Income Tax Assessment Amendment Regulations 2007 (No. 2)[1]

Select Legislative Instrument 2007 No. 90

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

Dated 12 April 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

PETER CRAIG DUTTON
Minister for Revenue and Assistant Treasurer

0622744C-070330EV

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2007 (No. 2)*.

2 Commencement

These Regulations commence as follows:

(a) on the day after they are registered — regulations 1, 2 and 3 and Schedule 1;

(b) on 1 July 2007 — regulation 4 and Schedule 2;

(c) immediately after the commencement of Schedule 2 — regulation 5 and Schedule 3.

3 Amendment of *Income Tax Assessment Regulations 1997*

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

4 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 2 amends the *Income Tax Assessment Regulations 1997*.

5 Amendment of *Income Tax Assessment Regulations 1997*

(1) Schedule 3 amends the *Income Tax Assessment Regulations 1997*, as amended by Schedule 2.

(2) The amendments made by Schedule 3 apply in relation to an income year that starts on or after 1 July 2007.

Schedule 1 Amendment commencing on day after registration

(regulation 3)

[1] Part 2, after Division 70

insert

Division 292 Excess contributions tax

Subdivision 292-C Excess non-concessional contributions tax

292-90.01 Non-concessional contributions for a financial year

(1) For paragraph 292-90 (4) (a) of the Act, this regulation sets out conditions for the purpose of allocating an amount in a complying superannuation plan.

Note The effect of paragraph 292-90 (4) (a) of the Act is that an amount is covered under that subsection if it is an amount in a complying superannuation plan that is allocated by the superannuation provider in relation to the plan for the year in accordance with conditions specified in the Regulations.

(2) Subject to subregulation (3), an amount that:

(a) is allocated under Division 7.2 of the SIS Regulations; and

(b) is not assessable contributions under Subdivision 295-C of the Act;

is to be treated as having been allocated by the superannuation provider in a way that is covered by paragraph 292-90 (4) (a) of the Act.

(3) Each of the following amounts is to be treated as not having been allocated by the superannuation provider in a way that is covered by paragraph 292-90 (4) (a) of the Act, even if subregulation (2) would also apply to the amount:

(a) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

(b) a contribution covered under section 292-95 of the Act;

(c) a contribution covered under section 292-100 of the Act, to the extent that it does not exceed the CGT cap amount when it is made;

(d) a contribution made to a constitutionally protected fund (other than a contribution included in the contributions segment of the member's superannuation interest in the fund);

(e) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180 of the Act;

(f) a contribution that is a roll-over superannuation benefit;

(g) the tax free component of a directed termination payment (within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*) made in the financial year on behalf of the member.

Schedule 2 Amendments commencing on 1 July 2007

(regulation 4)

[1] Part 2, after Division 292

insert

Division 306 Roll-overs etc

306-10.01 Roll-over superannuation benefit

For paragraph 306-10 (b) of the Act, a kind of superannuation benefit is a benefit to which the following requirements exist:

(a) the benefit arises from the commutation of a superannuation income stream paid to a person (***person 1***) because of the death of another person (***person 2***); and

(b) person 1 was not the spouse of person 2 at the time of person 2's death.

Note Under section 306-10 of the Act, a superannuation benefit is a roll-over superannuation benefit if it meets the requirements specified in the section. One of the requirements is that the benefit is not a superannuation benefit of a kind specified in the Regulations.

Division 307 Key concepts relating to superannuation benefits

Subdivision 307-D Superannuation interests

307-200.01 Application of Subdivision 307-D to Subdivision 292-D of the Act

For the purposes of calculating an amount of contributions under Subdivision 292-D of the Act, this Subdivision does not apply.

307-200.02 Meaning of superannuation interests

For subsection 307-200 (2) of the Act, every amount, benefit or entitlement that a member holds in a superannuation plan is to be treated as 1 superannuation interest in the relevant superannuation fund unless the amount, benefit or entitlement is to be treated as 2 or more superannuation interests in accordance with 1 of the other arrangements in this Subdivision.

307-200.03 Meaning of superannuation interests — treating a superannuation interest as 2 or more superannuation interests (public sector schemes)

(1) For subsection 307-200 (1) of the Act, this regulation explains how to treat a superannuation interest in a public sector superannuation scheme as 2 or more superannuation interests.

(2) The interest is to be treated as 2 interests if:

(a) the superannuation benefit that is to be paid from the scheme is sourced:

(i) partly from contributions made into the scheme or earnings on those contributions; and

(ii) partly from 1 or more other sources; or

(b) the superannuation benefits that are to be paid from the scheme are sourced:

(i) partly from contributions made into the scheme or earnings on those contributions; and

(ii) partly from 1 or more other sources.

(3) For subregulation (2), the interests are:

(a) an interest that consists of the contributions made into the scheme and the earnings on those contributions; and

(b) an interest that consists of the remainder of the amount sourced from the other source or sources.

(4) In addition to the interests identified in accordance with paragraphs (3) (a) and (b), if:

(a) the superannuation provider offers an income stream; and

(b) the rules of the fund do not allow the transfer of amounts between different categories of lump-sum amounts and amounts that form part of, or can be used to purchase, a superannuation income stream; and

(c) the rules of the fund (as in effect on 5 September 2006) did not allow a specified amount held in the plan:

(i) to form part of that superannuation income stream; or

(ii) to be used for the purpose of purchasing a superannuation income stream offered by the provider;

the superannuation interest is also to be treated as the further interests described in subregulation (5).

(5) For subregulation (4), the following separate interests are created:

(a) the amount transferred or rolled into the plan from another plan is to be treated as 1 superannuation interest;

(b) each other amount to which subregulation (4) relates is to be treated as 1 superannuation interest to the extent to which the amount is subject to different requirements regarding the rules, terms or conditions relating to the way it can be cashed or paid as compared to the amounts mentioned in paragraphs (3) (a) and (b);

(c) if:

(i) paragraph (b) applies to more than 1 amount; and

(ii) each of those amounts is subject to different requirements regarding the rules, terms or conditions relating to the way it can be cashed or paid as compared to the amount mentioned in paragraph (a);

each of those amounts is to be treated as a separate superannuation interest.

307-200.04 Meaning of superannuation interests — treating a superannuation interest as 2 or more superannuation interests (constitutionally protected funds)

(1) For subsection 307-200 (1) of the Act, this regulation explains how to treat a superannuation interest in a constitutionally protected fund as 2 or more superannuation interests.

(2) An interest is to be treated as more than 1 interest if:

(a) the superannuation provider offers an income stream; and

(b) the rules of the fund do not allow the transfer of amounts between different categories of lump-sum amounts and amounts that form part of, or can be used to purchase, a superannuation income stream; and

(c) the rules of the fund (as in effect on 5 September 2006) did not allow a specified amount held in the plan:

(i) to form part of that superannuation income stream; or

(ii) to be used for the purpose of purchasing a superannuation income stream offered by the provider.

(3) For subregulation (2), the interest is to be treated as more than 1 interest as follows:

(a) the amount transferred or rolled into the plan from another plan is to be treated as 1 superannuation interest;

(b) each other amount to which subregulation (2) relates is to be treated as 1 superannuation interest to the extent to which the amount is subject to different requirements regarding the rules, terms or conditions relating to the way it can be cashed or paid as compared to the amount mentioned in paragraph (a);

(c) if:

(i) paragraph (b) applies to more than 1 amount; and

(ii) each of those amounts is subject to different requirements regarding the rules, terms or conditions relating to the way it can be cashed or paid as compared to the amount mentioned in subregulation (2);

each of those amounts is to be treated as a separate superannuation interest.

307-200.05 Meaning of superannuation interests — treating a superannuation interest as 2 or more superannuation interests (superannuation income streams)

If a superannuation income stream commences, an amount that supports the superannuation income stream is always to be treated as a separate superannuation interest.

307-205.01 Value of superannuation interest for calculating pre-July 1983 amount for members in the contributions and investment phase

(1) For paragraph 307-205 (a) of the Act, this regulation specifies methods for determining the value of a superannuation interest at a particular time for the purposes of calculating the pre-July 1983 amount of the crystallised segment of a tax-free component under section 307-225 of the Act.

Note Calculating the pre-July 1983 amount of the crystallised segment of the tax-free component will require the superannuation interest to be valued before 1 July 2007. This calculation will only be performed for a superannuation interest in the accumulation phase, and only for a superannuation interest in which part of the taxable component is comprised of an element taxed in the fund.

Defined benefit interest

(2) For a defined benefit interest, the method is as follows.

Step 1 1 Calculate the value of the retirement benefit that would have been payable if the member:

(a) had been eligible to retire immediately before 1 July 2007; and

(b) had elected to do so.

Note If a member is no longer in the employment which gave rise to the interest, but the interest is preserved in the scheme, retirement is taken to be the point at which the benefit is payable without penalty to the member.

2 If the retirement benefit depends upon the member's age, service or salary, or upon the employer's consent, the value is to be calculated on the assumption that:

(a) the member's service was his or her actual service immediately before 1 July 2007; and

(b) the member's age was the greater of:

 (i) the minimum age at which a retirement benefit could be taken without requiring the employer's consent; and

 (ii) the member's actual age immediately before 1 July 2007; and

(c) the member's salary was his or her salary for superannuation purposes immediately before 1 July 2007; and

(d) the employer consents to the retirement.

3 If part or all of the retirement benefit can be paid as a superannuation income stream, then the value of that income stream is determined as the product of:

(a) the annual rate of the superannuation income stream that would have been paid had the maximum proportion of the benefit possible been taken as an income stream; and

(b) the applicable factor set out in clause 1 of Schedule 1B.

The total value of the retirement benefit is the sum of the value of the superannuation income stream so determined and any lump sum that would have been payable under the assumptions described above had the member taken the maximum possible proportion of his or her benefit as an income stream.

4 If the superannuation benefit can only be paid as a lump sum then the value of the retirement benefit is the amount of that lump sum.

Step 2 If a superannuation lump sum benefit, including a roll-over superannuation benefit, would have been payable had the member resigned, or withdrawn his or her benefit, immediately before 1 July 2007, calculate the amount of that benefit.

Step 3 1 The value of the superannuation interest is the greater of the values worked out using steps 1 and 2.

2 If no value can be determined under step 2, the value of the superannuation interest is the value determined under step 1.

Interest other than defined benefit interest

(3) For a superannuation interest that is not a defined benefit interest, the method is as follows.

Step 1 Assume that the member was eligible to retire immediately before 1 July 2007, and work out the total amount of all the superannuation lump sums that could be payable from the interest at that time.

Step 2 If the total amount worked out under step 1 is less than the total amount actually or notionally allocated to the member (other than because of superannuation contributions surcharge liabilities, insurance costs or other fees, taxes and charges), the value of the interest is the amount actually or notionally allocated to the member.

307-205.02 Value of superannuation interest

(1) For paragraph 307-205 (a) of the Act, this regulation:

(a) applies to a superannuation income stream (other than a superannuation income stream of a type prescribed by regulation 295-385.01); and

(b) specifies a method for determining the value of a superannuation interest at a particular time if the interest supports a superannuation income stream to which this regulation applies.

Note The proportioning rule requires the tax-free and taxable components of superannuation to be paid out as benefits in the same proportion as they make up of the underlying interest. A value of a superannuation interest is required to ensure that the proportioning rule operates appropriately.

(2) The value of the interest at a particular time is the sum of:

(a) the product of:

(i) the annual amount of the superannuation income stream payable in respect of the superannuation interest at that time; and

(ii) the applicable factor set out in clause 1 of Schedule 1B; and

(b) the product of:

(i) the nominal value of the superannuation lump sum, if any, which is payable in respect of the interest at a time in the future, other than a future lump sum which is a commutation of the income stream included in subparagraph (a) (i); and

(ii) the applicable factor set out in clause 2 of Schedule 1B.

[2] Part 6, regulation 995-1.01, after definition of *Act*

insert

RSA Act means the *Retirement Savings Accounts Act 1997*.

RSA Regulations means the *Retirement Savings Accounts Regulations 1997*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994*.

superannuation annuity means:

(a) an income stream:

(i) that is issued by a life insurance company or registered organisation; and

(ii) that commenced before 20 September 2007; and

(iii) that is an annuity within the meaning of:

(A) subsection 10 (1) of the SIS Act; or

(B) subregulation 1.07 (1A) of the RSA Regulations; or

(b) an income stream that:

(i) is issued by a life insurance company or registered organisation; and

(ii) meets the standards set out in subregulation 1.05 (1) of the SIS Regulations.

superannuation income stream means:

(a) an income stream that is taken to be:

(i) an annuity for the purposes of the SIS Act in accordance with subregulation 1.05 (1) of the SIS Regulations; or

(ii) a pension for the purposes of the SIS Act in accordance with subregulation 1.06 (1) of the SIS Regulations; or

(iii) a pension for the purposes of the RSA Act in accordance with regulation 1.07 of the RSA Regulations; or

(b) an income stream that:

(i) is an annuity or pension within the meaning of the SIS Act; and

(ii) commenced before 20 September 2007.

superannuation income stream benefit means a payment from an interest that supports a superannuation income stream, other than a payment to which regulation 995-1.02 applies.

[3] Part 6, after regulation 995-1.02

insert

995-1.03 Payments that are not superannuation income stream benefits

A payment from an interest that supports a superannuation income stream is not a ***superannuation income stream benefit*** if:

(a) the conditions to which the superannuation income stream is subject allow for the variation of the amount of the payments of benefit in a year in circumstances other than:

(i) the indexation of the benefit under the rules of the product; or

(ii) the application of the family law splitting provisions; or

(iii) the commutation of the benefit (including commutation to pay a surcharge liability); or

(iv) the payment of an assessment of excess contributions tax; and

(b) the person to whom the payment is made elects, before a particular payment is made, that that payment is not to be treated as a superannuation income stream benefit.

995-1.04 Constitutionally protected funds

For the definition of ***constitutionally protected fund*** in subsection 995-1 (1) of the Act, a fund:

(a) of the kind to which, in the absence of item 5.3 of section 50-25 of the Act, Division 295 of the Act would apply; and

(b) established by:

(i) a State Act mentioned in Schedule 4; or

(ii) a specified provision of a State Act mentioned in Schedule 4;

is a constitutionally protected fund.

[4] After Schedule 1

insert

Schedule 1B Valuation factors

(regulations 307-205.01 and 307-205.02)

1 Income stream valuation factors

(1) For subregulation 307-205.01 (2), the applicable factor is the factor given in Table 1 at the age which is the greater of:

(a) the minimum age at which a retirement benefit can be taken without requiring the consent of the employer; and

(b) the member's actual age as at his or her last birthday before 1 July 2007.

(2) For subregulation 307-205.02 (2), if the superannuation income stream in respect of the interest is payable for the life of the member, the applicable factor is the factor given in Table 1 for the age of the member at his or her last birthday before the day after the date on which the superannuation income stream is to be valued.

(3) For subregulation 307-205.02 (2), if the superannuation income stream in respect of the interest is payable for a fixed term, the applicable factor is the factor given in Table 2 for the number of complete years remaining in the term of the superannuation income stream on the day preceding the date on which the superannuation income stream is to be valued.

Table 1

Age	Factor	Age	Factor	Age	Factor
18	23.238	44	20.421	70	13.011
19	23.158	45	20.229	71	12.627
20	23.084	46	20.030	72	12.230
21	23.016	47	19.823	73	11.815
22	22.956	48	19.610	74	11.398
23	22.906	49	19.391	75	10.983
24	22.862	50	19.164	76	10.566
25	22.816	51	18.931	77	10.144
26	22.763	52	18.691	78	9.723
27	22.694	53	18.443	79	9.314
28	22.612	54	18.189	80	8.898
29	22.523	55	17.927	81	8.486
30	22.422	56	17.659	82	8.087
31	22.310	57	17.383	83	7.697
32	22.193	58	17.100	84	7.323
33	22.076	59	16.810	85	6.966
34	21.950	60	16.513	86	6.627
35	21.821	61	16.209	87	6.311
36	21.691	62	15.891	88	6.010
37	21.553	63	15.558	89	5.728
38	21.410	64	15.213	90	5.465
39	21.266	65	14.861	91	5.218
40	21.113	66	14.506	92	4.991
41	20.956	67	14.144	93	4.773
42	20.790	68	13.775	94	4.566
43	20.609	69	13.396	95	4.360

Table 2

Number of Years	Factor	Number of Years	Factor
0	0.000	16	11.963
1	0.981	17	12.495
2	1.925	18	13.007
3	2.834	19	13.499
4	3.709	20	13.973
5	4.550	21	14.430
6	5.360	22	14.869
7	6.140	23	15.291
8	6.891	24	15.698
9	7.613	25	16.090
10	8.308	26	16.466
11	8.977	27	16.829
12	9.621	28	17.178
13	10.241	29	17.514
14	10.837	30	17.837
15	11.411		

2 Lump sum valuation factors

(1) For subregulation 307-205.02 (2), the applicable factor is the discount valuation factor mentioned in subclause (3) that applies for the minimum deferral period.

(2) For the purposes of this clause, the minimum deferral period in relation to a lump sum that is to be paid at a time after the date on which an interest is to be valued is the number of complete years between the day before the date on which the interest is to be valued and the earliest date at which the lump sum can be paid.

(3) This subclause sets out the discount valuation factors, in accordance with the following principles:

(a) the factors in column 2 of table 3 apply if the lump sum is not indexed;

(b) the factors in column 3 of table 3 apply if the lump sum is indexed in accordance with the consumer price index;

(c) the factors in column 4 of table 3 apply if the lump sum is indexed in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Bureau of Statistics);

(d) if the lump sum is indexed in accordance with a fund crediting rate, the factor is 1.

Table 3

Minimum deferral period	Lump sum not indexed	CPI indexed lump sum	Wage indexed lump sum
0	1.000	1.000	1.000
1	0.939	0.963	0.977
2	0.882	0.927	0.954
3	0.829	0.892	0.932
4	0.779	0.859	0.910
5	0.732	0.827	0.889
6	0.689	0.797	0.869
7	0.648	0.768	0.849
8	0.610	0.740	0.830
9	0.575	0.714	0.811
10	0.542	0.688	0.793
11	0.511	0.664	0.776
12	0.483	0.641	0.759
13	0.456	0.619	0.742
14	0.431	0.598	0.727
15	0.409	0.579	0.711

Minimum deferral period	Lump sum not indexed	CPI indexed lump sum	Wage indexed lump sum
16	0.387	0.560	0.697
17	0.368	0.542	0.683
18	0.350	0.525	0.669
19	0.333	0.509	0.656
20	0.318	0.494	0.644
21	0.304	0.480	0.632
22	0.291	0.467	0.621
23	0.279	0.454	0.610
24	0.269	0.443	0.600
25	0.259	0.432	0.590
26	0.250	0.422	0.582
27	0.243	0.413	0.573
28	0.236	0.404	0.565
29	0.229	0.397	0.558
30	0.224	0.390	0.552

[5] After Schedule 3

insert

Schedule 4 Constitutionally protected superannuation funds — State legislation

(regulation 995-1.04)

Item	Legislation
Part 1 New South Wales	
101	*Judges' Pensions Act 1953*
Part 2 Victoria	

Item	Legislation
201	**Attorney-General and Solicitor-General Act 1972**
202	**Coal Mines (Pensions) Act 1958**
203	**Constitution Act 1975**
204	**County Court Act 1958**
205	**County Court (Jurisdiction) Act 1968**
206	**Justices Act 1958**
207	**Magistrates Court Act 1989**
208	**Magistrates (Summary Proceedings) Act 1975**
209	**Mint Act 1958**
210	**Ombudsman Act 1973** (subsection 9 (2))
211	**Public Prosecutions Act 1994**
212	**Supreme Court Act 1986**
Part 3 Queensland	
301	*Governor's Pension Act 1977*
302	*Judges (Pensions and Long Leave) Act 1957*
Part 4 Western Australia	
401	*Government Employees Superannuation Act 1987*
402	*Judges' Salaries and Pensions Act 1950*
403	*Parliamentary Superannuation Act 1970*
404	*State Superannuation Act 2000 (*section 29)
405	*Superannuation and Family Benefits Act 1938*
Part 5 South Australia	
501	*Governors' Pensions Act 1976*
502	*Judges' Pensions Act 1971*
503	*Parliamentary Superannuation Act 1974*
504	*Police Superannuation Act 1990* (other than sections 47 and 47A)
505	*Southern State Superannuation Act 1994* (other than sections 47B and 47C)
506	*Superannuation Act 1988* (other than section 52 and Schedule 3)

Item	Legislation
Part 6 Tasmania	
601	*Governor of Tasmania Act 1982*
602	*Judges' Contributory Pensions Act 1968*
603	*Public Servants' Retiring and Death Allowances Act 1925*
604	*Solicitor-General Act 1983*

Schedule 3 Further amendments commencing on 1 July 2007

(regulation 5)

[1] Part 2, before Division 28

insert

Division 26 Some amounts you cannot deduct, or cannot deduct in full

26-85.01 Borrowing costs on loans to pay life insurance premiums — term insurance policy

The risk component of a premium received in respect of:

(a) a term insurance policy; or

(b) a rider or supplementary benefit attached to another policy where the sum insured is payable on death within a specified term;

is the whole of the premium.

[2] Part 2, after Division 70

insert

Division 290 Contributions to superannuation funds

Subdivision 290-C Deducting personal contributions

290-170.01 Notice of intent to deduct contributions — contributions-splitting applications

For subparagraph 290-170 (2) (d) (i) of the Act, each of the following is a contributions-splitting application:

(a) an application under regulation 6.44 of the SIS Regulations;

(b) an application under regulation 4.41 of the RSA Regulations;

(c) an application to deal with an amount in a way that would result in the amount becoming a contributions-splitting superannuation benefit in accordance with the SIS Regulations or the RSA Regulations.

[3] Part 2, after Division 292

insert

Division 295 Taxation of superannuation entities

Subdivision 295-D Contributions excluded

295-265.01 Application of pre-1 July 1988 funding credits — limit on choice

(1) For paragraph 295-265 (7) (a) of the Act, this regulation prescribes the manner in which a superannuation provider in relation to a superannuation fund is to work out the amount applicable to the fund, under subsection 295-265 (6) of the Act, for an income year where the superannuation provider chooses, after 9 May 2006, to specify an amount for the purposes of subsection 295-265 (1) of the Act.

Method 1 — Funding credit valuation process

(2) Method 1 must be used for an income year, unless:

(a) the conditions mentioned in subregulation (7) for the use of method 2 are met; and

(b) the actuary decides that the use of method 2 is appropriate.

(3) The amount applicable to the fund for an income year is the least of the following amounts:

(a) the amount of pre-1 July 1988 funding credits unused at the end of the previous income year;

(b) the value of unfunded pre-1 July 1988 liabilities at the first day of the income year, determined by an actuary in accordance with step 3 of method 1 or method 2;

(c) the pre-1 July 1988 taxable contributions for the income year, worked out in accordance with step 4 of method 1 or method 2;

(d) for an income year that ended before 9 May 2006 — the amount that the superannuation provider could specify under subsection 295-265 (1) of the Act under the legislation that applied to the income year.

(4) The amount identified in accordance with subregulation (3) must then be adjusted for all transfers of funding credits and relevant liabilities into or out of the fund.

(5) The procedure in method 1 for determining an amount applicable to a fund is referred to in this regulation as a ***funding credit valuation process***.

(6) The amounts mentioned in paragraphs (3) (a), (b), (c) and (d), and the amount as adjusted under subregulation (4), must be certified by an actuary.

Method 2 — Notionally updated funding credit valuation process

(7) The actuary may use method 2 for an income year if:

(a) the actuary can identify, at the start of the income year, that the value of unfunded pre-1 July 1988 liabilities exceeds the amount that the superannuation provider wishes to specify for subsection 295-265 (1) of the Act; and

(b) the income year is the first year after, or the second year after, an income year for which method 1 was used to calculate the amount applicable to the fund.

(8) The procedure in method 2 for calculating an amount applicable to a fund is referred to in this regulation as a ***notionally updated funding credit valuation process***.

Method 1 Funding credit valuation process

Step 1

(value liabilities)

1.1 For any income year in which funding credits are claimed, calculate the discounted present value of liabilities as at the first day of that income year that relates to membership completed.

1.2 The basis for the calculations in item 1.1 must be the actuarial valuation basis relevant to the income year in question which the superannuation fund's actuary would consider appropriate for a valuation under Part 9 of the SIS Regulations.

1.3 In making the calculation in item 1.1 exclude the following liabilities that are not provided from taxable contributions:

(a) liabilities representing benefits financed by undeducted contributions;

(b) liabilities representing benefits or components that are expected to be treated as paid from an untaxed source;

Example

Pensions provided on an emerging cost or pay as you go basis, with corresponding elections being made under subsection 295-180 (1) of the Act.

(c) liabilities for entitlements relating to membership and for which corresponding assets can be identified;

Example

Fully funded productivity, superannuation guarantee or salary sacrifice account balances.

(d) liabilities representing death and disability benefits for which costs are claimed as deductible under section 295-465 or 295-470 of the Act.

1.4 Apportion the discounted present value of the liabilities, between:

(a) the period of superannuation fund membership completed before 1 July 1988; and

(b) the period of superannuation fund membership completed on and after 1 July 1988;

for each superannuation fund member or former member for whom a liability is being valued.

1.5 The apportionment in item 1.4 must be made having regard to the following requirements and principles:

(a) superannuation fund membership must be consistent with the definition used by the fund to determine the benefit being valued;

(b) the actuary of the superannuation fund may use an alternative method for apportioning the discounted present value of liabilities only if the actuary certifies that the method will provide a reasonable approximation of the apportionment;

(c) the actuary will generally use a linear apportionment method, but may use an apportionment method that reflects non-linear accrual of entitlements, provided the actuary considers that such an approach achieves an outcome that is consistent with the principle that funding credits can only be used against contributions intended to provide for entitlements relating to membership completed before 1 July 1988.

1.6 The actuary must retain documentation of the liability and valuation apportionment calculations for not less than 5 years.

1.7 The discounted present value of liabilities for all members apportioned to pre-1 July 1988 membership is the ***value of pre-1 July 1988 liabilities***.

Step 2

(apportion assets)

2.1 Calculate the total amount of superannuation fund assets at their market value at the start of the income year, on the basis on which the superannuation fund's actuary would consider appropriate for a valuation under Part 9 of the SIS Regulations.

2.2 Allow deductions for realisation costs and charges incurred in the normal course of operation of the superannuation fund.

2.3 Deduct the amount of assets that relate to excluded liabilities mentioned in item 1.3 of step 1 of this method.

2.4 All remaining assets should be treated as available to provide for the value of pre-1 July 1988 liabilities unless the superannuation provider can provide the actuary with written evidence to support exclusion of both an amount of assets and a corresponding value of liabilities.

2.5 The actuary must retain documentation to support calculations made for the asset apportionment for not less than 5 years.

2.6 The result is the ***assets available to fund pre-1 July 1988 liabilities*** for the income year.

Step 3

(unfunded pre-1 July 1988 liabilities)

3.1 Deduct the assets available to fund pre-1 July 1988 liabilities from the value of pre-1 July 1988 liabilities.

3.2 The result is the ***value of unfunded pre-1 July 1988 liabilities***.

Step 4

(pre-1 July 1988 taxable contributions)

4.1 The superannuation provider must notify to the actuary the amount of taxable contributions that are used to fund pre-1 July 1988 liabilities for the income year.

4.2 The superannuation provider must retain documentation to support calculations of pre-1 July 1988 taxable contributions for not less than 5 years.

4.3 The result is the ***pre-1 July 1988 taxable contributions***.

Method 2 Notionally updated funding credit valuation process

Step 1

(notionally update value of liabilities)

1.1 The actuary must notionally adjust the value of pre-1 July 1988 liabilities from the start of the previous year to the start of the current income year, taking into account any factors likely to affect the value of the pre-1 July 1988 liabilities.

1.2 In making a calculation under item 1.1 the actuary must have regard to the valuation basis that would be used by the fund if method 1 were being used.

1.3 In making a calculation under item 1.1 the actuary must have regard to actual experience gained from the operation of the fund if the experience is materially different from valuation assumptions used in the calculation of the previous pre-1 July 1988 liabilities.

1.4 The actuary must retain documentation of the notional updating of the pre-1 July 1988 liability valuation calculations for not less than 5 years.

1.5 The result is the ***notionally updated value of pre-1 July 1988 liabilities*** for the income year.

Step 2

(notionally update apportionment of assets)

2.1 The actuary must notionally adjust the amount of the assets available to fund pre-1 July 1988 liabilities, from the start of the previous year to the start of the current income year, taking into account any factors likely to affect the amount of the assets available to fund pre-1 July 1988 liabilities.

2.2 Add taxable contributions allocated to fund pre-1 July 1988 taxed liabilities in the previous income year.

2.3 Deduct the employer financed component of pre-1 July 1988 taxed benefits paid out during the previous income year.

2.4 Add actual investment earnings net of the tax and expenses relating to investment income for the previous income year using a basis that is consistent with the underlying investment earnings achieved and normal practices of the superannuation fund.

2.5 The actuary must retain documentation to support notional updating of the amount of assets available to fund pre-1 July 1988 liabilities for not less than 5 years.

2.6 The result is the ***notionally updated amount of assets available to fund pre-1 July 1988 liabilities***.

Step 3

(unfunded pre-1 July 1988 liabilities)

3.1 Deduct the notionally updated amount of assets available to fund pre-1 July 1988 liabilities from the notionally updated value of pre-1 July 1988 liabilities.

3.2 The result is the ***value of unfunded pre-1 July 1988 liabilities*** for the income year.

Step 4

(pre-1 July 1988 taxable contributions)

4.1 The superannuation provider must notify to the actuary the amount of taxable contributions that are allocated to fund pre-1 July 1988 liabilities for the income year.

4.2 The superannuation provider must retain documentation to support calculations of pre-1 July 1988 taxable contributions for not less than 5 years.

4.3 The result is the ***pre-1 July 1988 taxable contributions***.

(9) If an actuary certifies an amount under subregulation (6) the actuary must, if requested by a superannuation provider, provide sufficient information to enable another actuary to check the certification.

(10) An actuary must, in making a calculation under or applying method 1 or 2:

(a) follow any professional standards prepared by the Institute of Actuaries of Australia; and

(b) have regard to any professional guidance notes prepared by the Institute of Actuaries of Australia;

that relate to the determination of accrued benefits mentioned in method 1 or 2.

(11) A superannuation provider must, if requested to do so, provide sufficient information to support a funding credit claim under subsection 295-265 (1) of the Act, including any relevant information that relates to an income year for which a claim was not made.

(12) In this regulation:

method 1 means the method described in the table, Method 1 — Funding credit valuation process.

method 2 means the method described in the table, Method 2 — Notionally updated funding credit valuation process.

Note ***actuary*** is defined in section 995-1 of the Act.

Subdivision 295-F Exempt income

295-385.01 Segregated current pension assets — prescribed superannuation income stream benefits

For section 295-385 of the Act, the following superannuation income stream benefits are prescribed:

(a) an allocated pension within the meaning of the SIS Regulations;

(b) a market linked pension within the meaning of the SIS Regulations;

(c) an account-based pension within the meaning of the SIS Regulations.

Note This regulation is also mentioned in regulation 307-205.02 to identify superannuation income stream benefits to which the method set out in that regulation does not apply.

Division 301 Superannuation member benefits paid from complying plans etc

Subdivision 301-D Departing Australia superannuation payments

301-170.01 Departing Australia superannuation payments

For subparagraph (b) (i) of the definition of ***departing Australia superannuation payment*** in section 301-170 of the Act, the following regulations are prescribed:

(a) regulations 6.20A, 6.20B and 6.24A of the SIS Regulations;

(b) regulation 4.23A of the RSA Regulations.

Subdivision 301-E Superannuation lump sum member benefits less than $200

301-225.01 Superannuation lump sum member benefits less than $200 are tax free

(1) For paragraph 301-225 (d) of the Act, this regulation sets out requirements in relation to a superannuation member benefit.

Note The effect of section 301-225 of the Act is that a superannuation member benefit is not assessable income and is not exempt income in specified circumstances. One of the circumstances is that the requirements (if any) specified in the Regulations in relation to the benefit are satisfied.

(2) A requirement is that the member's benefit must be released under:

(a) item 104 or 109B of Part 1 of Schedule 1 to the SIS Regulations; or

(b) item 211 of Part 2 of Schedule 1 to the SIS Regulations.

Division 302 Superannuation death benefits paid from complying plans etc

Subdivision 302-D Definitions relating to dependants

302-200.01 What is an *interdependency relationship* — matters to be taken into account

(1) For paragraph 302-200 (3) (a) of the Act, this regulation sets out matters that are to be taken into account in determining whether 2 persons have an interdependency relationship.

(2) The matters are:

(a) all of the circumstances of the relationship between the persons, including (where relevant):

(i) the duration of the relationship; and

(ii) whether or not a sexual relationship exists; and

(iii) the ownership, use and acquisition of property; and

(iv) the degree of mutual commitment to a shared life; and

(v) the care and support of children; and

(vi) the reputation and public aspects of the relationship; and

(vii) the degree of emotional support; and

(viii) the extent to which the relationship is one of mere convenience; and

(ix) any evidence suggesting that the parties intend the relationship to be permanent; and

(b) the existence of a statutory declaration signed by 1 of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.

302-200.02 What is an *interdependency relationship* — existence of relationship

(1) For paragraph 302-200 (3) (b) of the Act, this regulation sets out circumstances in which 2 persons have, or do not have, an interdependency relationship under section 302-200 of the Act.

Interdependency relationship

(2) 2 persons have an interdependency relationship if:

(a) they satisfy the requirements of paragraphs 302-200 (1) (a) to (c) of the Act; and

(b) 1 or each of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.

Examples of care normally provided in a close personal relationship rather than by a friend or flatmate

1. Significant care provided for the other person when he or she is unwell.

2. Significant care provided for the other person when he or she is suffering emotionally.

(3) 2 persons have an interdependency relationship if:

(a) they have a close personal relationship; and

(b) they do not satisfy the other requirements set out in subsection 302-200 (1) of the Act; and

(c) the reason they do not satisfy the other requirements is that they are temporarily living apart.

Example for paragraph (3) (c)

One of the persons is temporarily working overseas or is in gaol.

(4) 2 persons have an interdependency relationship if:

(a) they have a close personal relationship; and

(b) they do not satisfy the other requirements set out in subsection 302-200 (1) of the Act; and

(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a disability.

No interdependency relationship

(5) 2 persons do not have an interdependency relationship if 1 of them provides domestic support and personal care to the other:

(a) under an employment contract or a contract for services; or

(b) on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.