



Income Tax Assessment Amendment Regulations 2009 (No. 3)

Select Legislative Instrument 2009 No. 177

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1997*.

Dated 9 July 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Financial Services, Superannuation and Corporate
Law

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2009 (No. 3)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 1 amends the *Income Tax Assessment Regulations 1997*.

4 Application of amendments

The amendments made by items [2] and [5] of Schedule 1 apply in relation to the 2007–2008 financial year and to subsequent financial years.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 292-170.05 (7)

omit

subparagraph (5) (a) (i) or (ii)

insert

paragraph (5) (a) or (b)

[2] After subregulation 292-170.05 (7)

insert

(8) If:

(a) a condition mentioned in paragraph (2) (b) or subregulation (3) is not satisfied; and

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- (b) the condition was not satisfied only because:
- (i) the defined benefit member moved to a new benefit category; and
 - (ii) the move was caused by the necessary application of the rules of the superannuation fund that were, or of legislation that was, in force on 5 September 2006; and
 - (iii) the member had no control over the application of the rules or legislation;

the failure to satisfy the condition is to be disregarded in determining if the conditions of this regulation have been satisfied.

[3] Regulation 292-170.06, heading

substitute

**292-170.06 Notional taxed contributions — other conditions
(subparagraph 292-170 (7) (e) (ii) of the Act)**

[4] Subregulation 292-170.06 (1)

omit

paragraph 292-170 (7) (e)

insert

subparagraph 292-170 (7) (e) (ii)

[5] Subregulation 292-170.06 (7)

omit

subparagraph (5) (a) (i) or (ii)

insert

paragraph (5) (a) or (b)

[6] After subregulation 292-170.06 (7)

insert

(8) If:

- (a) a condition mentioned in paragraph (2) (b) or subregulation (3) is not satisfied; and
- (b) the condition was not satisfied only because:
 - (i) the defined benefit member moved to a new benefit category; and
 - (ii) the move was caused by the necessary application of the rules of the superannuation fund that were, or of legislation that was, in force on 5 September 2006; and
 - (iii) the member had no control over the application of the rules or legislation;

the failure to satisfy the condition is to be disregarded in determining if the conditions of this regulation have been satisfied.

[7] After regulation 292-170.06

insert

292-170.07 Notional taxed contributions — other conditions (paragraph 292-170 (8) (d) of the Act)

- (1) For paragraph 292-170 (8) (d) of the Act, this regulation:
 - (a) applies to a superannuation fund if a defined benefit member of the fund is a person to whom subregulation 292-170.02 (2) applies, or is taken to apply; and
 - (b) sets out the conditions that are to be satisfied in relation to establishing whether the defined benefit member's notional taxed contributions for a financial year for a defined benefit interest are equal to the concessional contributions cap for the financial year.

Note Subsection 292-170 (8) of the Act explains when a member's notional taxed contributions for the financial year, in respect of a defined benefit interest, are equal to the concessional contributions cap for the financial year. This includes satisfying conditions specified in the Regulations.

- (2) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
 - (a) has not increased since 12 May 2009; or
 - (b) has increased since 12 May 2009 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (3) A condition is that the method of calculating superannuation salary:
 - (a) has not been changed, in a way that would increase the member's salary, since 12 May 2009; or
 - (b) has changed since 12 May 2009 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) If the rate of superannuation salary has increased, since 12 May 2009, by:
 - (a) more than 50% in 1 year; or
 - (b) more than 75% over 3 years;a condition is that the employer-sponsor advises the trustee that the increase in the rate is on an arm's length basis.
- (5) A condition is that the trustee or employer-sponsor of the superannuation fund has not exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 12 May 2009.
- (6) For subregulation (4), a trustee must notify the Commissioner, in writing, of an increase in the rate of superannuation salary that exceeds the rate specified in paragraph (4) (a) or (b) as soon as practicable after the increase occurs.

- (7) If:
- (a) a condition mentioned in subregulation (2) is not satisfied; and
 - (b) the condition was not satisfied only because:
 - (i) the defined benefit member moved to a new benefit category; and
 - (ii) the move was caused by the necessary application of the rules of the superannuation fund that were, or of legislation that was, in force on 5 September 2006; and
 - (iii) the member had no control over the application of the rules or legislation;

the failure to satisfy the condition is to be disregarded in determining if the conditions of this regulation have been satisfied for the 2009–2010 financial year and subsequent financial years.

292-170.08 Notional taxed contributions — other conditions (subparagraph 292-170 (9) (e) (ii) of the Act)

- (1) For subparagraph 292-170 (9) (e) (ii) of the Act, this regulation:
- (a) applies to a superannuation fund if a defined benefit member of the fund is a person to whom subregulation 292-170.02 (2) applies, or is taken to apply; and
 - (b) sets out the conditions that are to be satisfied in relation to establishing whether notional taxed contributions for a financial year for a defined benefit interest are equal to the concessional contributions cap for the financial year.

Note Subsection 292-170 (9) of the Act explains when a member's notional taxed contributions for the financial year, in respect of a defined benefit interest that has been transferred to another fund, are equal to the concessional contributions cap for the financial year. This includes satisfying conditions specified in the Regulations.

- (2) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
- (a) has not increased since 12 May 2009; or

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- (b) has increased since 12 May 2009 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (3) A condition is that the method of calculating superannuation salary:
- (a) has not been changed, in a way that would increase the salary, since 12 May 2009 or
- (b) has changed since 12 May 2009 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) If the rate of superannuation salary has increased, since 12 May 2009, by:
- (a) more than 50% in 1 year; or
- (b) more than 75% over 3 years;
- a condition is that the employer-sponsor advises the trustee that the increase in the rate is on an arm's length basis.
- (5) A condition is that the trustee or employer-sponsor of the superannuation fund has not exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 12 May 2009.
- (6) For subregulation (4), a trustee must notify the Commissioner, in writing, of an increase in the rate of superannuation salary that exceeds the rate specified in paragraph (4) (a) or (b) as soon as practicable after the increase occurs.
- (7) If:
- (a) a condition mentioned in subregulation (2) is not satisfied; and
- (b) the condition was not satisfied only because:
- (i) the defined benefit member moved to a new benefit category; and

- (ii) the move was caused by the necessary application of the rules of the superannuation fund that were, or of legislation that was, in force on 5 September 2006; and
- (iii) the member had no control over the application of the rules or legislation;

the failure to satisfy the condition is to be disregarded in determining if the conditions of this regulation have been satisfied for the 2009–2010 financial year and subsequent financial years.

[8] Schedule 1A, Part 3, subclause 3.6 (2A)

substitute

(2A) If:

- (a) there has been a transfer of defined benefit members from a predecessor fund into the fund, or a sub-fund of the fund; and
- (b) the actuary considers it reasonable to do so;

the actuary may determine a new entrant age for the fund or sub-fund taking account of the average age of entry used for or relevant for those members in the predecessor fund.

[9] Further amendments — to a notional earnings base

The following provisions are amended by omitting ‘to a notional earnings base’:

- paragraph 292-170.05 (3) (b)
- paragraph 292-170.05 (4) (b)
- paragraph 292-170.06 (3) (b)
- paragraph 292-170.06 (4) (b).