



***TD 2013/13 - Income tax: is a payment by a complying superannuation fund (first fund) to another complying superannuation fund of a superannuation lump sum arising from the full commutation of a superannuation income stream paid to a person as a beneficiary of a deceased member of the first fund, a 'roll-over superannuation benefit' for the purpose of section 306-10 of the Income Tax Assessment Act 1997 ?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 June 2013*



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## Taxation Determination

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Income tax: is a payment by a complying superannuation fund (first fund) to another complying superannuation fund of a superannuation lump sum arising from the full commutation of a superannuation income stream paid to a person as a beneficiary of a deceased member of the first fund, a 'roll-over superannuation benefit' for the purpose of section 306-10 of the *Income Tax Assessment Act 1997*?

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This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### Ruling

1. Yes, a payment by the first fund to another complying superannuation fund of a superannuation lump sum arising from the full commutation of a superannuation income stream paid to a person as a beneficiary of a deceased member of the first fund, is a 'roll-over superannuation benefit' for the purpose of section 306-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) if:

- the person was the spouse of the deceased member at the time of the deceased member's death; and

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- the superannuation lump sum is paid after the latest of the times set out in paragraph 307-5(3)(c) of the ITAA 1997; and
- the Commissioner has not made a decision under subsection 307-5(3A) of the ITAA 1997 that the superannuation lump sum is not a superannuation member benefit under subsection 307-5(3) of the ITAA 1997.

## **Date of effect**

2. This Determination applies from 1 July 2007. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

26 June 2013

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## Appendix 1 – Explanation

① ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

### Explanation

3. When a member of a regulated superannuation fund dies the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) impose certain obligations on the trustee of that regulated superannuation fund in respect of the deceased member's benefits in that fund.

4. Subregulation 6.21(1) of the SIS Regulations provides that:

Subject to subregulation (3), a member's benefits in a regulated superannuation fund must be cashed as soon as practicable after the member dies.

5. Subregulation 6.21(2) of the SIS Regulations prescribes the form in which such benefits may be cashed under regulation 6.21 of the SIS Regulations in respect of each person to whom such benefits are cashed. The benefits may be cashed as a single lump sum or an interim lump sum (up to a certain amount) and a final lump sum and/or, for certain dependant beneficiaries,<sup>1</sup> as one or more pensions or annuities.

6. Where the trustee has cashed the deceased member's benefits to a beneficiary in the form of a pension, the beneficiary may, subject to the SIS Regulations, the rules of the pension and the governing rules of the regulated superannuation fund, be entitled to commute the pension in full. If the trustee were to pay the resulting commutation payment to the trustee of another complying superannuation fund, a question arises as to whether the payment to that other fund is a roll-over superannuation benefit for the purposes of the ITAA 1997.

7. Where the pension is commuted in full the trustee no longer has a liability to pay superannuation income stream benefits, as the liability to pay superannuation income stream benefits has been substituted by a liability to instead pay a lump sum. The lump sum would be a superannuation benefit and a superannuation lump sum<sup>2</sup> as it is not a payment from a superannuation interest that supports a superannuation income stream.<sup>3</sup>

8. But for any application of subsection 307-5(3) of the ITAA 1997, the superannuation lump sum would be a superannuation death benefit as it is a payment described in column 3 of item 1 of the table in subsection 307-5(1) of the ITAA 1997.<sup>4</sup> This is because the payment would be:

- taken to be made to, or received by, the beneficiary by virtue of section 307-15 of the ITAA 1997 because the payment would be made for the beneficiary's benefit (and in the majority of cases at the beneficiary's direction or request); and
- made from 'a superannuation fund, after another person's death, because the other person was a fund member'.

<sup>1</sup> See subregulation 6.21(2A) of the SIS Regulations.

<sup>2</sup> See the definition of 'superannuation lump sum' in subsection 995-1(1) and section 307-65 of the ITAA 1997.

<sup>3</sup> See the definitions of 'superannuation income stream benefit' and 'superannuation income stream' in subsection 995-1(1) of the ITAA 1997, section 307-70, and the definitions of those two terms in regulation 995-1.01 of the *Income Tax Assessment Regulations 1997*.

<sup>4</sup> See subsection 307-5(4) of the ITAA 1997.

9. As a superannuation death benefit, the superannuation benefit would not satisfy one of the requirements in section 306-10 of the ITAA 1997 to be a 'roll-over superannuation benefit' (as that term is defined in subsection 995-1(1) and, in turn, section 306-10 of the ITAA 1997). Paragraph 306-10(a) of the ITAA 1997 requires the benefit to be a superannuation member benefit.
10. Subsection 307-5(3) of the ITAA 1997 relates to a superannuation lump sum that arises from the commutation of a superannuation income stream paid to the beneficiary because of the death of another person (for example, a reversionary pension or a new death benefit pension).
11. The effect of subsection 307-5(3) of the ITAA 1997, if its various requirements are satisfied, is to treat the superannuation benefit to which it applies as a superannuation member benefit rather than as a superannuation death benefit (which it would be apart from that subsection).
12. One of the requirements of subsection 307-5(3) of the ITAA 1997 (found in paragraph 307-5(3)(c)) is that the benefit is paid after the latest of the following:
- (i) 6 months after the death of the deceased person;
  - (ii) 3 months after the grant of probate of that deceased person's will or letters of administration of that deceased person's estate;
  - (iii) if the payment of the benefit is delayed because of legal action about entitlement to the benefit – 6 months after the legal action ceases; and
  - (iv) if the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit – 6 months after that process is completed.
13. Another of those requirements (found in paragraph 307-5(3)(d) of the ITAA 1997) is the Commissioner has not made a decision under subsection 307-5(3A) of the ITAA 1997 that the lump sum is not a superannuation member benefit under subsection 307-5(3) of that Act.
14. Where the requirements of subsection 307-5(3) of the ITAA 1997 are satisfied such that the superannuation lump sum to which it applies is treated as a superannuation member benefit, paragraph 306-10(a) of the ITAA 1997 would be satisfied.
15. However, paragraph 306-10(b) of the ITAA 1997 additionally requires that the superannuation benefit not be a superannuation benefit of a kind specified in the regulations. In other words, regulations may prescribe kinds of superannuation benefits that cannot be roll-over superannuation benefits even if such a superannuation benefit would satisfy the other requirements of section 306-10 of the ITAA 1997.
16. Regulation 306-10.01 of the *Income Tax Assessment Regulations 1997* (ITAR 1997) specifies kinds of superannuation benefits for paragraph 306-10(b) of the ITAA 1997. Relevantly for present purposes, paragraph 306-10.01(a) of the ITAR 1997 specifies:
- a benefit to which the following requirements exist:
- (i) the benefit arises from the commutation of a superannuation income stream paid to a person (**person 1**) because of the death of another person (**person 2**); and
  - (ii) person 1 was not the spouse of person 2 at the time of person 2's death.

17. As such, a benefit arising from the commutation of a superannuation income stream paid to person 1 because of the death of person 2 cannot be a roll-over superannuation benefit if person 1 was not the spouse of person 2 when person 2 died.

18. Therefore, the payment by the first fund to another complying superannuation fund of a superannuation lump sum arising from the full commutation of a superannuation income stream paid to a person as a beneficiary of the deceased member of the first fund, will be a 'roll-over superannuation benefit' for the purpose of section 306-10 of the ITAA 1997 if:

- the person was the spouse of the deceased member at the time of the deceased member's death; and
- the superannuation lump sum is paid after the latest of the times set out in paragraph 307-5(3)(c) of the ITAA 1997; and
- the Commissioner has not made a decision under subsection 307-5(3A) of the ITAA 1997 that the superannuation lump sum is not a superannuation member benefit under subsection 307-5(3) of that Act.

19. However, the payment by the first fund to another complying superannuation fund of a superannuation lump sum arising from the full commutation of a superannuation income stream paid to a person as a beneficiary of the deceased member of the first fund, will *not* be a 'roll-over superannuation benefit' for the purpose of section 306-10 of the ITAA 1997 if:

- the person was not the spouse of the deceased member at the time of the deceased member's death; or
- the superannuation lump sum is paid on or before the latest of the times set out in paragraph 307-5(3)(c) of the ITAA 1997; or
- the Commissioner has made a decision under subsection 307-5(3A) of the ITAA 1997 that the superannuation lump sum is not a superannuation member benefit under subsection 307-5(3) of that Act.

## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- Death benefits – superannuation benefits
- Lump sum – superannuation benefits
- Member benefits – superannuation benefits
- Roll-overs - superannuation benefits
- Superannuation benefits
- Superannuation income stream

*Legislative references:*

- ITAA 1997
- ITAA 1997 306-10
- ITAA 1997 306-10(a)
- ITAA 1997 306-10(b)

- ITAA 1997 307-5(1)
  - ITAA 1997 307-5(3)
  - ITAA 1997 307-5(3)(c)
  - ITAA 1997 307-5(3)(d)
  - ITAA 1997 307-5(3A)
  - ITAA 1997 307-5(4)
  - ITAA 1997 307-15
  - ITAA 1997 307-65
  - ITAA 1997 307-70
  - ITAA 1997 995-1(1)
  - ITAR 1997
  - ITAR 1997 306-10.01
  - ITAR 1997 306-10.01(a)
  - ITAR 1997 995-1.01
  - SIS Regulations
  - SIS Regulations 6.21
  - SIS Regulations 6.21(1)
  - SIS Regulations 6.21(2)
  - SIS Regulations 6.21(2A)
  - TAA 1953
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ATO references

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