \*defined benefit interest; and
  - (b) defined benefit interests are to be disregarded in working out the sum mentioned in paragraph 135-95(1)(c).

*Exception for debt for deferred Division 293 tax*

- (2) This section does not apply to a release authority issued under item 5 of the table in subsection 135-10(1) (about debt for deferred Division 293 tax).

## **135-110 Income tax treatment of amounts released—proportioning rule does not apply**

Section 307-125 of the *Income Tax Assessment Act 1997* (the proportioning rule) does not apply to a payment made as required or permitted under this Division.

Note: Further provisions about the income tax treatment of amounts released are in sections 303-20 and 304-20 of the *Income Tax Assessment Act 1997*.

## **3 At the end of subsection 155-5(2) in Schedule 1**

Add:

- ; (f) an amount of \*Division 293 tax payable for an income year in relation to an individual's \*Division 293 taxable contributions for the income year.

## **4 At the end of subsection 155-15(1) in Schedule 1**

Add:

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1 Note: There is no self-assessment of Division 293 tax.

## 2 **5 Subsection 155-30(3) in Schedule 1**

3 Repeal the subsection, substitute:

- 4 (3) This section does not apply to the following \*assessable amounts:
- 5 (a) the \*MRRT payable by you for an \*MRRT year in relation to
- 6 your \*taxable mining profit for the MRRT year;
- 7 (b) the \*Division 293 tax payable by you in relation to an income
- 8 year in relation to your \*Division 293 taxable contributions
- 9 for the income year.

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1 **Part 2—Other amendments**

2 *Income Tax Assessment Act 1997*

3 **6 Section 10-5 (table item headed “superannuation”)**

4 After:  
refunded excess concessional contributions ..... 292-467(2)(a)

5 insert:  
release authorities, payments from ..... 304-15(4)  
304-20

6 **7 Section 11-55 (table item headed “superannuation”)**

7 Omit:  
release authorities, payments from ..... 304-15

8 substitute:  
release authorities, payments from..... 303-20  
304-15

9 **8 At the end of Division 303**

10 Add:

11 **303-20 Payments from release authorities—Division 293 tax**

12 A \*superannuation benefit that you receive (or are taken to  
13 receive), paid in relation to a release authority issued to you in  
14 accordance with Subdivision 135-A in Schedule 1 to the *Taxation*  
15 *Administration Act 1953*, is not assessable income and is not  
16 \*exempt income.

17 Note: However, payments that exceed the issued amount of a release  
18 authority are assessable: see section 304-20.

19 **9 At the end of Division 304**

20 Add:

21 **304-20 Excess payments from release authorities—Division 293 tax**

22 (1) Despite section 303-20, a \*superannuation benefit that you receive  
23 (or are taken to receive), paid in relation to a release authority  
24 issued to you in accordance with Subdivision 135-A in Schedule 1  
25 to the *Taxation Administration Act 1953*, is assessable income to

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1 the extent (if any) that it exceeds the amount worked out under  
2 subsection (2).

3 Note: Section 303-20 makes superannuation benefits paid under a release  
4 authority non-assessable non-exempt income.

- 5 (2) The amount is the issued amount of the release authority  
6 mentioned in column 3 of the table in subsection 135-10(1) in  
7 Schedule 1 to the *Taxation Administration Act 1953*, reduced (but  
8 not below zero) by the amount of any \*superannuation benefit that  
9 was not assessable income and not \*exempt income under a  
10 previous operation of section 303-20 of this Act in relation to the  
11 release authority.

## 12 **10 Subsection 995-1(1)**

13 Insert:

14 *assessed Division 293 tax* means \*Division 293 tax, as assessed  
15 under Schedule 1 to the *Taxation Administration Act 1953*.

16 *debt for deferred Division 293 tax* has the meaning given by  
17 section 134-65 in Schedule 1 to the *Taxation Administration Act*  
18 *1953*.

19 *deferred Division 293 tax* has the meaning given by section 133-10  
20 in Schedule 1 to the *Taxation Administration Act 1953*.

21 *defined benefit contributions* has the meaning given by  
22 section 293-115.

23 *defined benefit Division 293 tax* has the meaning given by  
24 section 133-20 in Schedule 1 to the *Taxation Administration Act*  
25 *1953*.

26 *Division 293 end benefit* has the meaning given by  
27 subsection 134-60(2) in Schedule 1 to the *Taxation Administration*  
28 *Act 1953*.

29 *Division 293 tax* means tax imposed by the *Superannuation*  
30 *(Sustaining the Superannuation Contribution Concession)*  
31 *Imposition Act 2013*.

32 *Division 293 taxable contributions* has the meaning given by  
33 section 293-20.

34 *Division 293 tax law* means:

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- 1 (a) the *Income Tax Assessment Act 1997*, so far as it relates to  
2 the \*Division 293 tax; and  
3 (b) any Act that imposes Division 293 tax; and  
4 (c) the *Taxation Administration Act 1953*, so far as it relates to  
5 any Act covered by paragraphs (a) and (b) (or to so much of  
6 that Act as is covered); and  
7 (d) any other Act, so far as it relates to any Act covered by  
8 paragraphs (a) to (c) (or to so much of that Act as is covered);  
9 and  
10 (e) regulations and other legislative instruments under an Act, so  
11 far as they relate to any Act covered by paragraphs (a) to (d)  
12 (or to so much of that Act as is covered).

13 *low tax contributions* has the meaning given by sections 293-25  
14 and 293-105.

## 15 ***Superannuation (Resolution of Complaints) Act 1993***

### 16 **11 Paragraph 15CA(1)(c)**

17 Repeal the paragraph, substitute:

- 18 (ba) subsection 134-65(3) in Schedule 1 to the *Taxation*  
19 *Administration Act 1953*; or  
20 (bb) section 134-115 in that Schedule; or  
21 (c) section 390-5 in that Schedule;

### 22 **12 Paragraph 15CA(2)(c)**

23 Repeal the paragraph, substitute:

- 24 (ba) subsection 134-65(3) in Schedule 1 to the *Taxation*  
25 *Administration Act 1953*; or  
26 (bb) section 134-115 in that Schedule; or  
27 (c) section 390-5 in that Schedule;

## 28 ***Taxation Administration Act 1953***

### 29 **13 Subsection 8AAB(4) (after table item 15)**

30 Insert:

15A	293-75	<i>Income Tax Assessment Act</i> <i>1997</i>	payment of Division 293 tax or shortfall interest charge
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## 14 Subsection 8AAB(4) (after table item 45B)

Insert:

45C	134-75 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of debt for deferred Division 293 tax
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## 15 At the end of subsection 155-90(1) in Schedule 1

Add:

Note: An individual may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule.

## 16 Subsection 250-10(2) in Schedule 1 (after table item 37)

Insert:

37AA	shortfall interest charge on income tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AB	shortfall interest charge on excess contributions tax	5-10	<i>Income Tax Assessment Act 1997</i>
37AC	shortfall interest charge on Division 293 tax	5-10	<i>Income Tax Assessment Act 1997</i>

## 17 Subsection 250-10(2) in Schedule 1 (after table item 38BA)

Insert:

38BB	Division 293 tax	293-65 and 293-70	<i>Income Tax Assessment Act 1997</i>
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## 18 Subsection 250-10(2) in Schedule 1 (after table item 40)

Insert:

41	shortfall interest charge on petroleum resource rent tax	82	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
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## 19 Subsection 250-10(2) in Schedule 1 (table item 73)

Repeal the item.

## 20 Subsection 250-10(2) in Schedule 1 (after table item 136)

Insert:

136A	debt for deferred Division 293 tax	134-60 in Schedule 1	<i>Taxation Administration Act 1953</i>
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## 21 Section 280-1 in Schedule 1

Omit “or excess contributions tax”, substitute “, excess contributions tax or Division 293 tax”.

## 22 Section 280-50 in Schedule 1

Omit “or \*excess contributions tax”, substitute “, \*excess contributions tax or \*Division 293 tax”.

## 23 After section 280-102A in Schedule 1

Insert:

### 280-102B Liability to shortfall interest charge—Division 293 tax

- (1) You are liable to pay \*shortfall interest charge on an additional amount of \*Division 293 tax that you are liable to pay because the Commissioner amends your assessment of an amount of Division 293 tax payable in relation to an income year.
- (2) However, subsection (1) does not apply to the extent the additional amount of \*Division 293 tax is stated in a determination under section 133-60 in this Schedule to be \*deferred Division 293 tax.
- (3) The liability is for each day in the period:
  - (a) beginning at the start of the day on which \*Division 293 tax under your first assessment of Division 293 tax for that income year was due to be paid; and
  - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.
- (4) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which \*Division 293 tax under the earlier amended assessment was due to be paid.

Note 1: See section 5-10 of the *Income Tax Assessment Act 1997* for when the amount of shortfall interest charge becomes due and payable.

Note 2: See Subdivision 293-C of that Act for when the amount of assessed Division 293 tax becomes due and payable. That Subdivision also provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

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**24 Paragraph 280-105(1)(a) in Schedule 1**

Omit “or \*excess contributions tax”, substitute “, \*excess contributions tax or \*Division 293 tax,”.

**25 Subsection 280-110(1) in Schedule 1**

Omit “or 280-102A”, substitute “, 280-102A or 280-102B”.

**26 Section 280-170 in Schedule 1**

Omit “or \*excess contributions tax”, substitute “, \*excess contributions tax or \*Division 293 tax,”.

**27 At the end of section 288-95 in Schedule 1**

Add:

- (4) A \*superannuation provider that fails to comply with section 135-85 (about release authorities for Division 293 tax) is liable to an administrative penalty of 20 penalty units.

**28 Section 288-100 in Schedule 1**

Before “A person”, insert “(1)”.

**29 At the end of section 288-100 in Schedule 1**

Add:

- (2) An individual is liable to an administrative penalty of 20 penalty units if one or more \*superannuation benefits that the individual receives (or is taken to receive), paid in relation to a release authority issued in accordance with Subdivision 135-A in this Schedule, is assessable income to any extent.

**30 At the end of section 350-5 in Schedule 1**

Add:

; (c) the \*Division 293 tax law.

**31 After subparagraph 353-10(1)(a)(ii) in Schedule 1**

Insert:

(ia) the \*Division 293 tax law; or

**32 After subparagraphs 353-10(1)(b)(ii) and (c)(ii) in Schedule 1**

Insert:

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1 (ia) the Division 293 tax law; or

2 **33 Section 353-15 in Schedule 1 (heading)**

3 Omit “and the MRRT law”, substitute “, the MRRT law and the  
4 Division 293 tax law”.

5 **34 Subsection 353-15(1) in Schedule 1**

6 Omit “or the \*MRRT law”, substitute “, the \*MRRT law or the  
7 \*Division 293 tax law”.

8 **35 At the end of subsection 390-5(9A) in Schedule 1**

9 Add:

10 ; (d) \*defined benefit contributions in relation to a \*defined benefit  
11 interest in the superannuation plan.

12 **36 Paragraph 390-65(1)(a) in Schedule 1**

13 Repeal the paragraph, substitute:

14 (a) been given a release authority in accordance with:

15 (i) section 292-410 of the *Income Tax Assessment Act*  
16 *1997*; or

17 (ii) section 292-80B of the *Income Tax (Transitional*  
18 *Provisions) Act 1997*; or

19 (iii) Subdivision 135-B in this Schedule; and

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1 **Part 3—Application and transitional provisions**

2 **37 Application**

3 (1) Subject to this item, the amendments made by Parts 1 and 2 of this  
4 Schedule apply to the 2012-13 income year and later income years.

5 (2) Subitem 1 does not apply to item 1 of this Schedule.

6 Note: For the application of Division 293 of the *Income Tax Assessment Act 1997*, as inserted  
7 by item 1, see Division 293 of the *Income Tax (Transitional Provisions) Act 1997*.

8 *No retrospective administrative penalty*

9 (3) Despite subitem (1), the amendments made by this Schedule do not give  
10 rise to a liability to an administrative penalty under section 286-75 in  
11 Schedule 1 to the *Taxation Administration Act 1953* for failing to do a  
12 thing by a particular day, if the day is before the day this Act receives  
13 the Royal Assent.

14 *Modification for certain notice provisions*

15 (4) Despite subitem (1), section 134-105 in Schedule 1 to the *Taxation*  
16 *Administration Act 1953*, as inserted by this Schedule, does not require  
17 the Commissioner to give a notice before 1 July 2014.

18 ***Income Tax (Transitional Provisions) Act 1997***

19 **38 After Division 292**

20 Insert:

21 **Division 293—Sustaining the superannuation contribution**  
22 **concession**

23 **Table of Subdivisions**

24 293-A Application of Division 293 tax rules

25 **Subdivision 293-A—Application of Division 293 tax rules**

26 **Table of sections**

27 293-10 Application of Division 293 of the *Income Tax Assessment Act 1997*

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1 **293-10 Application of Division 293 of the *Income Tax Assessment Act***  
2 ***1997***

3 Division 293 of the *Income Tax Assessment Act 1997* applies to the  
4 2012-13 income year and later income years.