


# ***TR 2013/5A1 - Addendum - Income tax: when a superannuation income stream commences and ceases***

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# Addendum

## Taxation Ruling

### Income tax: when a superannuation income stream commences and ceases

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends TR 2013/5 to reflect the legislative amendments made by:

- *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013*
- *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*
- *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017*
- *Treasury Laws Amendment (2017 Measures No. 1) Regulations 2017*
- *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018* and
- *Income Tax Assessment (1997 Act) Regulations 2021* (which replaced the repealed *Income Tax Assessment Act Regulations 1997*).

It also amends TR 2013/5 to:

- clarify how the general principles in that Ruling apply in the context of successor fund transfers, and
- remove practical compliance approaches that are no longer current.

TR 2013/5 is amended as follows:

#### 1. Ruling – preamble

Omit the preamble; substitute:

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

*If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.*

#### 2. Table of contents

Omit the table of contents; substitute:

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What this Ruling is about

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### 3. Paragraph 1

At the end of the paragraph, insert new footnote 1A:

<sup>1A</sup> These concepts are also relevant to the transfer balance cap provisions in Division 294 of the *Income Tax Assessment Act 1997*. For an explanation of these concepts in relation to the transfer balance cap see Law Companion Ruling LCR 2016/9 *Superannuation reform: transfer balance cap*.

### 4. Paragraph 2

(a) Omit the wording of the paragraph; substitute:

This Ruling considers the case where a member with an accumulation interest in a taxed complying superannuation fund commences a superannuation income stream on or after 1 July 2007 that meets the conditions of subparagraph (a)(ii) of the definition of superannuation income stream in subsection 307-70.02(1) of the *Income Tax Assessment (1997 Act) Regulations 2021* (ITAR (1997 Act) 2021).<sup>1B</sup> That is, where the superannuation income stream is taken to be a pension in accordance with subregulation 1.06(1) of the *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994).

- (b) At the end of the first sentence, insert new footnote 1B:

<sup>1B</sup> Superannuation income stream is defined in subsection 307-70(2) of the *Income Tax Assessment Act 1997* as having the meaning given by the ITAR (1997 Act) 2021.

**5. Paragraph 3**

Omit 'account based'; substitute 'account-based'.

**6. Paragraph 4**

- (a) Omit 'account based'; substitute 'account-based'.

- (b) After the paragraph, insert new paragraphs 4A and 4B:

4A. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

4B. Appendix 2 to this Ruling lists relevant legislative changes that have been made since 1 July 2012.

**7. Paragraph 5**

- (a) In the heading, after 'and' insert 'a'.

- (b) Omit the wording of the paragraph; substitute:

There is an 'income stream' within the definition of 'superannuation income stream'<sup>2</sup>, if a superannuation fund trustee has a liability to pay to a member a series of periodic payments that relate to each other over an identifiable period of time. The payments need not be periodic in the sense that they are always paid at the same, recurring intervals. The payments in a series may also vary in amount. A liability to make a single payment each year for a number of years can constitute a liability to pay a member a series of payments. However, a liability to make a single payment for one year will not be considered a liability to pay a member a series of payments and therefore will not be an income stream.

- (c) Omit the wording of footnote 2; substitute:

Subsection 307-70.02(1) of the ITAR (1997 Act) 2021.

**8. Paragraph 6**

Omit the commas.

**9. Paragraph 7**

- (a) Omit 'unless an election under regulation 995-1.03 of the ITAR 1997 has been made for that payment not to be treated as a superannuation income stream benefit'.

- (b) Omit the wording of footnote 3; substitute:

See the definition of superannuation income stream benefit in subsection 307-70(1) of the ITAA 1997, and section 307-70.01 of the ITAR (1997 Act) 2021.

**10. Paragraph 8**

- (a) Omit the wording of the paragraph; substitute:

A superannuation lump sum is a superannuation benefit that is not a superannuation income stream benefit.<sup>4</sup> An example of a superannuation lump sum is a payment made from a superannuation interest that has ceased to support a superannuation income stream.<sup>5</sup>

- (b) In footnote 4, omit 'of the *Income Tax Assessment Act 1997* (ITAA 1997)'.  
(c) In footnote 5, omit 'The two examples mentioned are'; substitute 'The example mentioned is'.  
(d) Omit footnotes 6 and 7.

- (e) After the paragraph, insert new paragraph 8A:

8A. A payment made as the result of a partial commutation of a superannuation income stream will also be treated as a superannuation lump sum for the purposes of the ITAA 1997 (apart from Subdivision 295-F).<sup>7A</sup>

- (f) At the end of new paragraph 8A, insert new footnote 7A:

<sup>7A</sup>. Subsection 307-65(2).

**11. Paragraph 9**

In footnote 8, after 'Example 4', insert 'in'.

**12. Paragraph 10**

After 'paragraph 9', insert 'of this Ruling'.

**13. Paragraph 12**

- (a) After the first dot point, omit the semi-colon; substitute a comma.  
(b) In footnote 13, after 'Examples 1 to 3', insert 'in'.

**14. Paragraph 15**

Omit 'regulation 307-200.05 of the ITAR 1997'; substitute 'section 307-200.05 of the ITAR (1997 Act) 2021'.

**15. Paragraph 18**

Omit 'ceases'; substitute 'is taken to have ceased'.

**16. Paragraph 19**

In footnote 17, after 'assumes the', insert 'superannuation'.

**17. Paragraph 20**

- (a) Omit the wording of the paragraph; substitute:

If a superannuation income stream ceases for income tax purposes for the reasons outlined in paragraph 18 of this Ruling, it cannot recommence meeting the SISR requirements in a future year. This means it will not be a superannuation income stream for income tax purposes from the time of cessation, even if the member remains entitled to receive payments from the superannuation fund. For the member to receive a superannuation income stream, any income stream payable from the superannuation interest must cease (for example, by commutation) and a new superannuation income stream must commence under the principles in paragraphs 9 to 13 of this Ruling.<sup>18</sup>

- (b) In footnote 18, after 'Example 6', insert 'in'.

**18. Paragraph 21**

After 'the deceased', insert 'member'.

**19. Paragraph 28**

- (a) Omit the wording of the paragraph; substitute:

A payment made as the result of a partial commutation is treated as a superannuation lump sum for the purposes of the ITAA 1997 (other than Subdivision 295-F).<sup>21</sup>

- (b) At the start of footnote 21, insert 'Subsection 307-65(2)'.<sup>21</sup>

- (c) After the paragraph, insert new paragraphs 28A to 28C (including heading):

***Successor fund transfers***

28A. A superannuation income stream ceases for income tax purposes when the liability to pay superannuation income stream benefits is transferred without the consent of the member to another superannuation fund under a successor fund transfer.

28B. The superannuation income stream from the original fund will cease at the time of the transfer to the successor fund. This is because the member will no longer have any entitlement to superannuation income stream benefits from the superannuation interest in the original fund from the time of the transfer.

28C. If the successor fund is required to pay superannuation income stream benefits as a result of the successor fund transfer, they will arise from a new superannuation interest in the successor fund. This will result in a new superannuation income stream commencing to be paid to the member from the successor fund.<sup>21A</sup>

- (d) At the end of new paragraph 28C, insert new footnote 21A:

<sup>21A</sup> For further explanation see paragraphs 120A to 120E, and Example 7 in paragraphs 44A to 44C of this Ruling.

**20. Paragraph 29**

- (a) At the end of the first sentence, insert new footnote 21B:

<sup>21B</sup> One or more rights (whether contingent or not) that arise on a member's death may, for certain purposes, also be a superannuation income stream: see paragraph 307-70.02(1)(d) of the ITAR (1997 Act) 2021.

- (b) In footnote 22, after 'Example 5', insert 'in'.

**21. Paragraph 30**

- (a) Omit 'account based'; substitute 'account-based'.
- (b) In footnote 30, after 'paragraphs 3 and 4', insert 'of this Ruling'.

**22. Paragraph 39**

Omit 'three'; substitute '3'.

**23. Paragraph 42**

- (a) Omit 'self managed'; substitute 'self-managed'.
- (b) Omit 'account based'; substitute 'account-based'.
- (c) In footnote 24, omit 'SMSF's'; substitute 'self-managed superannuation fund's'.

**24. Paragraph 44**

- (a) Omit the last sentence; substitute:

*For Bill to receive a superannuation income stream in future years, he must cease the income stream that did not meet the requirements of the SISR and commence a new superannuation income stream.*

- (b) After the paragraph, insert new paragraphs 44A to 44C (including heading):

***Example 7: successor fund transfer – cessation of a superannuation income stream***

*44A. ABC Super and DEF Super funds have agreed to enter a successor fund transfer under which the benefits of members of ABC Super will be transferred to DEF Super.*

*44B. A Deed is prepared by the parties setting out the obligations of both parties under the successor fund transfer. This includes DEF Super providing equivalent superannuation income streams to those currently payable to members of ABC Super. The Deed specifies the transfer will occur on 1 August 2023.*

*44C. On 1 August 2023:*

- *the assets supporting superannuation income streams payable to the members of ABC Super, and corresponding obligations, are transferred to DEF Super*
- *the superannuation income streams cease for income tax purposes for each of the members of ABC Super*



- *the transfer results in an involuntary roll-over superannuation benefit to DEF Super in respect of each member, and*
- *new superannuation income streams commence for income tax purposes from DEF Super to its new members.*

**25. Paragraph 45**

Omit the wording of the paragraph; substitute:

This Ruling applies from 1 July 2007, subject to the commencement and application provisions of each Act or Regulation to which it refers. Appendix 2 to this Ruling summarises legislative changes that have been made to the provisions referred to in this Ruling since 1 July 2012.

**26. Paragraphs 46 to 48**

Omit the paragraphs.

**27. Appendix 1 – Explanation**

Omit the preamble; substitute:

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

**28. Paragraph 50**

- Omit all instances of semi-colons.
- In the third dot point, after '(paragraphs 73 to 90)', insert a comma.

**29. Paragraph 51**

- After 'through to 307', omit 'of the ITAA 1997'.
- After the fourth instance of 'superannuation income stream', insert 'that is in the retirement phase'.

**30. Paragraph 52**

- Omit the wording of the paragraph; substitute:

A 'superannuation income stream' is defined in subsection 307-70(2), by reference to subsection 307-70.02(1) of the ITAR (1997 Act) 2021<sup>25</sup> and relevantly to this Ruling as:

- an income stream that is taken to be:
  - ...
  - (ii) a pension for the purposes of the SIS Act in accordance with subregulation 1.06(1) of the SIS Regulations; or
  - ...

- (b) Omit the wording of footnote 25; substitute:

This Ruling does not specifically consider pensions that are covered by paragraphs (b) to (c) of the definition, or rights covered by paragraph (d) of the definition, and they have not been reproduced.

### **31. Paragraph 54**

- (a) Omit the wording of footnote 26; substitute:

Subsection 307-70(1) of the ITAA 1997, and section 307-70.01 of the ITAR (1997 Act) 2021.

- (b) Omit 'account based'; substitute 'account-based'.

### **32. Paragraph 57**

After the paragraph, insert new paragraph 57A:

57A. The Full Federal Court in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (*Douglas*) observed at [140] that the term 'income stream' in the context of the definition 'superannuation income stream' takes its ordinary meaning and is a series of payments, paid periodically even if not necessarily at regular intervals, which may be seen to relate to each other usually as having come from a particular source.

### **33. Paragraph 58**

Omit 'In light of the ordinary meanings of these terms'; substitute 'In light of the ordinary meaning of the term and the decision of the Full Federal Court in *Douglas*'.

### **34. Paragraph 59**

- (a) Omit the wording of the paragraph; substitute:

An income stream is only a 'superannuation income stream' if, relevantly for this Ruling<sup>30</sup>, it is capable of being taken to be a pension in accordance with subregulation 1.06(1) of the SISR 1994.<sup>31</sup> Subregulation 1.06(1) relevantly defines a benefit as a pension if:

- (a) it is provided under rules of a superannuation fund that:
  - (i) meet the standards of subregulation (9A) ...; and
  - (ii) do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced; and
- (b) in the case of rules to which paragraph (9A)(a) applies and that meet the standards of subregulation (9A) – the rules also meet the standards of regulation 1.07D.

...

- (b) In footnote 31, omit 'regulation 995-1.01 of the ITAR 1997'; substitute 'subsection 307-70.02(1) of the ITAR (1997 Act) 2021'.

**35. Paragraph 60**

(a) Omit 'account based'; substitute 'account-based'.

(b) Omit the quotation; substitute:

Rules for the provision of a benefit (the pension) meet the standards of this subregulation if the rules ensure that payment of the pension is made at least annually, and also ensure that:

(a) for a pension in relation to which there is an account balance attributable to the beneficiary – the total of payments in any year (excluding payments by way of commutation but including payments under a payment split) is at least the amount calculated under clause 1 of Schedule 7; and

...

(c) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and

(d) the capital value of the pension and the income from it cannot be used as a security for a borrowing.

**36. Paragraph 61**

Omit 'two'; substitute '2'.

**37. Paragraph 62**

After 'paragraphs 55 to 58', insert 'of this Ruling'.

**38. Paragraph 63**

Omit 'subregulation 1.06(9A)(a)'; substitute 'paragraph 1.06(9A)(a)'.

**39. Paragraph 64**

Omit 'This is the case unless an election under regulation 995-1.03 of the ITAR 1997 has been made for that payment not to be treated as a superannuation income stream benefit.'

**40. Paragraph 65**

(a) Omit the wording of the paragraph; substitute:

A payment made as a result of a full commutation of a superannuation income stream is a superannuation lump sum. A payment made as a result of a partial commutation of a superannuation income stream is treated as a superannuation lump sum for the purposes of the ITAA 1997 (other than Subdivision 295-F).<sup>33</sup>

(b) In footnote 33, at the start of the footnote, insert 'Subsection 307-65(2)'.

**41. Paragraph 67**

(a) In the heading, omit '*of the ITAA 1997*'.

- (b) After '302 and 307', omit 'of the ITAA 1997'.

**42. Paragraph 69**

- (a) In footnote 34, omit 'of the ITAA 1997'.
- (b) Omit footnote 35.

**43. Paragraph 70**

- (a) Omit the wording of the paragraph; substitute:

A further example is the separate interest rule in section 307-200.05 of the ITAR (1997 Act) 2021. This rule relevantly provides that if a superannuation income stream is payable<sup>35A</sup>, an amount that supports the superannuation income stream is always to be treated as a separate superannuation interest.<sup>36</sup>

- (b) After 'superannuation income stream is payable', insert new footnote 35A:

<sup>35A</sup> It is noted that paragraph (b) of this provision states '[or] will be payable, and is a deferred superannuation income stream covered by paragraph 307-70.02(1)(c)'. This has been omitted here as deferred income streams are not discussed in this Ruling.

- (c) In footnote 36, omit 'regulation'; substitute 'section'.

**44. Paragraph 71**

- (a) After the paragraph, insert new paragraphs 71A and 71B (including heading):

***Transfer balance cap provisions***

71A. Whether or not a superannuation income stream is in the retirement phase is also relevant for the transfer balance cap provisions in Division 294.<sup>36A</sup> These provisions limit the amount of superannuation income streams that are in the retirement phase. This, in turn, limits the amount of a superannuation provider's assessable income that is exempt from tax for that individual.<sup>36B</sup>

71B. A superannuation income stream is in the retirement phase at a time if a superannuation income stream benefit is payable from it at that time.<sup>36C</sup> However, in limited circumstances a superannuation income stream will not be in the retirement phase.<sup>36D</sup> For example, a superannuation income stream that is a transition to retirement income stream (payable to a person other than a reversionary beneficiary) will not be in the retirement phase unless the person has met a specified condition of release.<sup>36E</sup>

- (b) At the end of the first sentence of new paragraph 71A, insert new footnote 36A:

<sup>36A</sup> See LCR 2016/9 for further explanation of the transfer balance cap.

- (c) At the end of new paragraph 71A, insert new footnote 36B:

<sup>36B</sup> See also paragraph 72 of this Ruling.

- (d) At the end of the first sentence of new paragraph 71B, insert new footnote 36C:

<sup>36C</sup> Subsection 307-80(1).

- (e) At the end of the second sentence of new paragraph 71B, insert new footnote 36D:

<sup>36D</sup> Subsections 307-80(3) and (4).

- (f) At the end of new paragraph 71B, insert new footnote 36E:

<sup>36E</sup> Subsection 307-80(3) and paragraph 307-80(2)(c).

**45. Paragraph 72**

- (a) Omit the wording of the paragraph; substitute:

Further context is provided by Subdivision 295-F. Broadly, this Subdivision provides 2 mechanisms for exempting from the assessable income of a superannuation fund, ordinary or statutory income from fund assets that support the payment by the fund of a superannuation income stream that is in the retirement phase. Therefore, in determining if the exemption applies, it is necessary to consider whether superannuation income stream benefits are payable, and this in turn requires consideration of whether a superannuation income stream that is in the retirement phase has commenced and not ceased.

- (b) Omit footnote 37.

**46. Paragraph 73**

Omit 'ITAR 1997'; substitute 'ITAR (1997 Act) 2021'.

**47. Paragraph 74**

Omit 'account based'; substitute 'account-based'.

**48. Paragraph 76**

In footnote 39, after '86', insert 'of this Ruling'.

**49. Paragraph 81**

Omit 'can not'; substitute 'cannot'.

**50. Paragraph 82**

After 'paragraphs 30 to 35', insert 'of this Ruling'.

**51. Paragraph 83**

Omit 'of the ITAA 1997'.

**52. Paragraph 84**

Omit 'of the ITAA 1997'.

**53. Paragraph 87**

After 'paragraphs 36 to 38', insert 'of this Ruling'.

**54. Paragraph 88**

- (a) Omit the wording of the paragraph; substitute:

Section 307-200.05 of the ITAR (1997 Act) 2021 relevantly states that if a superannuation income stream is payable, an amount that supports the superannuation income stream is always to be treated as a separate superannuation interest.<sup>42A</sup> Section 307-200.05 applies for the purposes of the proportioning rule<sup>42B</sup> to ensure all payments made from the superannuation interest that supports the superannuation income stream have the same proportions of tax-free component and taxable component.

- (b) At the end of the first sentence of paragraph 88, insert new footnote 42A:

<sup>42A</sup> It is noted that paragraph (b) of this provision states '[or] will be payable, and is a deferred superannuation income stream covered by paragraph 307-70.02(1)(c)'. This has been omitted here as deferred income streams are not discussed in this Ruling.

- (c) After 'proportioning rule', insert new footnote 42B:

<sup>42B</sup> Section 307-125.

**55. Paragraph 89**

Omit the wording of the paragraph; substitute:

Former regulation 307-200.05 of the *Income Tax Assessment Regulations 1997* (ITAR 1997) used different terminology between 1 July 2007 and 1 July 2017. It stated that the amount was always to be treated as a separate superannuation interest from the time the superannuation income stream 'commenced'. It was suggested that the effect of this former provision was that once a superannuation income stream commenced, it only ceased once the amount in the relevant superannuation interest was exhausted. However, this interpretation did not give due regard to the terms of regulation 307-200.05 of the ITAR 1997 as they appeared in the legislation.

**56. Paragraph 90**

Omit the wording of the paragraph; substitute:

The operation of former regulation 307-200.05 of the ITAR 1997 was directed at ensuring that a separate superannuation interest was identified at the time a superannuation income stream commenced. It did not by its terms deem the amount supporting the superannuation income stream to be the superannuation income stream. Nor did it deem all payments from the superannuation interest, including those made after the superannuation income stream ceased, to be superannuation income stream benefits. In addition, current section 307-200.05 of the ITAR (1997 Act) 2021 refers to the provision applying where the superannuation income stream is 'payable', clarifying that it is not intended to apply where the superannuation income stream had ceased.

**57. Paragraph 91**

Omit 'ITAR 1997'; substitute 'ITAR (1997 Act) 2021'.

**58. Paragraph 92**

After 'paragraph 52', insert 'of this Ruling'.

**59. Paragraph 95**

(a) Omit the wording of the paragraph; substitute:

Further explanation<sup>43</sup> is provided below in relation to:

- failure to comply with the pension rules (paragraphs 96 to 102 of this Ruling)
- commutation (paragraphs 103 to 120 of this Ruling)
- successor fund transfers (paragraphs 120A to 120E of this Ruling), and
- death of a member (paragraphs 121 to 129 of this Ruling).

(b) In footnote 43, omit 'the Ruling'; substitute 'this Ruling'.

**60. Paragraph 99**

At the end of the paragraph, insert new footnote 45A:

<sup>45A</sup> See also *Douglas* at [125].

**61. Paragraph 100**

After 'payments made during that income year', insert 'or subsequently'.

**62. Paragraph 101**

(a) Omit the wording of the paragraph; substitute

A new superannuation income stream can only commence from the superannuation interest where the rules of the superannuation fund *ensure* the payment is made at least annually and that the other requirements in subregulation 1.06(9A) of the SISR 1994 are met. To achieve this, any previous income stream payable from the interest must cease (for example, by commutation), and a new superannuation income stream must commence under the principles in paragraphs 9 to 13 of this Ruling. The proportioning rule<sup>47</sup> must be applied to that new superannuation income stream when it commences.<sup>47A</sup>

(b) In footnote 47, omit 'of the ITAA 1997'.

(c) At the end of the paragraph, insert new footnote 47A:

<sup>47A</sup> For the transfer balance cap implications of a superannuation income stream ceasing and a new one commencing, see LCR 2016/9.

**63. Paragraph 102**

After 'paragraphs 42 to 44' insert 'of this Ruling'.

**64. Paragraph 104**

Omit 'ITAR 1997'; substitute 'ITAR (1997 Act) 2021'.

**65. Paragraph 110**

After 'to be paid a lump sum.', insert new footnote 49A:

<sup>49A</sup> A commutation will also be taken to have occurred where a superannuation fund has met its obligations under subsection 136-80(1) of Schedule 1 to the *Taxation Administration Act 1953* in respect of a commutation authority. See LCR 2016/9 for further information about commutation authorities.

**66. Paragraph 114**

- (a) After 'receive a lump sum', omit the comma.
- (b) Omit footnote 52.

**67. Paragraph 117**

After 'process', insert a comma.

**68. Paragraph 120**

- (a) Omit the wording of the paragraph; substitute:

If a partial commutation occurs the resulting payment is treated as a superannuation lump sum for the purposes of the ITAA 1997 (other than Subdivision 295-F).<sup>52A</sup>

- (b) At the end of the paragraph, insert new footnote 52A:

<sup>52A</sup> Subsection 307-65(2).

- (c) Omit footnote 53.

- (d) After the paragraph, insert new paragraphs 120A to 120E (including heading):

***Successor fund transfers***

120A. Generally, a member's superannuation interest in a superannuation fund can only be transferred with the member's consent. However, where a member is conferred equivalent rights in a new superannuation interest a successor fund transfer can occur without receiving a member's consent.<sup>53A</sup> The member will have 'equivalent rights' if the member's rights in the new superannuation interest with the successor fund are equivalent to what they had in the original superannuation fund.

120B. A successor fund transfer may take place where there is a merger between 2 superannuation funds. In this scenario, members will usually be advised that their entitlements in their current superannuation fund will be provided by a different trustee from the date of the transfer.

120C. Under the successor fund transfer, all the assets and liabilities of the original superannuation fund are transferred from the trustee of the original fund to the



trustee of the successor fund.<sup>53B</sup> This includes where those assets and liabilities relate to superannuation income streams.

120D. The trustee of the original superannuation fund will no longer have a liability to pay superannuation income stream benefits after the successor fund transfer occurs. This means the member will no longer have an entitlement to receive the superannuation income stream benefits from their interest in the original fund, and the superannuation income stream will cease.

120E. Where the trustee of the successor fund assumes the liability to pay superannuation income stream benefits, a new superannuation income stream will be taken to commence from the interest in the successor fund on the first day of the period to which the first payment of the superannuation income stream relates.

- (e) At the end of the second sentence in new paragraph 120A, insert new footnote 53A:

<sup>53A</sup> 'Successor fund' is defined in subsection 995-1(1).

- (f) At the end of the first sentence in new paragraph 120C, insert new footnote 53B:

<sup>53B</sup> An involuntary roll-over superannuation benefit may be paid to the successor fund under paragraph 306-12(a). There are specific rules that apply to involuntary rollover benefits in the ITAA 1997.

## **69. Paragraph 121**

At the end of the paragraph, insert new footnote 53C:

<sup>53C</sup> See Law Companion Ruling LCR 2017/3 *Superannuation reform: Superannuation death benefits and the transfer balance cap* for the transfer balance cap implications for death benefit recipients.

## **70. Paragraph 122**

Omit 'account based'; substitute 'account-based'.

## **71. Paragraph 123**

- (a) Omit the wording of the paragraph; substitute:

The rules for the cashing of benefits on death in Division 6.3 of the SISR 1994 are consistent with this. Benefits for a dependant beneficiary can be cashed as:

- a single lump sum, or as an interim lump sum and a final lump sum<sup>55A</sup>, or
- one or more pensions or annuity products<sup>56</sup>, each of which is a superannuation income stream that is in the retirement phase.

Benefits paid to a person who is not a dependant beneficiary cannot be cashed as a superannuation income stream.<sup>57</sup>

- (b) After 'final lump sum', insert new footnote 55A:

<sup>55A</sup> Paragraph 6.21(2)(a) of the SISR 1994. For a limited set of superannuation interests, benefits may also be cashed as a series of superannuation lump sums: see paragraph 6.21(2)(aa) of the SISR 1994.

- (c) Omit the wording of footnote 57; substitute 'Subregulation 6.21(2A) of the SISR 1994.'.

**72. Paragraph 127**

- (a) At the end of the first sentence, insert new footnote 57A:

<sup>57A</sup> One or more rights (whether contingent or not) that arise on a member's death may, for certain purposes, also be a superannuation income stream where the deceased was receiving a superannuation income stream: see paragraph 307-70.02(1)(d) of the ITAR (1997 Act) 2021. The effect of this expanded definition is to extend the application of the exempt current pension income provisions until the new superannuation income stream payable to the relevant dependant beneficiary commences, or a superannuation lump sum is paid from the deceased's superannuation interest.

- (b) Omit 'at that time'.

**73. Paragraph 130**

- (a) Omit the wording of paragraph 130 (including detailed contents list and heading); substitute:

**Appendix 2 – Legislative changes**

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

130. A number of legislative changes have been enacted since the date this Ruling was originally published. While these legislative changes do not affect the Commissioner's view outlined in this Ruling, they are summarised below to provide an understanding of what legislation was in effect at a given time:

- (b) After the paragraph, insert new paragraphs 131 to 141 (including headings):

**1 July 2007 to 30 June 2012**

131. The legislative references in the original Ruling reflected the law applicable for this period including in relation to the following:

- The definition of 'superannuation income stream' was contained in subsection 307-70(2) and regulation 995-1.01 of the ITAR 1997.
- Taxpayers could make an election for a payment from an interest that supported a superannuation income stream to be a superannuation lump sum under regulation 995-1.03 of the ITAR 1997.
- The 'regulations' to the ITAA 1997 were all contained in the ITAR 1997.

132. However, the definition of 'superannuation income stream benefit' was later amended for this period with retrospective effect from 1 July 2007.<sup>58A</sup> This means for this period:

- The definition of 'superannuation income stream benefit' was contained in subsection 307-70(1) and regulation 307-70.01 of the ITAR 1997.<sup>58B</sup>

**1 July 2012 to 30 June 2017**

133. Legislative amendments effective from the 2012–13 income year:

- renumbered regulation 995-1.01 of the ITAR 1997, which contained the definition of ‘superannuation income stream’, to subregulation 995-1.01(1), and
- expanded the application of the exempt current pension income (ECPI) provisions after the death of a member who was receiving a superannuation income stream.<sup>58C</sup>

134. The original amendments altered the definition of superannuation income stream benefit to include the expanded application of the ECPI provisions after the death of a member who was receiving a superannuation income stream.<sup>58D</sup>

135. These changes were later amended in 2018 by expanding the definition of superannuation income stream for the purposes of applying the ECPI provisions after the death of a member who was receiving a superannuation income stream, with a retrospective date of effect from the 2012–13 income year.<sup>58E</sup>

136. This means for this period the expanded definition for ECPI purposes was covered under:

- paragraph (d) of the definition of ‘superannuation income stream’ under subsection 995-1.01(1) of the ITAR 1997, and
- subregulations 995-1.01(2) to (5) of the ITAR 1997.

**1 July 2017 to 30 June 2021**

137. Significant legislative changes were made which generally applied from 1 July 2017.<sup>58F</sup>

138. These changes included the following:

- The election contained in regulation 995-1.03 of the ITAR 1997 was removed for payments made on or after 1 July 2017.
- Regulation 307-200.05 of the ITAR 1997 was reworded to state that an amount supporting a superannuation income stream was to be treated as a separate interest from when it is ‘payable’ rather than from when it ‘commenced’.
- Section 307-65 was renumbered to subsection 307-65(1), and subsection 307-65(2) was inserted to treat partial commutations as superannuation lump sums for the purposes of the ITAA 1997 (except for Division 295-F).
- The requirements for an account-based pension in paragraph 1.06(9A)(a) of the SISR 1994 were updated so that the minimum annual payment amount required to be paid excluded payments by way of commutation but included payments under a payment split (previously it stated ‘including under a payment split but excluding amounts rolled over’).
- Paragraph 6.21(2)(b) of the SISR 1994 was amended to include the requirement that death benefits cashed as one or more pensions or

annuities must each be a superannuation income stream that is in the retirement phase.

- Division 294 was inserted to introduce the transfer balance cap with effect from 1 July 2017, limiting the amount of superannuation a fund member can have in the retirement phase.
- Amendments limited the exemption of assessable income under Subdivision 295-F to situations where fund assets supported the payment of retirement phase superannuation income stream benefits by the fund.

### **1 July 2021 to present**

139. On 1 April 2021 the ITAR 1997 sunset. The regulations were rewritten and replaced by the ITAR (1997 Act) 2021. The ITAR (1997 Act) 2021 take effect from the start of the first income year after 1 July 2021 for each taxpayer.

140. The meanings of terms in the ITAR (1997 Act) 2021 are not intended to change from those equivalent terms in the ITAR 1997. The provisions are also generally contained in similarly numbered provisions to the ITAR 1997, for instance former regulation 307-70.01 in the ITAR 1997 is now reflected in section 307-70.01 in the ITAR (1997 Act) 2021.

141. However, some renumbering did occur, specifically:

- The definition of 'superannuation income stream' that was previously in subregulation 995-1.01(1) of the ITAR 1997 is now contained in section 307-70.02 of the ITAR (1997 Act) 2021.
- The expanded definition of 'superannuation income stream' for ECPI purposes has moved from paragraph (d) of the previous definition of superannuation income stream under subsection 995-1.01(1) of the ITAR 1997, and subregulations 995-1.01(2) to (5) of the ITAR 1997. It is now contained in paragraph (d) of the superannuation income stream definition in subsection 307-70.02(1), and subsections 307-70.02(2) to 307-70.02(6) of the ITAR (1997 Act) 2021.

- (c) At the end of the first sentence in new paragraph 132, insert new footnote 59:

<sup>59</sup> *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018.*

- (d) At the end of new paragraph 132, insert new footnote 60:

<sup>60</sup> Prior to the retrospective amendment, the definition of superannuation income stream benefit was contained in regulation 995-1.01 of the ITAR 1997 for the 2007–08 to 2011–12 income years.

- (e) At the end of new paragraph 133, insert new footnote 61

<sup>61</sup> *Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013.*

- (f) At the end of new paragraph 134, insert new footnote 62:

<sup>62</sup> The definition of superannuation income stream benefit was contained in subregulations 995-1.01(2) to (5) of the ITAR 1997 but was retrospectively amended in 2018. See paragraph 132 of this Ruling.

- (g) At the end of new paragraph 135, insert new footnote 63:

<sup>63.</sup> *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018.*

- (h) At the end of new paragraph 137, insert new footnote 64:

<sup>64.</sup> *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016, Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017 and Treasury Laws Amendment (2017 Measures No. 1) Regulations 2017.* It should be noted that the amendments listed below to section 307-65 and Subdivision 295-F applied in relation to the 2017–18 income years and later income years. There are also certain limited exceptions to the application of Division 294 set out in the *Income Tax (Transitional Provisions) Act 1997*.

This Addendum, other than paragraph 25, applies from 1 July 2007, subject to the commencement and application provisions of each Act or Regulation to which it refers. Paragraph 25 of this Addendum applies from the date of issue of this Addendum.

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**Commissioner of Taxation**

26 June 2024

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ATO references

NO:	1-DVRF83K
ISSN:	2205-6122
BSL:	SEO

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