





**Tax and Superannuation Laws  
Amendment (Increased Concessional  
Contributions Cap and Other Measures)  
Act 2013**

**No. 82, 2013**

**An Act to amend the law relating to taxation and  
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013**

**No. 82, 2013**

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**An Act to amend the law relating to taxation and  
superannuation, and for related purposes**

*[Assented to 28 June 2013]*

The Parliament of Australia enacts:

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## **1 Short title**

This Act may be cited as the *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013*.

## **2 Commencement**

This Act commences on the day this Act receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Superannuation concessional contributions cap**

### ***Income Tax Assessment Act 1997***

#### **1 Section 292-20 (note 2)**

Repeal the note, substitute:

Note 2: For transitional rules for older Australians, see section 292-20 of the *Income Tax (Transitional Provisions) Act 1997*.

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

#### **2 Section 292-20**

Repeal the section, substitute:

#### **292-20 Concessional contributions cap for older Australians— \$35,000**

- (1) Despite section 292-20 of the *Income Tax Assessment Act 1997*, your ***concessional contributions cap*** is \$35,000:
- (a) for the 2013-2014 financial year—if you are 59 years or over on 30 June 2013; or
  - (b) for the 2014-2015 financial year or a later financial year—if you are 49 years or over on the last day of the previous financial year.

Note: This amount is not indexed.

- (2) This section does not apply to a financial year for which the concessional contributions cap worked out under section 292-20 of the *Income Tax Assessment Act 1997* is \$35,000 or more.
- (3) This section does not apply for the purposes of subsection 292-85(2) of that Act.

## **Schedule 2—Low income superannuation contribution: technical amendments**

### ***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

#### **1 Subsection 5(2)**

Omit “12E”, substitute “12G”.

#### **2 After subparagraph 12B(2)(a)(ii)**

Insert:

(iia) section 23;

#### **3 Subsection 12B(3)**

Repeal the subsection, substitute:

- (3) Paragraph 14(1)(a) (Commissioner to have regard to income tax return) does not apply in deciding whether to make a determination under section 13 that a low income superannuation contribution is payable under subsection 12C(2) in respect of a person for an income year.

#### **4 Section 12C**

Before “A low”, insert “(1)”.

#### **5 Section 12C**

Omit “payable under this Act”, substitute “payable under this subsection”.

#### **6 Paragraph 12C(a)**

Repeal the paragraph, substitute:

- (a) the person’s concessional contributions for the financial year that corresponds to the income year are for a financial year starting on or after 1 July 2012; and

#### **7 At the end of section 12C**

Add:

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- (2) A low income superannuation contribution is payable under this subsection in respect of a person for an income year of the person if:
- (a) the person's concessional contributions for the financial year that corresponds to the income year are for a financial year starting on or after 1 July 2012; and
  - (b) 12 months after the end of the income year, the Commissioner reasonably believes there is insufficient information to decide whether to make a determination under section 13 that a low income superannuation contribution is payable under subsection (1) in respect of the person for the income year; and
  - (c) the Commissioner estimates that:
    - (i) the person's adjusted taxable income for the income year (worked out in accordance with Schedule 3 to the *New Tax System (Family Assistance) Act 1999* (disregarding clauses 3 and 3A of that Schedule)) does not exceed \$37,000; and
    - (ii) 10% or more of the person's total income for the income year (disregarding subsections 8(2) and (3)) is attributable to the person engaging in activities covered under subsection 6(2); and
  - (d) the requirement in paragraph 6(1)(f) is satisfied in respect of the person in relation to the income year.
- (3) For the purposes of paragraph (1)(c), disregard the words "in which the person makes the contribution" in paragraph 6(2)(a).
- (4) For the purposes of subparagraph (2)(c)(i), treat the person as having total deductions of \$300 for the income year unless the Commissioner has information to the contrary.
- (5) For the purposes of subparagraph (2)(c)(ii), disregard the words "in the income year in which the person makes the contribution" in paragraph 6(2)(a).

## **8 Section 12D**

Repeal the section.

**9 Subsection 12E(1)**

Omit “person is entitled to a low income superannuation contribution for an income year of the person under section 12C”, substitute “low income superannuation contribution is payable under subsection 12C(1) or (2) in respect of a person for an income year”.

**10 Paragraph 12E(2)(a)**

Omit “superannuation contributions covered by section 12D made by or for the person during the income year”, substitute “person’s concessional contributions for the financial year that corresponds to the income year”.

**11 Paragraph 12E(2)(c)**

Repeal the paragraph, substitute:

- (c) if the amount worked out under paragraph (a) is less than \$10—\$10.

**12 At the end of section 12E**

Add:

- (3) If, apart from this subsection:
  - (a) there would be an underpaid amount as mentioned in section 19 in respect of the person’s low income superannuation contribution for the income year; and
  - (b) the underpaid amount would be less than \$10;decrease the amount of that low income superannuation contribution by that underpaid amount.
- (4) If, apart from this subsection:
  - (a) there would be an amount overpaid as mentioned in section 24 in respect of the person’s low income superannuation contribution for the income year; and
  - (b) the amount overpaid would be less than \$10;increase the amount of that low income superannuation contribution by that amount overpaid.

**13 At the end of Part 2A**

Add:

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### **12F Consequences if estimates no longer accurate**

- (1) Treat a low income superannuation contribution as never having been payable under subsection 12C(2) in respect of a person for an income year if:
  - (a) the Commissioner obtains information after making the determination under section 13 that the contribution was so payable; and
  - (b) the Commissioner decides that, had the Commissioner obtained that information before making the determination, the Commissioner would not have made the determination.

Note: The contribution will be recoverable under section 24.

- (2) The Commissioner must give the person written notice of the Commissioner's decision under paragraph (1)(b).

### **12G Reports on this Part**

- (1) After the end of each quarter the Commissioner must give the Minister a report, for presentation to the Parliament, on the working of this Part during the quarter. The report must include, for the quarter to which the report relates, the prescribed details about beneficiaries of, and amounts of, low income superannuation contributions.
- (2) After the end of each financial year the Commissioner must give the Minister a report, for presentation to the Parliament, that:
  - (a) is on the working of this Part during the financial year; and
  - (b) includes, for the financial year to which the report relates, the prescribed details about beneficiaries of, and amounts of, low income superannuation contributions.

### **14 Section 56**

Insert:

*concessional contributions* has the same meaning as in the *Income Tax Assessment Act 1997*.

### **15 Application of amendments**

The amendments made by this Schedule apply to the 2012-13 income year and later income years.

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## **Schedule 3—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	Sustaining the superannuation contribution concession
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.

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 *taxable contributions*

### Low tax contributions

- 293-25 Your *low tax contributions*  
293-30 Low tax contributed amounts  
293-35 Effect of determination relating to refunded excess concessional contributions

## Liability for tax

### 293-15 Liability for tax

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

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

### 293-20 Your *taxable contributions*

- (1) If the sum of:
- (a) your \*income for surcharge purposes for an income year (disregarding your \*reportable superannuation contributions); and
  - (b) your \*low tax contributions for the corresponding \*financial year;
- exceeds \$300,000, you have *taxable contributions* for the income year equal to the lesser of the low tax contributions and the amount of the excess.
- (2) However, you do not have *taxable contributions* for an income year if the amount of your \*low tax contributions is nil.

## Low tax contributions

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

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

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

Note 1: Low tax contributions are modified for defined benefit interests (see Subdivision 293-D).

Note 2: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

### **293-30 Low tax contributed amounts**

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

Note: Low tax contributed amounts covered by this section are modified for State higher level office holders (see Subdivision 293-E).

#### *Contributions to complying superannuation plans*

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

#### *Exceptions*

- (4) Despite subsection (2), a contribution is not covered under this section if it is any of the following:

**Schedule 3** Sustaining the superannuation contribution concession  
**Part 1** Main amendments

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- (a) an amount mentioned in subsection 295-200(2) (about amounts transferred from foreign superannuation funds);
- (b) an amount mentioned in item 2 of the table in subsection 295-190(1) (about certain roll-over superannuation benefits).

*Amounts allocated in relation to a complying superannuation plan*

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

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

## Operative provisions

### 293-65 When 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.

*Exception for tax deferred to a debt account*

- (2) However, subsection (1) does not apply to an amount of \*assessed Division 293 tax that is \*deferred to a debt account for a \*superannuation interest.

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

Note 2: For *deferred to a debt account*, see Division 133 in that Schedule.

Note 3: For release of money from a superannuation plan to pay these amounts, see Division 135 in that Schedule.

### 293-70 When 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 the Commissioner gives you notice of the amended assessment.

*Exception for tax deferred to a debt account*

- (2) However, subsection (1) does not apply to an amount of extra \*assessed Division 293 tax that is \*deferred to a debt account for a \*superannuation interest.

Note 1: For *deferred to a debt account*, see Division 133 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For release of money from a superannuation plan to pay these amounts, see Division 135 in that Schedule.

### 293-75 General interest charge

If an amount of \*assessed Division 293 tax or \*shortfall interest charge on assessed Division 293 tax 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) begins on the day on which the amount was due to be paid; and
- (b) ends on 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;
  - (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 *Low tax contributions*—modification for defined benefit interests
- 293-110 Effect of determination relating to refunded excess concessional contributions
- 293-115 *Defined benefit contributions*

## Operative provisions

### **293-105 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 for the \*financial year, to the extent to which they do *not* relate to the \*defined benefit interest or interests.

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

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

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

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

Note: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

### **293-110 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 293-105, 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.

**293-115** *Defined benefit contributions*

- (1) Your *defined benefit contributions*, for a \*financial year in respect of a \*defined benefit interest, has the meaning given by regulation.

Note: There are modifications in sections 293-150 (about constitutionally protected State higher level office holders) and 293-195 (about Commonwealth justices).

- (2) A regulation made for the purposes of subsection (1) may provide for a method of determining the amount of the *defined benefit contributions*.
- (3) A regulation made for the purposes of subsection (1) may define the \*defined benefit contributions, and the amount of defined benefit contributions, in different ways depending on any of the following matters:
- (a) the person who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.
- (4) A regulation made for the purposes of subsection (1) may specify circumstances in which the amount of \*defined benefit contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit a regulation that may be made for the purposes of this section.
- (6) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a regulation made for the purposes of subsection (1) may be expressed to take effect from any time on or after 1 July 2012.

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

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

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

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

#### **Table of sections**

##### **Operative provisions**

293-145	Who this Subdivision applies to
293-150	Low tax contributions—modification for CPFs
293-155	High income threshold—effect of modification
293-160	Salary packaged contributions

#### **Operative provisions**

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

- (1) This Subdivision applies to an individual for an income year if:
  - (a) the individual has a \*superannuation interest in a \*constitutionally protected fund in the corresponding \*financial year; and
  - (b) at any time in the income year, the individual is declared by regulation to be an individual to whom this Subdivision applies.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a regulation made for the purposes of paragraph (1)(b) may be expressed to take effect from any time on or after 1 July 2012.
- (3) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

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

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

- (1) This section applies for the purpose of working out under section 293-25 or 293-105 the amount of the individual's \*low tax contributions for the \*financial year corresponding to the income year.

#### *Modified low tax contributed amounts in CPFs*

- (2) Despite section 293-30, the low tax contributed amounts covered by that section for the \*financial year do not include any contributions to a \*constitutionally protected fund, other than contributions covered by section 293-160 (about salary packaged contributions).

#### *Modified defined benefit contributions in CPFs*

- (3) Despite section 293-115, the individual's **defined benefit contributions** for the \*financial year in respect of a \*defined benefit interest in a \*constitutionally protected fund are equal to:
- (a) unless paragraph (b) applies—nil; or
  - (b) if, having regard to subsection (2) of this section, the low tax contributed amounts covered by section 293-30 for the year include contributions in respect of the defined benefit interest—the amount of those contributions.

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

- (1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the \$300,000 threshold mentioned in that subsection, disregard section 293-150.
- (2) To avoid doubt, the effect of subsection (1) is that the amount of the individual's \*taxable contributions for an income year is the lesser of:

- (a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-150) for the income year; and
- (b) the individual's \*low tax contributions for the corresponding \*financial year (worked out having regard to section 293-150).

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

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

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<b>Withholding payments covered</b>		
<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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## Subdivision 293-F—Modifications for Commonwealth justices

### Guide to Subdivision 293-F

#### 293-185 What this Subdivision is about

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

#### Table of sections

##### Operative provisions

- 293-190 Who this Subdivision applies to  
293-195 **Defined benefit contributions**—modified treatment of contributions under the *Judges' Pensions Act 1968*  
293-200 High income threshold—effect of modification

#### Operative provisions

##### 293-190 Who this Subdivision applies to

- (1) This Subdivision applies to an individual if the individual is a Justice of the High Court, or a justice or judge of a court created by the Parliament, at any time on or after the start of the individual's 2012-13 income year.
- (2) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

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

##### 293-195 **Defined benefit contributions**—modified treatment of contributions under the *Judges' Pensions Act 1968*

- (1) This section applies for the purpose of working out under section 293-105 the amount of the individual's \*low tax contributions for any \*financial year.

- (2) Despite section 293-115 and subsection 293-150(3), the individual's *defined benefit contributions* for a \*financial year for a \*defined benefit interest in a \*superannuation fund established under the *Judges' Pensions Act 1968* are nil.

### **293-200 High income threshold—effect of modification**

- (1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the \$300,000 threshold mentioned in that subsection, disregard section 293-195.
- (2) To avoid doubt, the effect of subsection (1) is that the amount of the individual's \*taxable contributions for an income year is the lesser of:
- (a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-195) for the income year; and
  - (b) the individual's \*low tax contributions for the corresponding \*financial year (worked out having regard to section 293-195).

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

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

#### **293-225 What this Subdivision is about**

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

#### **Table of sections**

##### **Operative provisions**

- 293-230 Who is entitled to a refund  
293-235 Amount of the refund  
293-240 Entitlement to refund stops all Division 293 tax liabilities

## **Operative provisions**

### **293-230 Who is entitled to a refund**

You are entitled to a refund if:

- (a) you have made payments of any of the following:
  - (i) \*assessed Division 293 tax;
  - (ii) a voluntary payment made under section 133-70 in Schedule 1 to the *Taxation Administration Act 1953* for the purpose of reducing the amount by which a debt account for a \*superannuation interest is in debit;
  - (iii) \*debt account discharge liability; and
- (b) you receive a \*departing Australia superannuation payment; and
- (c) you apply to the Commissioner in the \*approved form for the refund.

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

### **293-235 Amount of the refund**

- (1) The amount of the refund to which you are entitled is the sum of the payments mentioned in paragraph 293-230(a) that you have made.
- (2) However, the amount of the refund is reduced by the amount of any refunds to which you are entitled under a previous application of this Subdivision.

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

- (3) Despite subsection (1), if:
  - (a) at any time in your 2012-13 income year, or a later income year, you are an Australian resident (but not a \*temporary resident); and
  - (b) a payment mentioned in paragraph 293-230(a) that you have made relates, or is reasonably attributable, to that income year;

the payment is to be disregarded in working out under subsection (1) of this section the amount of the refund to which you are entitled.

**293-240 Entitlement to refund stops all Division 293 tax liabilities**

- (1) The Commissioner may decide to release you from any existing or future liability to pay \*Division 293 tax or \*debt account discharge liability if:
  - (a) you become entitled to a refund under section 293-230; or
  - (b) you would become entitled to such a refund, if you were to pay the liability and paragraph 293-230(c) were disregarded.
- (2) The Commissioner may take such action as is necessary to give effect to a decision under subsection (1).

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

Add:

**Part 3-20—Sustaining the superannuation  
contribution concession**

**Division 133—Deferred payment**

**Table of Subdivisions**

	Guide to Division 133
133-A	Deferral determination
133-B	Debt account
133-C	Compulsory payment

## Guide to Division 133

### 133-1 What this Division is about

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

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

### Subdivision 133-A—Deferral determination

#### Guide to Subdivision 133-A

### 133-5 What this Subdivision is about

The Commissioner determines the amount of your tax that is deferred to a debt account by working out the extent to which your assessed tax is attributable to defined benefit interests.

#### Table of sections

##### Operative provisions

133-10	Determination of tax that is <i>deferred to a debt account</i>
133-15	<b><i>Defined benefit tax</i></b>
133-20	How to attribute the defined benefit tax to defined benefit interests
133-25	Determination reducing tax deferred to a debt account
133-30	General provisions applying to determinations under this Subdivision

#### Operative provisions

##### 133-10 Determination of tax that is *deferred to a debt account*

- (1) The Commissioner must make a determination specifying the amount the Commissioner has ascertained as being the extent to which your \*assessed Division 293 tax for an income year is \*defined benefit tax attributable to a \*superannuation interest.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For general provisions, including review, see section 133-30.

- (2) The amount of \*assessed Division 293 tax specified in the determination is ***deferred to a debt account*** for the \*superannuation interest.
- (3) However, the Commissioner must not make a determination under this section in relation to a \*superannuation interest if, at the time the determination is to be made:
- (a) the \*end benefit for the superannuation interest has become payable; or
  - (b) a notice under section 133-125 has been made in relation to the superannuation interest.
- Note: For the meaning of ***end benefit***, see section 133-130.
- (4) Subsection (1) does not apply if the Commissioner ascertains that no part of your \*assessed Division 293 tax for an income year is \*defined benefit tax attributable to a \*superannuation interest.

### **133-15 Defined benefit tax**

- (1) Your ***defined benefit tax*** for an income year is the amount worked out using the formula:

$$\text{*Division 293 tax for the income year} \times \frac{\text{Defined benefit contribution component}}{\text{*Taxable contributions for the income year}}$$

where:

***defined benefit contribution component*** means the amount worked out as follows:

- (a) work out the lesser of the following for the corresponding \*financial year:
  - (i) your \*low tax contributions;
  - (ii) the total amount of your \*defined benefit contributions in respect of all \*defined benefit interests you have in the financial year;
- (b) subtract from the result of paragraph (a) the difference (if any) between:

- (i) your \*taxable contributions for the income year; and
- (ii) your low tax contributions for the corresponding financial year.

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

*Exception—defined benefit contribution component is nil or less*

- (2) However, if the defined benefit contribution component mentioned in subsection (1) is nil, or a negative amount, no part of the \*Division 293 tax for the income year is ***defined benefit tax***.

### **133-20 How to attribute the defined benefit tax to defined benefit interests**

- (1) If you have one \*defined benefit interest in a \*financial year, your \*defined benefit tax for the corresponding income year is attributable to that interest.
- (2) If you have more than one \*defined benefit interest in a \*financial year, your \*defined benefit tax for the corresponding income year is attributable to each such interest in proportion to the \*defined benefit contributions for the interest for the financial year.

### **133-25 Determination reducing tax deferred to a debt account**

- (1) If an amount of \*assessed Division 293 tax that is \*deferred to a debt account for a \*superannuation interest is reduced as a result of an amended assessment, the Commissioner must make a determination under this section in respect of the reduced amount.
- (2) The amount so determined is a ***deferral reversal*** for the \*superannuation interest.

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

### **133-30 General provisions applying to determinations under this Subdivision**

- (1) The Commissioner must:
    - (a) make a determination as soon as practicable after:
-

- (i) for a determination under section 133-10—assessing the amount (whether by way of a first assessment or an amended assessment); or
    - (ii) for a determination under section 133-25—amending the assessment; and
  - (b) give you notice in writing of the determination as soon as practicable after making it.
- (2) The Commissioner:
- (a) may include 2 or more determinations under this Subdivision in the same notice; and
  - (b) may include a notice under this Subdivision in a notice of an assessment under this Act.
- (3) The validity of the determination is not affected because any of the provisions of this Act have not been complied with.

*Review*

- (4) If you are dissatisfied with a determination made under this Subdivision in relation to you, you may object against the determination in the manner set out in Part IVC.
- (5) If you are dissatisfied with a decision the Commissioner makes not to make a determination under this Subdivision:
- (a) you may object against the decision in the manner set out in Part IVC; and
  - (b) for the purpose of working out the period within which the objection must be lodged, notice of the decision is taken to have been served on you on the day notice is given to you of:
    - (i) for a determination under section 133-10—the assessment of the amount; or
    - (ii) for a determination under section 133-25—the amended assessment.

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

## Subdivision 133-B—Debt account

### Guide to Subdivision 133-B

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

The Commissioner keeps debt accounts for tax that is deferred to a debt account for a superannuation interest.

You can make voluntary payments of the debt account.

#### Table of sections

##### Operative provisions

133-60	Debt account to be kept for deferred tax
133-65	Interest on debt account balance
133-70	Voluntary payments
133-75	Commissioner must notify superannuation provider of debt account

#### Operative provisions

##### 133-60 Debt account to be kept for deferred tax

###### *Accounts to be kept*

- (1) The Commissioner is to keep a debt account for \*Division 293 tax for you for a \*superannuation interest, if an amount of your \*assessed Division 293 tax is \*deferred to a debt account for the superannuation interest.

###### *Account to be debited for Division 293 tax*

- (2) The Commissioner must debit the debt account for the amount of \*assessed Division 293 tax that is \*deferred to a debt account for the \*superannuation interest.

### **133-65 Interest on debt account balance**

#### *Interest to be debited at end of financial year*

- (1) If a debt account for a \*superannuation interest 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.

Note: Interest would not be debited to a debt account that is no longer being kept by the Commissioner because the assessed Division 293 tax liability being tracked in the account has been finally discharged as mentioned in subsection 133-105(3).

#### *Remission of interest—deferral reversal*

- (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:
  - (a) the debt account is credited:
    - (i) under section 133-70 because of a \*deferral reversal; or
    - (ii) because a determination under section 133-10 is varied or revoked; and
  - (b) the Commissioner is satisfied that, because of that credit, it would be fair and reasonable to do so.

#### *Remission of interest—special circumstances*

- (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.

### **133-70 Voluntary payments**

- (1) 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.
- (2) 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.

- (3) The amount of a \*deferral reversal for the \*superannuation interest is to be treated as if it were a voluntary payment under this section in relation to the debt account for that interest. However, paragraphs (2)(a) and (c) do not apply in relation to that amount.

### **133-75 Commissioner must notify superannuation provider of debt account**

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

## **Subdivision 133-C—Compulsory payment**

### **Guide to Subdivision 133-C**

#### **133-100 What this Subdivision is about**

The deferred tax liability 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**

##### **Debt account discharge liability**

- 133-105 Liability to pay debt account discharge liability  
133-110 When debt account discharge liability must be paid  
133-115 General interest charge  
133-120 Meaning of *debt account discharge liability*  
133-125 Notice of debt account discharge liability

##### **End benefit**

- 133-130 Meaning of *end benefit*  
133-135 End benefit notice—individual  
133-140 End benefit notice—superannuation provider

133-145 End benefit notice—material changes or omissions

## **Debt account discharge liability**

### **133-105 Liability to pay debt account discharge liability**

- (1) You are liable to pay the amount of your \*debt account discharge liability for a \*superannuation interest if the \*end benefit for the interest becomes payable.
- (2) The liability arises:
  - (a) unless paragraph (b) applies—at the time the \*end benefit becomes payable; or
  - (b) if the end benefit is a \*superannuation death benefit—just before you die.

Note 1: For paragraph (a), a release authority allows money to be released from the superannuation plan to pay this amount: see subsection 135-10(1).

Note 2: For paragraph (b), the debt will be recovered from your estate: see Subdivision 260-E.

- (3) Payment of your \*debt account discharge liability for a \*superannuation interest discharges your liability for so much of your total \*assessed Division 293 tax for all income years as is \*deferred to a debt account for the superannuation interest.

### **133-110 When debt account discharge liability must be paid**

The amount of your \*debt account discharge liability for a \*superannuation interest is due and payable at the end of 21 days after the day on which the \*end benefit for the superannuation interest is paid.

### **133-115 General interest charge**

If your \*debt account discharge liability remains unpaid after the time by which it is due and payable, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) begins on the day on which the debt account discharge liability was due to be paid; and

- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the debt account discharge liability;
  - (ii) general interest charge on any of the debt account discharge liability.

Note: The general interest charge is worked out under Part IIA.

### **133-120 Meaning of *debt account discharge liability***

- (1) The ***debt account discharge liability*** for a \*superannuation interest for which the Commissioner keeps a debt account is the lesser of:
  - (a) the amount by which the debt account is in debit at the earlier of:
    - (i) the time the \*end benefit for the superannuation interest becomes payable; and
    - (ii) the time a notice under section 133-125 is made; and
  - (b) the end benefit cap specified in a notice given to the Commissioner by the \*superannuation provider under subsection (2) or section 133-140 (as the case requires).

- (2) If requested by the Commissioner, the \*superannuation provider in relation to a \*superannuation interest must give the Commissioner notice of the amount (the ***end benefit cap***) that is 15% of the employer-financed component of any part of the \*value of the superannuation interest that accrued after 1 July 2012.

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

- (3) For the purposes of subsection (2), the \*value of the \*superannuation interest is to be worked out at the end of the \*financial year before the financial year in which the \*end benefit becomes payable.
- (4) A notice under subsection (2) must be given:
  - (a) in the \*approved form; and
  - (b) within 14 days of the Commissioner making the request.

### **133-125 Notice of debt account discharge liability**

- (1) The Commissioner must give you a notice under this section if:
  - (a) the \*end benefit becomes payable from a \*superannuation interest for which the Commissioner keeps a debt account; or
  - (b) the Commissioner receives a notice from you under section 133-135 in relation to such a superannuation interest.
- (2) The notice must state that you are liable to pay your \*debt account discharge liability for the \*superannuation interest and specify:
  - (a) the amount of that debt; and
  - (b) the day on which that debt is due and payable; and
  - (c) whether the amount of that debt is:
    - (i) the amount by which the debt account is in debit as mentioned in paragraph 133-120(1)(a); or
    - (ii) the end benefit cap mentioned in paragraph 133-120(1)(b).
- (3) If you are dissatisfied with a notice given under this section in relation to you, you may object against it in the manner set out in Part IVC of this Act.
- (4) However, you cannot object against a notice stating that the amount you are liable to pay is the amount by which the debt account is in debit, unless you are seeking to be liable to pay the end benefit cap specified in a notice given to the Commissioner by the \*superannuation provider under subsection (2) or section 133-140 (as the case requires).

### **End benefit**

#### **133-130 Meaning of *end benefit***

- (1) A \*superannuation benefit is the *end benefit* for a \*superannuation interest if it is the first superannuation benefit to become payable from the interest, disregarding a benefit that is any of the following:
  - (a) a \*roll-over superannuation benefit paid to a \*complying superannuation plan that is a \*successor fund;
  - (b) a benefit that becomes payable under the condition of release specified in item 105 of the table in Schedule 1 to the

*Superannuation Industry (Supervision) Regulations 1994*  
(about severe financial hardship);

- (c) a benefit that becomes payable under the condition of release specified in item 107 of that table (about compassionate ground);
  - (d) a benefit specified in an instrument under subsection (2).
- (2) The Minister may, by legislative instrument, specify a \*superannuation benefit for the purposes of paragraph (1)(d).
- (3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a legislative instrument made under subsection (2) may be expressed to take effect from any time on or after 1 July 2012.

### **133-135 End benefit notice—individual**

- (1) If an individual requests a \*superannuation provider to pay the \*end benefit from a \*superannuation interest for which the Commissioner keeps a debt account, the individual must notify the Commissioner of the request.
- (2) The notice must be given within 21 days after making the request.
- (3) A notice under this section must be given in the \*approved form.

### **133-140 End benefit notice—superannuation provider**

- (1) If the \*end benefit becomes payable from a \*superannuation interest for which the Commissioner keeps a debt account, the \*superannuation provider in relation to the interest must give the Commissioner a notice stating:
  - (a) the amount of the end benefit cap mentioned in subsection 133-120(2) for the superannuation interest (unless the provider has already given the Commissioner notice of the end benefit cap under that subsection); and
  - (b) the expected date of payment of the benefit.

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

- (2) The notice must be given within 14 days after the earlier of:

- (a) the \*superannuation provider receiving a request (if any) to pay the \*superannuation benefit; and
  - (b) the superannuation benefit becoming payable.
- (3) However, this section does not apply if the \*superannuation provider has not been given a notice under section 133-75 saying that the Commissioner has started to keep a debt account for the \*superannuation interest.
- (4) A notice under this section must be given in the \*approved form.

### **133-145 End benefit notice—material changes or omissions**

- (1) If an entity that gives the Commissioner a notice under section 133-135 or 133-140 becomes aware of a material change or material omission in any information given to the Commissioner in the notice, the entity must:
- (a) tell the Commissioner of the change in the \*approved form; or
  - (b) give the omitted information to the Commissioner in the approved form.
- (2) Information required by this section must be given no later than 7 days after the entity becomes aware of the change or omission.

## **Division 135—Releasing money from superannuation**

### **Table of Subdivisions**

	Guide to Division 135
135-A	When the Commissioner must issue a release authority
135-B	When a release authority can be given to a superannuation provider
135-C	Release of superannuation money under a release authority

## Guide to Division 135

### 135-1 What this Division is about

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

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

#### Guide to Subdivision 135-A

### 135-5 What this Subdivision is about

The Commissioner must issue you with a release authority to allow money to be released from a superannuation plan to pay assessed Division 293 tax that is due and payable, make voluntary payments in reduction of a debt account, or pay your debt account discharge liability.

#### Table of sections

##### Operative provisions

135-10 Release authorities

#### Operative provisions

##### 135-10 Release authorities

- (1) If the condition mentioned in column 1 of an item in the following table is satisfied:
  - (a) the Commissioner must issue you with a release authority under that item; and
  - (b) you have a **release entitlement**:
    - (i) equal to the amount mentioned in column 2 of that item; and
    - (ii) arising at the time mentioned in column 3 of that item.

<b>Release entitlement</b>			
<b>Item</b>	<b>Column 1 Condition:</b>	<b>Column 2 Amount of the release entitlement:</b>	<b>Column 3 Time at which the release entitlement arises:</b>
1	An amount of your *assessed Division 293 tax for an income year is due and payable in accordance with subsection 293-65(1) or 293-70(1)	The amount of tax that is due and payable as mentioned in column 1	On assessing the amount
2	An amount of your *assessed Division 293 tax for an income year is *deferred to a debt account for a *superannuation interest	The amount so deferred	On the making of the determination under section 133-10
3	You become liable to pay your *debt account discharge liability for a *superannuation interest	The amount of your debt account discharge liability	On the giving of the notice under section 133-125

Note: A release authority issued under item 3 of the table can only be given to the superannuation provider that holds the superannuation interest to which the debt account relates: see subsection 135-40(3).

*Requirements for release authority*

- (2) A release authority must:
- (a) state the amount of the \*release entitlement in respect of which it is given; and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.

*Commissioner may issue a further release authority*

- (3) The Commissioner may at any time issue you with a further release authority in respect of a \*release entitlement if:

- (a) the Commissioner is satisfied that it is reasonable in the circumstances to do so; and
- (b) the Commissioner has issued you with an earlier release authority in respect of that release entitlement.

Despite paragraph (2)(a), the further release authority must state the amount the Commissioner considers reasonable in the circumstances, but not exceeding the amount of the release entitlement.

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

*Release authority not to be issued to trustee of deceased estate*

- (4) To avoid doubt, this section does not require or permit the Commissioner to issue a release authority to the trustee of a deceased estate.

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

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

##### **135-35 What this Subdivision is about**

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

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

#### **Table of sections**

##### **Operative provisions**

- 135-40 When you may give release authority to superannuation provider
- 135-45 When Commissioner may give release authority to superannuation provider

## **Operative provisions**

### **135-40 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.
- (2) You may request the \*superannuation provider, in writing, to pay a specified amount in relation to the release authority.

Note 1: For the amount that the provider pays under a release authority, see section 135-85.

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).

- (3) However, a release authority issued under item 3 of the table in subsection 135-10(1) (for debt account discharge liability) may only be given to the \*superannuation provider that holds the \*superannuation interest to which the debt account relates.

### **135-45 When Commissioner may give release authority to superannuation provider**

- (1) The Commissioner may, at any time, give a release authority issued under item 1 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 135-40;
    - (ii) that you have given the release authority to one or more superannuation providers in accordance with that

section, but that the sum of the amounts to be paid by the providers under those release authorities falls short of the amount of your assessed Division 293 tax;

- (iii) that the total of the \*values of every superannuation interest (other than a \*defined benefit interest) held for you by superannuation providers to which the release authority has been given falls short of the amount of your assessed Division 293 tax.

Note: No payment may be made from a defined benefit interest: see subsection 135-75(4).

- (2) The Commissioner 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 135-85.

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

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

#### **135-70 What this Subdivision is about**

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

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

#### **Table of sections**

##### **Operative provisions**

135-75	Requirement for superannuation provider to release money
135-80	Compensation for acquisition of property
135-85	Release amount
135-90	How the Commissioner applies amounts received under a release authority
135-95	Defined benefit interests—releasing amounts to pay debt account discharge liability

135-100 Income tax treatment of amounts released—proportioning rule does not apply

## **Operative provisions**

### **135-75 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 135-85 (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 of the table in subsection 135-10(1) (which is about Division 293 tax that is due and payable within 21 days); and
  - (b) given to the \*superannuation provider by the individual under section 135-40;
- 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 (other than a \*defined benefit interest) held by the \*superannuation provider for the individual.

### **135-80 Compensation for acquisition of property**

- (1) If the operation of section 135-75 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.
- (2) If the Commonwealth and the entity do not agree on the amount of the compensation, the entity may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **135-85 Release amount**

- (1) The amount is the least of the following amounts:
  - (a) the amount stated in the release authority, as issued by the Commissioner;
  - (b) if the individual or Commissioner requests the \*superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
  - (c) the sum of the amounts covered by subsection (2) for each \*superannuation interest (other than a \*defined benefit interest) held by the superannuation provider for the individual in \*superannuation plans.
- (2) The amount covered by this subsection for a \*superannuation interest at a particular time is the total amount of all the \*superannuation lump sums that could be payable from the interest at that time.

### **135-90 How the Commissioner applies amounts received under a release authority**

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

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

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

- (2) However, if the Commissioner receives the payment under a release authority issued under item 2 of the table in subsection 135-10(1) in respect of a \*superannuation interest, the payment is to be treated as if it were a voluntary payment under section 133-70 in relation to the debt account for that interest.

*Commissioner to notify individual if payment received*

- (3) If:
- (a) the release authority was given by the Commissioner in accordance with section 135-45; 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.

**135-95 Defined benefit interests—releasing amounts to pay debt account discharge liability**

The exclusion of \*defined benefit interests from subsection 135-75(4) and paragraph 135-85(1)(c) is to be disregarded for a release authority issued under item 3 of the table in subsection 135-10(1) (about debt account discharge liability).

**135-100 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 that Act.

**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 \*taxable contributions for the income year.

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

Add:

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

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

Repeal the subsection, substitute:

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

## **Part 2—Other amendments**

### ***Income Tax Assessment Act 1997***

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

After:	
refunded excess concessional contributions .....	292-467(2)(a)
insert:	
release authorities, payments from .....	304-15(4)
	304-20

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

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

#### **8 At the end of Division 26**

Add:

#### **26-100 Division 293 tax cannot be deducted**

You cannot deduct under this Act any of the following:

- (a) an amount of \*Division 293 tax that you pay;
- (b) an amount of \*debt account discharge liability that you pay.

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

Add:

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

A \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in respect of a \*release entitlement you have, is not assessable income and is not \*exempt income.

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Note: However, payments that exceed the release entitlement are assessable: see section 304-20.

**10 At the end of Division 304**

Add:

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

- (1) Despite section 303-20, a \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in respect of a \*release entitlement you have, is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (2).

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

- (2) The amount is the amount of the \*release entitlement, reduced (but not below zero) by the amount of any \*superannuation benefit that was not assessable income and not \*exempt income under a previous operation of section 303-20 of this Act in relation to that release entitlement.

**11 Subsection 995-1(1)**

Insert:

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

***debt account discharge liability*** has the meaning given by section 133-120 in Schedule 1 to the *Taxation Administration Act 1953*.

***deferral reversal***, for a \*superannuation interest, has the meaning given by section 133-25 in Schedule 1 to the *Taxation Administration Act 1953*.

***deferred to a debt account***, for a \*superannuation interest, in relation to \*assessed Division 293 tax, has the meaning given by section 133-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***defined benefit contributions*** has the meaning given by sections 293-115, 293-150 and 293-195.

**defined benefit tax** has the meaning given by section 133-15 in Schedule 1 to the *Taxation Administration Act 1953*.

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

**Division 293 tax law** means:

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

**end benefit** has the meaning given by section 133-130 in Schedule 1 to the *Taxation Administration Act 1953*.

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

**release entitlement** has the meaning given by section 135-10 in Schedule 1 to the *Taxation Administration Act 1953*.

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

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

### **12 Paragraph 15CA(1)(c)**

Repeal the paragraph, substitute:

- (ba) subsection 133-120(2) in Schedule 1 to the *Taxation Administration Act 1953*; or
- (bb) subsection 133-140(1) in that Schedule; or
- (c) section 390-5 in that Schedule;

### 13 Paragraph 15CA(2)(c)

Repeal the paragraph, substitute:

- (ba) subsection 133-120(2) in Schedule 1 to the *Taxation Administration Act 1953*; or
- (bb) subsection 133-140(1) in that Schedule; or
- (c) section 390-5 in that Schedule;

### *Taxation Administration Act 1953*

#### 14 Subsection 8AAB(4) (after table item 15)

Insert:

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

Insert:

45C	133-115 in Schedule 1	<i>Taxation Administration Act 1953</i>	payment of debt account discharge liability
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#### 16 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.

#### 17 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>

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**18 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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**19 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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**20 Subsection 250-10(2) in Schedule 1 (table item 73)**

Repeal the item.

**21 Subsection 250-10(2) in Schedule 1 (after table item 136)**

Insert:

136A	debt account discharge liability	133-105 in Schedule 1	<i>Taxation Administration Act 1953</i>
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**22 Section 280-1 in Schedule 1**

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

**23 Section 280-50 in Schedule 1**

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

**24 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.

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- (2) However, subsection (1) does not apply to the extent the additional amount of \*Division 293 tax is \*deferred to a debt account for a \*superannuation interest.
- (3) The liability is for each day in the period:
- (a) beginning on 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 on 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.

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

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

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

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

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

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

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

Add:

- (4) A \*superannuation provider that fails to comply with section 135-75 (about release authorities for Division 293 tax) is liable to an administrative penalty of 20 penalty units.

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

Before “A person”, insert “(1)”.

**30 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.

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

Add:

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

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

Insert:

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

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

Insert:

(ia) the Division 293 tax law; or

**34 Section 353-15 in Schedule 1 (heading)**

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

**35 Subsection 353-15(1) in Schedule 1**

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

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

Add:

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

**37 Paragraph 390-65(1)(a) in Schedule 1**

Repeal the paragraph, substitute:

- (a) been given a release authority in accordance with:
  - (i) section 292-410 of the *Income Tax Assessment Act 1997*; or
  - (ii) section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or
  - (iii) Subdivision 135-B in this Schedule; and

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

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

#### **38 After Division 292**

Insert:

### **Division 293—Sustaining the superannuation contribution concession**

#### **Table of Subdivisions**

293-A Application of Division 293 tax rules

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

#### **Table of sections**

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

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

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

#### **39 Application**

- (1) Subject to this item, the amendments made by Parts 1 and 2 of this Schedule apply to the 2012-13 income year and later income years.
- (2) Subitem (1) does not apply to item 1 of this Schedule.

#### ***No retrospective administrative penalty***

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

*Modification for certain notice provisions*

- (4) Despite subitem (1), section 133-75 in Schedule 1 to the *Taxation Administration Act 1953*, as inserted by this Schedule, does not require the Commissioner to give a notice before 1 July 2014.

## Schedule 4—Sustaining the superannuation contribution concession: consequential amendments

### Part 1—Amendment of the Governor-General Act 1974

#### 1 After section 4B

Insert:

#### 4BA Sustaining the superannuation contribution concession— release of money to meet deferred tax liability

*Release of lump sum under a release authority*

- (1) A lump sum (the **release authority lump sum**) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to the Finance Secretary in accordance with Subdivision 135-B in that Schedule.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

*Finance Secretary treated as superannuation provider*

- (2) For the purposes of this Act, the Division 293 tax law (within the meaning of the *Income Tax Assessment Act 1997*) applies as if the Finance Secretary was the superannuation provider in relation to the defined benefit interest (within the meaning of that Act) established under this Act.

*Limit on amount that may be released*

- (3) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of the release authority lump sum must not have the effect that the person's allowance is reduced below zero.

**Schedule 4** Sustaining the superannuation contribution concession: consequential amendments

**Part 1** Amendment of the Governor-General Act 1974

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- (4) For the purpose of subsection (3), the effect of the release authority lump sum on the amount of the person's allowance is to be worked out after taking account of any reduction under another provision of this Act.

*Appropriation*

- (5) Payment of a release authority lump sum must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

*Calculation of allowance after payment of release authority lump sum*

- (6) If:
- (a) a release authority lump sum is paid in relation to a release authority issued to a person; and
  - (b) an allowance is payable to the person under subsection 4(1);
- the rate of the allowance is the applicable percentage of the rate of allowance that would, apart from this section (but having regard to any other provisions of this Act that affect that rate) be payable to the person.
- (7) For the purposes of subsection (6), the applicable percentage is worked out using this formula:

$$\left[ 1 - \left( \frac{\text{Release authority lump sum}}{\text{Age factor}} \div \text{Basic allowance} \right) \right] \times 100$$

where:

**age factor** means the age factor for the person on the day on which the allowance becomes payable (see subsection (10)).

**basic allowance** means the rate of the allowance that would, apart from this subsection (but having regard to any other provisions of this Act that affect that rate), be payable to the person at the time the allowance becomes payable.

- (8) The applicable percentage mentioned in subsection (7) is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (9) If:
-

- (a) the rate of allowance payable to a person is worked out under subsection (6) having regard to a particular applicable percentage; and
  - (b) a spouse allowance becomes payable to a spouse of the person;  
the rate of the spouse allowance is that applicable percentage of the rate of spouse allowance that would, apart from this section (but having regard to any other provisions of this Act that affect that rate) be payable to the spouse.
- (10) The Finance Secretary may, by legislative instrument, determine the age factor, or the method for working out the age factor, for the purposes of subsection (7).

## **Part 2—Amendment of the Parliamentary Contributory Superannuation Act 1948**

### **2 After subsection 18(1)**

Insert:

Note: A benefit to which a person is entitled in accordance with this section may be reduced under Part VC (which deals with sustaining the superannuation contribution concession).

### **3 After subsection 18A(1)**

Insert:

(1A) However, a person may not make an election under subsection (1) if the person has given the Secretary of the Finance Department a written notice under paragraph 22SC(2)(c).

### **4 Subsection 18B(17)**

Repeal the subsection, substitute:

(17) If:

- (a) a person makes an election under subsection 18A(1) in relation to his or her retiring allowance; or
- (b) the amount of the person's retiring allowance is reduced in accordance with section 22SE to reflect a release authority lump sum (within the meaning of Part VC);

the person is not entitled to make a subsequent election under subsection (3) of this section in relation to the retiring allowance.

### **5 After Part VB**

Insert:

## Part VC—Sustaining the superannuation contribution concession

### Division 1—Preliminary

#### 22SA Definitions

In this Part:

*defined benefit interest* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*Division 293 tax law* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*release authority lump sum* has the meaning given by section 22SC.

*superannuation provider* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

#### 22SB Secretary treated as superannuation provider

For the purposes of this Act, the Division 293 tax law applies as if the Secretary of the Finance Department was the superannuation provider in relation to the defined benefit interest established under this Act.

### Division 2—Release under a release authority

#### 22SC Release of benefits under a release authority

- (1) A lump sum (the *release authority lump sum*) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to the Secretary of the Finance Department in accordance with Subdivision 135-B in that Schedule if, at that time, either:
  - (a) the person's surcharge debt account is not in debit; or
  - (b) subsection (2) applies.

**Schedule 4** Sustaining the superannuation contribution concession: consequential amendments

**Part 2** Amendment of the Parliamentary Contributory Superannuation Act 1948

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Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

*Surcharge election must be made or forgone*

- (2) This subsection applies if any of the following are satisfied:
- (a) the person has made an election under subsection 18A(1) (which deals with the adjustment of benefits to take account of the surcharge deduction amount);
  - (b) the person has not made an election under that subsection and the period within which such an election may be made has expired;
  - (c) the person gives the Secretary of the Finance Department written notice that the person forgoes making an election under that subsection.

*Appropriation*

- (3) Payment of a release authority lump sum must be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**22SD Limit on amount that may be released**

- (1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum paid in relation to a release authority issued to a person must not have the effect that the person's retiring allowance is reduced below zero.
- (2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of the person's retiring allowance is to be worked out after taking account of:
- (a) the amount of any surcharge adjustment applicable in relation to the person's retiring allowance under a provision of this Act; and
  - (b) any reduction under section 22DI (which deals with special payments during deferral period); and
  - (c) any reduction under Part VAA (which deals with family law splitting).

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## 22SE Calculation of benefits after payment of release authority lump sum

- (1) If:
- (a) a release authority lump sum is paid in relation to a release authority issued to a person; and
  - (b) the person is entitled to a retiring allowance in accordance with section 18;

the person's rate of retiring allowance is the applicable percentage of the rate of retiring allowance that would, apart from this section (but having regard to any other provisions of this Act that affect that rate), be worked out under section 18.

- (2) For the purposes of subsection (1), the applicable percentage is worked out using this formula:

$$\left[ 1 - \left( \frac{\text{Release authority lump sum}}{\text{Age factor}} \div \text{Basic rate} \right) \right] \times 100$$

where:

**age factor** means the age factor for the person on the day on which the retiring allowance becomes payable (see subsection (4)).

**basic rate** means the rate of the retiring allowance that would, apart from this subsection (but having regard to any other provisions of this Act that affect that rate), be worked out under section 18 for the person at the time the retiring allowance becomes payable.

- (3) The applicable percentage mentioned in subsection (1) is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (4) The Secretary of the Finance Department may, by legislative instrument, determine the age factor, or the method for working out the age factor, for the purposes of subsection (2).

## Part 3—Amendment of the Superannuation Act 1976

### 6 Subsection 3(1) (definition of *benefit*)

Repeal the definition, substitute:

*benefit* means pension or other benefit payable under this Act, and:

- (a) includes a release authority lump sum (within the meaning of Part IXC) paid in relation to a release authority issued to a person under Subdivision 135-A in Schedule 1 to the *Taxation Administration Act 1953*; but
- (b) does not include a payment made out of the Fund that is required to be made under:
  - (i) a release authority given to CSC under section 292-410 of the *Income Tax Assessment Act 1997*; or
  - (ii) a transitional release authority given to the Board under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or
  - (iii) a release authority issued under item 1 or 2 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

### 7 Sections 80B and 80C

Before “A person”, insert “(1)”.

### 8 At the end of sections 80B and 80C

Add:

- (2) However, a person may not make an election under this section if the person has given CSC a written notice under paragraph 146RB(2)(c).

### 9 At the end of paragraph 110SN(2)(a)

Add:

- ; or (iii) a release authority issued under item 1 or 2 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*;

## 10 At the end of paragraph 130D(3)(a)

Add:

- ; or (iii) a release authority issued under item 1 or 2 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*;

## 11 After Part IXB

Insert:

# Part IXC—Sustaining the superannuation contribution concession: release of benefits to meet deferred tax liability

## 146RA Definitions

In this Part:

*release authority lump sum* has the meaning given by section 146RB.

## 146RB Release of benefits under a release authority

- (1) A lump sum (the *release authority lump sum*) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to CSC in accordance with Subdivision 135-B in that Schedule if:
  - (a) at or before that time, the person gives CSC written notice of the person's election under section 146RC of this Act (which deals with the reduction of benefits to reflect the release authority lump sum); and
  - (b) at that time, either:
    - (i) there is no surcharge deduction amount in relation to the person; or
    - (ii) subsection (2) applies.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

*Surcharge election must be made or forgone*

- (2) This subsection applies if any of the following are satisfied:
- (a) the person has made an election under section 80B or 80C (which deal with the adjustment of benefits to take account of the surcharge deduction amount);
  - (b) the person has not made an election under either of those sections and the periods within which such elections may be made have expired;
  - (c) the person gives CSC written notice that the person forgoes making an election under both of those sections.

**146RC Election specifying which benefit is to be reduced**

- (1) A person who gives CSC a release authority in accordance with Division 135 in Schedule 1 to the *Taxation Administration Act 1953* may make an election specifying which of the following is to be reduced to reflect the release authority lump sum:
- (a) a lump sum benefit to which the person is (or is about to become) entitled under this Act (unless the lump sum benefit has already been paid);
  - (b) a pension to which the person is (or is about to become) entitled under this Act (whether or not the pension has started to be paid).
- (2) However, a person cannot specify that 2 or more benefits are to be reduced to reflect a release authority lump sum, unless the person elects to reduce all, or all but one, of the specified benefits to zero.

**146RD Limit on amount that may be released**

- (1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum must not have the effect that a benefit specified in an election under section 146RC is reduced below zero.
- (2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of a benefit specified in an election under section 146RC is to be worked out after taking account of:
- (a) the person's surcharge deduction amount (if any); and

- 
- (b) any reduction under section 79D (which deals with reductions for early release lump sums); and
  - (c) any reductions under Division 3 of Part IXB (which deals with family law splitting).
- (3) Apart from subsection (2), the amount of a release authority lump sum is not to be reduced under any provision of this Act.

#### **146RE Calculation of benefits after payment of release authority lump sum**

- (1) If a release authority lump sum is paid in relation to a release authority issued to a person, the benefits to which the person is entitled under this Act must be reduced to reflect the release authority lump sum, in accordance with the person's election under section 146RC.
- (2) If the election specifies that a pension is to be reduced (but not to zero), the annual rate of the pension is to be reduced so that it equals the amount worked out using this formula:

$$\text{Pre-reduction rate} - \frac{\text{Reduced release authority lump sum}}{\text{Conversion factor}}$$

where:

**conversion factor** means the factor that is applicable to the person under the determination made by CSC under subsection (4).

**pre-reduction rate** means the annual rate of the pension that would, apart from this section (but having regard to any other provisions of this Act that affect that rate), be payable to the person on the pension reduction day mentioned in subsection (3).

**reduced release authority lump sum** means the amount of the release authority lump sum, reduced by the sum of each reduction made under a previous application of this section to a benefit to which the person is entitled.

- (3) The reduction mentioned in subsection (2) takes effect from the day (the **pension reduction day**) that is:
  - (a) if the pension has not started to be paid—the first pension pay day; or

**Schedule 4** Sustaining the superannuation contribution concession: consequential amendments

**Part 3** Amendment of the Superannuation Act 1976

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- (b) if the pension has started to be paid—the first pension pay day that occurs 14 days after the release authority was given to CSC.
- (4) CSC may, by legislative instrument, determine the conversion factor, or the method for working out the conversion factor, for the purposes of subsection (2).

## **Part 4—Amendment of the Superannuation Act 1990**

### **12 After subsection 16(8)**

Insert:

- (8A) For the purpose of this Act and the Rules, a lump sum paid by CSC in relation to a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* is a benefit paid in respect of the person.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

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[*Minister's second reading speech made in—  
House of Representatives on 15 May 2013  
Senate on 17 June 2013*]

(96/13)

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