

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for a later sitting) Bill 2022: Taxation of
military superannuation benefits**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule X	The day after this Act receives the Royal Assent.	

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Schedule X—Taxation of military superannuation benefits

Income Tax Assessment (1997 Act) Regulations 2021

1 After paragraph 307-70.02(1)(b)

Insert:

- (ba) an income stream in respect of which these conditions are satisfied:
 - (i) the income stream is a defined benefit pension within the meaning of regulation 1.03 of the SIS Regulations; and
 - (ii) the income stream commenced on or after 20 September 2007; and
 - (iii) the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations), or an exempt public sector superannuation scheme (within the meaning of the SIS Act); and
 - (iv) if the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations) that is not a public sector superannuation scheme—the fund or scheme has more than 6 members; and
 - (v) the income stream is not invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (vi) the income stream is not an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

2 After subsection 307-70.02(1)

Insert:

- (1A) Paragraphs (1)(a) and (ba) do not apply to any of the following:
 - (a) a pension payable under subsection 39(1) of the *Defence Force Retirement and Death Benefits Act 1973* if:
 - (i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to the deceased member mentioned in that subsection; and

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- 1 (ii) that invalidity pay commenced on or after 20 September
2 2007;
- 3 (b) a pension payable under subsection 42(1) of the *Defence*
4 *Force Retirement and Death Benefits Act 1973* if:
- 5 (i) that pension is payable because invalidity pay (within
6 the meaning of that Act) was payable to a member (as
7 mentioned in subsection 42(3)); and
- 8 (ii) that invalidity pay commenced on or after 20 September
9 2007;
- 10 (c) a pension payable under subsection 43(1) of that Act if:
- 11 (i) that pension is payable because invalidity pay (within
12 the meaning of that Act) was payable to a member (as
13 mentioned in subsection 43(3)); and
- 14 (ii) that invalidity pay commenced on or after 20 September
15 2007;
- 16 (d) a pension payable under subrule 42(1) or (3) of the Rules
17 (within the meaning of the *Military Superannuation and*
18 *Benefits Act 1991*) if:
- 19 (i) the deceased retirement pensioner's pension mentioned
20 in that subrule was an invalidity pension (within the
21 meaning of those Rules); and
- 22 (ii) that invalidity pension commenced on or after 20
23 September 2007;
- 24 (e) a pension payable under subrule 46(1) of those Rules if the
25 deceased person's notional pension mentioned in that subrule
26 was a pension covered by paragraph (d).

27 **3 In the appropriate position in Chapter 7**

28 Insert:

29 **Part 1000-3—Transitional matters relating to the** 30 **Treasury Laws Amendment (Measures for** 31 **a later sitting) Act 2022** 32

33 **1000-3.01 Application of amendments**

34 The amendments of section 307-70.02 made by Schedule X to the
35 *Treasury Laws Amendment (Measures for a later sitting) Act 2022*
36 apply in relation to income years starting on or after 1 July 2007.

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1 **4 Application of amendments**

2 Part 1000-3 of the *Income Tax Assessment (1997 Act) Regulations*
3 2021, as inserted by this Schedule, has effect despite subsection 12(2)
4 of the *Legislation Act 2003*.

5 ***Income Tax Assessment Act 1997***

6 **5 Section 13-1 (at the end of the table item headed**
7 **“superannuation”)**

8 Add:
veterans’ invalidity pensions Subdivision 301-F

9 **6 Subsection 63-10(1) (after table item 20)**

10 Insert:

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|----|--|--|
| 21 | *Tax offset under Subdivision 301-F (veterans’ superannuation (invalidity pension) tax offset) | Apply it against your liability (if any) to pay *Medicare levy for the income year.

To the extent that an amount of it remains, apply it against your liability (if any) to pay *Medicare levy (fringe benefits) surcharge for the income year.

To the extent that an amount of it remains, you cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year |
|----|--|--|

12 **7 At the end of Division 301**

13 Add:

14 **Subdivision 301-F—Veterans’ superannuation (invalidity**
15 **pension) tax offset**

16 **Table of sections**

17 301-275 Veterans’ superannuation (invalidity pension) tax offset

18 **301-275 Veterans’ superannuation (invalidity pension) tax offset**

19 (1) You are entitled to a *tax offset for an income year if:

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- 1 (a) you are an individual; and
2 (b) during the income year, you receive one or more
3 *superannuation lump sums that are payments of:
4 (i) invalidity pay within the meaning of the *Defence Force*
5 *Retirement and Death Benefits Act 1973*; or
6 (ii) an invalidity pension under the superannuation scheme
7 established under the *Military Superannuation and*
8 *Benefits Act 1991*; or
9 (iii) a pension mentioned in a paragraph of
10 subsection 307-70.02(1A) of the *Income Tax*
11 *Assessment (1997 Act) Regulations 2021*.
- 12 (2) The amount of your *tax offset is worked out as follows:
13 (a) first, work out the amount by which your basic income tax
14 liability exceeds the total of the amount of your tax offsets (if
15 any) for the income year under:
16 (i) this Division (other than this Subdivision); and
17 (ii) Subdivision AB of Division 17 of Part III of the *Income*
18 *Tax Assessment Act 1936*;
19 (b) next, work out the total of:
20 (i) the amount worked out under paragraph (a); and
21 (ii) the amounts (if any) of *Medicare levy and *Medicare
22 levy (fringe benefits) surcharge you are liable to pay for
23 the income year;
24 (c) next, work out the total of:
25 (i) the amount worked out under paragraph (a); and
26 (ii) the amounts (if any) of Medicare levy and Medicare
27 levy (fringe benefits) surcharge you are liable to pay for
28 the income year;
29 on the assumptions mentioned in subsection (3);
30 (d) next, work out the amount (if any) by which the total worked
31 out under paragraph (b) exceeds the total worked out under
32 paragraph (c).
- 33 (3) For the purposes of paragraph (2)(c), the assumptions are that:
34 (a) each *superannuation lump sum mentioned in
35 paragraph (1)(b) were a *superannuation income stream
36 benefit; and
37 (b) for the purposes of section 307-125 (proportioning rule), the
38 invalidity pay or invalidity pension mentioned in
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paragraph (1)(b) of this section were a *superannuation income stream.

Income Tax (Transitional Provisions) Act 1997

8 At the end of Division 301

Add:

301-90 Application of Subdivision 301-F of the *Income Tax Assessment Act 1997*

Subdivision 301-F of the *Income Tax Assessment Act 1997* applies in relation to income years starting on or after 1 July 2007.

301-95 Amendment of assessments to give effect to Subdivision 301-F of the *Income Tax Assessment Act 1997* etc.

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to the following in respect of an income year that starts on or before 1 July 2020:

- (a) Subdivision 301-F of the *Income Tax Assessment Act 1997*;
- (b) the amendments of the *Income Tax Assessment (1997 Act) Regulations 2021* made by Schedule X to the *Treasury Laws Amendment (Measures for a later sitting) Act 2022*.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.