Inserts for

# Income Tax Assessment and Other Legislation (Sustaining the Superannuation Contribution Concession) Amendment Regulation 2013; Superannuation Contributions

**EXPOSURE DRAFT (27/05/2013)**

Contents



### 1 Name of regulation

This regulation is the ***Income Tax Assessment and Other Legislation (Sustaining the Superannuation Contribution Concession) Amendment Regulation 2013***.

### 2 Commencement

This regulation is taken to have commenced on 1 July 2012.

### 3 Authority

This regulation is made under the *Income Tax Assessment Act 1997*.

## 4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

# Schedule 1—Income Tax Assessment Amendments

## *Income Tax Assessment Regulations 1997*

### 1 After Division 292

Insert:

## Division 293—Sustaining the superannuation contribution concession

### Subdivision 293-D—Modifications for defined benefit interests

#### 293-115.01 Meaning of defined benefit contributions

For subsection 293-115(1) of the Act, ***defined benefit contributions***, for a financial year in respect of a defined benefit interest of an individual, means the sum of:

(a) the actuarial value of the employer-provided benefits that the individual has accrued in the financial year in relation to the defined benefit interest; and

(b) the administrative expenses and risks benefits funded by the employer and attributable to the defined benefit interest in the financial year.

#### 293-115.02 Method of determining amount of defined benefit contributions

*Method*

(1) For subsection 293-115(1) of the Act, the method of determining the amount of defined benefit contributions for a financial year is to use the following formula:

$$\left(\frac{A(f) + B(f) + C(f)}{0.85}\right) + A(u) + B(u) + C(u) + D + E + F$$

where, for that financial year:

***A(f)*** is the present actuarial value of funded employer-provided benefits not included in the value of D or E that accrued to, or may be provided in respect of, the member.

***A(u)*** is the present actuarial value of unfunded employer-provided benefits not included in the value of D or E that accrued to, or may be provided in respect of, the member.

***B(f)*** is the actuarial value of any funded employer-provided benefit option not included in the value of A(f) that the member elects to exercise as a personal right.

***B(u)*** is the actuarial value of any unfunded employer-provided benefit option not included in the value of A(u) that the member elects to exercise as a personal right.

***C(f)*** is the actuarial value of any discretionary funded employer-provided benefits that may be provided in respect of the member by the superannuation provider.

***C(u)*** is the actuarial value of any discretionary unfunded employer-provided benefits that may be provided in respect of the member by the superannuation provider.

***D*** is the actuarial value of employer-provided death, disablement and other risk benefits not included in the value of A(f) or A(u) that may be provided in respect of the member.

***E*** is the value of the administration expenses (excluding investment expenses) in respect of the member.

***F*** is the actuarial value of any potential increase in the actuarial value of A(f), A(u), B(f), B(u), C(f), C(u) or D that accrued to, or may be provided in respect of, the member because of the occurrence of an event in relation to the member.

*Employer-provided benefits that accrued to member: A(f) and A(u)*

(2) In working out the actuarial value of A(f) and A(u) that accrued to a member for a financial year:

(a) the present actuarial value of employer provided retirement, death, disablement or any other risk benefits that accrued to the member for the financial year must be worked out using:

(i) an actual accrual method; or

(ii) if an actuary considers that an actual accrual method is not appropriate in relation to the member for the year—a proportionate method; and

(b) the method used under paragraph (a) must be used consistently and applied so that the full benefit would accrue to the member over the whole period of the member's membership.

*Employer-provided benefit options exercised by a member—B(f) and B(u)*

(3) if:

(a) an employer-provided benefit option described in column 1 of an item in the following table is exercised by a member of the scheme in a financial year; and

(b) the option has been taken into account by an actuary in working out A(f) and A(u) as described in Column 2 of the table;

(c) the actuarial value of the benefit accruing to the member for the financial year mentioned in column 1 is the amount mentioned in column 3.

**Actuarial value of employer-provided benefit options**

| **Item** | **Column 1** | **Column 2** | **Column 3** |
|---|---|---|---|
| | **Description of option exercised by the member for a financial year** | **How option is taken into account by actuary** | **Actuarial value** |
| 1 | The option had been available to the member under the rules of the scheme in force as at 1 July 2012. | In the valuation of employer-provided benefits that accrued to the member for each financial year before the year in which the option was exercised, the actuary allowed for the exercise of the option in accordance with the actuarial report made in relation to the relevant actuarial valuation of the scheme | 0 |

| Actuarial value of employer-provided benefit options | | | |
|---|---|---|---|
| **Item** | **Column 1** | **Column 2** | **Column 3** |
| | **Description of option exercised by the member for a financial year** | **How option is taken into account by actuary** | **Actuarial value** |
| | | (including an assumption of zero that was used in the valuation and was noted in the actuarial report or the actuary's working papers). | |
| 2 | The option had been available to the member under the rules of the scheme in force as at 1 July 2012. | In the valuation of employer-provided benefits that accrued to the member for any financial year since 1 July 2012, the actuary did not allow for the exercise of the option in accordance with the actuarial report made in relation to the relevant actuarial valuation of the scheme. | The lesser of:<br>(a) the difference between the value of all employer-provided benefits taken by the member (including the option) and the actuarial value of all employer-provided benefits that the actuary assumed would have accrued to the member at the date when the option was exercised, worked out in accordance with regulation 293-115.03; and<br>(b) the post 1 July 2012 component of the difference between the actuarial value of all employer-provided benefits taken on exercising the option and the actuarial value of the employer-provided benefits that would have been taken by the member if the option had not been exercised. |

| Actuarial value of employer-provided benefit options | | | |
|---|---|---|---|
| **Item** | **Column 1** | **Column 2** | **Column 3** |
| | **Description of option exercised by the member for a financial year** | **How option is taken into account by actuary** | **Actuarial value** |
| 3 | The option was introduced after 1 July 2012. | An actuary:<br>(a) treated the introduction of the option as an event in working out the value of F in a financial year (the ***first financial year***); and<br>(b) allowed for the exercise of the option in working out the valuation of employer-provided benefits that accrued to the member for each financial year after the first financial year. | 0 |
| 4 | The option was introduced after 1 July 2012. | An actuary did not treat the introduction of the option as an event in working out the value of F for the member for the financial year. | The difference between:<br>(a) the value of the benefit taken; and<br>(b) the greater of:<br>(i) the actuarial value of the benefit that the actuary assumed would be taken by the member in working out an amount under this subregulation for the member for the financial year; and<br>(ii) the actuarial |

| Actuarial value of employer-provided benefit options | | | |
|---|---|---|---|
| **Item** | **Column 1** | **Column 2** | **Column 3** |
| | **Description of option exercised by the member for a financial year** | **How option is taken into account by actuary** | **Actuarial value** |
| | | | value of the benefits (excluding the value of the option) that had accrued to the member when the option was exercised, worked out in accordance with regulation 293-1 15.03. |

*Discretionary employer-provided benefits: C(f) and C(u)*

(4) If an actuary considers that a benefit will be provided for the financial year at the discretion of the superannuation provider in respect of the member and, on the same basis, in respect of:

(a) each other member of the scheme; or

(b) each other member of a class of members in which the first member is included;

the actuarial value of the benefit for the member for the financial year is the increase in the actuarial value of A(f) and A(u) that would accrue to the member for the financial year if the option were exercised.

(5) If subregulation (4) does not apply, and the superannuation provider exercises the discretion to provide a benefit (the ***provided benefit***) in respect of the member for the financial year, the actuarial value of the benefit for the member for the financial year is the difference between the actuarial value of the provided benefit and the greater of:

(a) the actuarial value of the benefit that the actuary assumed would be provided by the superannuation provider; and

(b) the actuarial value of the benefit (excluding the value of any additional benefits arising from the exercise of the discretion) that had accrued to the member when the discretion was exercised, worked out in accordance with regulation 293-115.03.

*Employer-provided death, disablement and other risk benefits: D*

(6) The cost of death, disablement and other risk benefits is worked out based on the cost of insurance for 1 year for the non-accrued (for example, future service) component of those benefits.

(7) Subject to subregulation 293-115.03(6), if the rates of decrement for death and disablement were assumed to be more than zero for the purposes of the most recent actuarial valuation of the scheme, the cost of cover for death and disablement is to be based on that assumption.

(8) If the rates of decrement for death and disablement were assumed to be zero for the purposes of the most recent actuarial valuation of the scheme, or no actuarial valuation of the scheme has been prepared, the rates of decrement for death and disablement to be applied are:

(a) the rates an actuary expects to use at the next actuarial valuation of the scheme; or

(b) the relevant rates set out in the following table.

**Rates of decrement for death and disablement**

| **Item** | **Member's age at next birthday** | **Mortality decrement** | **Disablement decrement** |
|---|---|---|---|
| 1 | 15 | 0.00028 | 0.00001 |
| 2 | 16 | 0.00035 | 0.00001 |
| 3 | 17 | 0.00052 | 0.00001 |
| 4 | 18 | 0.00070 | 0.00002 |
| 5 | 19 | 0.00081 | 0.00002 |
| 6 | 20 | 0.00083 | 0.00003 |
| 7 | 21 | 0.00082 | 0.00006 |
| 8 | 22 | 0.00077 | 0.00010 |
| 9 | 23 | 0.00070 | 0.00012 |
| 10 | 24 | 0.00064 | 0.00014 |

| Rates of decrement for death and disablement | | | |
|---|---|---|---|
| **Item** | **Member's age at next birthday** | **Mortality decrement** | **Disablement decrement** |
| 11 | 25 | 0.00060 | 0.00016 |
| 12 | 26 | 0.00056 | 0.00017 |
| 13 | 27 | 0.00055 | 0.00019 |
| 14 | 28 | 0.00055 | 0.00020 |
| 15 | 29 | 0.00057 | 0.00023 |
| 16 | 30 | 0.00059 | 0.00025 |
| 17 | 31 | 0.00061 | 0.00027 |
| 18 | 32 | 0.00063 | 0.00029 |
| 19 | 33 | 0.00066 | 0.00032 |
| 20 | 34 | 0.00070 | 0.00035 |
| 21 | 35 | 0.00076 | 0.00040 |
| 22 | 36 | 0.00084 | 0.00045 |
| 23 | 37 | 0.00091 | 0.00050 |
| 24 | 38 | 0.00100 | 0.00057 |
| 25 | 39 | 0.00111 | 0.00065 |
| 26 | 40 | 0.00121 | 0.00073 |
| 27 | 41 | 0.00133 | 0.00083 |
| 28 | 42 | 0.00149 | 0.00097 |
| 29 | 43 | 0.00168 | 0.00112 |
| 30 | 44 | 0.00187 | 0.00130 |
| 31 | 45 | 0.00210 | 0.00151 |
| 32 | 46 | 0.00236 | 0.00177 |
| 33 | 47 | 0.00264 | 0.00207 |
| 34 | 48 | 0.00294 | 0.00241 |
| 35 | 49 | 0.00329 | 0.00283 |
| 36 | 50 | 0.00368 | 0.00333 |
| 37 | 51 | 0.00410 | 0.00391 |
| 38 | 52 | 0.00457 | 0.00460 |
| 39 | 53 | 0.00514 | 0.00548 |
| 40 | 54 | 0.00572 | 0.00647 |
| 41 | 55 | 0.00634 | 0.00761 |

| Rates of decrement for death and disablement | | | |
|---|---|---|---|
| **Item** | **Member's age at next birthday** | **Mortality decrement** | **Disablement decrement** |
| 42 | 56 | 0.00704 | 0.00897 |
| 43 | 57 | 0.00783 | 0.01063 |
| 44 | 58 | 0.00870 | 0.01258 |
| 45 | 59 | 0.00965 | 0.01489 |
| 46 | 60 | 0.01069 | 0.01759 |
| 47 | 61 | 0.01181 | 0.02076 |
| 48 | 62 | 0.01311 | 0.02459 |
| 49 | 63 | 0.01452 | 0.02909 |
| 50 | 64 | 0.01595 | 0.03413 |
| 51 | 65 or over | 0.01751 | 0.04001 |

*Administration expenses: E*

(9) The rate of administration expenses (excluding investment expenses) to be applied is:

(a) the rate assumed for the purposes of the most recent actuarial valuation of the scheme; or

(b) if an actuary considers that the rate of administration expenses adopted at the most recent actuarial valuation of the scheme is no longer appropriate, or no previous actuarial valuation of the scheme has been prepared, a rate that the actuary considers is appropriate for the particular scheme.

*Increases in employer-provided benefits not allowed for elsewhere in this regulation: F*

(10) In working out the value of F, an event, in relation to a member for a financial year, does not include any difference between the valuation parameters mentioned in regulation 293-115.03 for the member for the financial year and the actual experience of the scheme for the financial year.

(11) If an event is mentioned in column 1 of an item in the following table, the actuarial value of any increase in the employer provided benefits that accrued to the member for the financial year because of the occurrence of the event is:

(a) an amount worked out in accordance with column 3 of the item; and

(b) for a funded scheme—the amount mentioned in paragraph (a) divided by 0.85.

**Increases in employer-provided benefits arising from various events**

| Item | Column 1 | Column 2 | Column 3 |
|---|---|---|---|
| | **Event** | **Description of event** | **Actuarial value of increase in employer-provided benefits** |
| 1 | Change in scheme rules or membership class | Either of the following occurs in relation to the member for the financial year:<br>(a) the rules of the member's scheme are changed;<br>(b) the member changes to a different membership class in the scheme;<br>and the change results in an increase in the actuarial value of the employer-provided benefits that accrued to the member for the financial year. | The difference between the actuarial value of all employer-provided benefits that had accrued to the member immediately after the change and the greater of:<br>(a) the employer-provided component of the actuarial value of the benefits that had accrued to the member immediately before the change, worked out in accordance with regulation 293-115.03; and<br>(b) the employer-provided component of the standard benefit to which the member is entitled at the date of the change. |
| 2 | Transfer by member to a different scheme | The member transfers from the member's scheme (the ***exited scheme***) to another defined benefits superannuation scheme (the ***receiving scheme***) in the financial year. | If the actuarial value of the employer-provided benefits that had accrued to the member in both the exited scheme and the receiving scheme at the time of transfer is the same, the amount is 0.<br>If the actuarial value of the employer-provided benefits accruing to the member is |

| Increases in employer-provided benefits arising from various events | | | |
|---|---|---|---|
| **Item** | **Column 1** | **Column 2** | **Column 3** |
| | **Event** | **Description of event** | **Actuarial value of increase in employer-provided benefits** |
| | | | greater in the receiving scheme than in the exited scheme, the amount is the amount that the actuarial value of all employer-provided benefits that had accrued to the member immediately after the transfer exceeds the greater of:<br>(a) the employer-provided component of the actuarial value of the benefits that had accrued to the member immediately before the transfer, worked out in accordance with regulation 293.115.03; and<br>(b) the employer-provided component of the standard benefit to which the member is entitled at the date of the transfer. |
| 3 | Conversion from defined benefit membership to accumulation membership | The member's benefits are converted to accumulation benefits in the financial year and the conversion results in the member transferring to the accumulation membership an amount that exceeds the greater of:<br>(a) the actuarial value of all employer-provided | The difference between the opening balance of the part of the member account provided by the employer and the greater of:<br>(a) the employer-provided component of the actuarial value of the benefits that had accrued to the member before the conversion worked out in accordance with regulation 293-115.03; and |

| Increases in employer-provided benefits arising from various events | | | |
|---|---|---|---|
| **Item** | **Column 1** | **Column 2** | **Column 3** |
| | **Event** | **Description of event** | **Actuarial value of increase in employer-provided benefits** |
| | | benefits that had accrued to the member before the conversion; and<br>(b) the employer-provided component of the member's standard benefit to which the member is entitled for the financial year at the date of the conversion. | (b) the employer-provided component of the standard benefit to which the member is entitled at the date of the conversion. |
| 4 | Increase in pension in payment | The amount of a pension being paid to the member in the financial year increases by an amount that is greater than the amount provided under the scheme rules in force at the later of:<br>(a) the time when the pension became payable; and<br>(b) 1 July 2012. | The difference, at the time the change was made, between:<br>(a) the actuarial value of the pension after the increase; and<br>(b) the actuarial value of the pension after the increase, had the increase not been greater than the amount provided under the scheme rules in force at the later of:<br>(i) the time when the pension became payable; and<br>(ii) 1 July 2012. |

(12) If there is an option in benefits to which the member is entitled in relation to an event mentioned in an item of the table in subregulation (11), a reference to ***standard benefit*** in the item is a reference to the maximum value of that benefit.

(13) If:

(a) an event is not of a kind mentioned in subregulation 11; and

(b) because of the occurrence of the event, the actuarial value of all employer-provided benefits that had accrued to the member immediately after the event is greater than the actuarial value of all employer-provided benefits that had accrued to the member immediately before the event;

the actuarial value of the increase in the employer-provided benefits that accrued to the member for the financial year is:

(c) the difference between:

(i) the actuarial value of all employer-provided benefits that had accrued to the member immediately after the event; and

(ii) the actuarial value of all employer-provided benefits that had accrued to the member before the event; and

(d) for a funded scheme—is the amount worked out under paragraph (c) divided by 0.85.

*Definitions*

(14) In this regulation:

***actuarial certificate***, for a defined benefits superannuation scheme, means a certificate prepared for the scheme by an eligible actuary that states the actuary's recommendations for the purpose of working out the amount of defined benefit contributions for members of the scheme for a financial year.

***actuarial valuation***, of a defined benefits superannuation scheme, means an actuarial valuation of the scheme prepared by an eligible actuary as part of the actuarial investigation of the scheme made under Part 9 of the *Superannuation Industry (Supervision) Regulations 1994*.

### 293-115.03 Valuation parameters

(1) In determining the actuarial values of A(f), A(u), B(f), B(u), C(f), C(u), D and F for a member of a defined benefits superannuation scheme for a financial year, an actuary must apply the parameters mentioned in this regulation.

(2) The discount rate to be applied is 8% a year, and must not be adjusted for any reason.

(3) The rate of salary or wages growth to be applied is 4.5% a year, and must be used:

(a) to project the value of future salary or wages; and

(b) to value employer-provided benefits that increase in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Statistician).

(4) If a benefit is linked at any time to the increase in a published price index, the rate of increase in the price index to be applied for projections is 2.5% a year.

Example: Increases in the value of a pension may be linked to increases in the Consumer Price Index.

(5) The rates of decrement and other parameters to be applied are the rates of decrement and other parameters adopted at the most recent actuarial valuation of the scheme that has a valuation date not later than 1 July of the first financial year to which the actuarial certificate prepared in accordance with the actuarial valuation applies.

(6) However, if the actuary considers that the rates of decrement and other parameters mentioned in subregulation (5) are no longer appropriate, the actuary must set new rates of decrement and other parameters that are:

(a) consistent with any other parameters set under this regulation; and

(b) appropriate, in the opinion of the actuary, in relation to the particular scheme; and

(c) if the scheme is a new scheme for which no actuarial valuation has been prepared—consistent with:

(i) the parameters for a comparable scheme; and

(ii) the other parameters set under this regulation.

Example: The rates of decrement and other parameters adopted for the purpose of preparing an actuarial valuation of a scheme may no longer be appropriate for the scheme because the nature of the work performed by members of the scheme may have changed.

(7) If appropriate, minimum employer-provided benefits that accrued to a member under the *Superannuation Guarantee (Administration) Act 1992* must be assumed to increase in accordance with increases provided by that Act.

### 293-115.04 Employer provided benefits

In this Subdivision, a benefit that is described as employer-provided does not include any part of the benefit attributable to member contributions or any earnings in relation to those contributions.

### 293-115.05 Non-accruing members

(1) This Subdivision applies to an individual who is a non-accruing interest holder in respect of a superannuation interest the individual holds for a financial year unless the member is a non-accruing interest holder for the whole of the financial year.

(2) If an individual is a non-accruing interest holder in respect of a superannuation interest the individual holds for the whole of the financial year, the value of the individual's defined benefit contributions with respect to that interest is 0.

(3) An individual is a non-accruing interest holder for a period in respect of a superannuation interest the individual holds if, for the whole of the period:

(a) the individual only receives pension payments under the scheme; and

(b) any of the following applies:

(i) the pension payments are always the same amount;

(ii) the pension payments are paid from an account that relates only to the individual, and no employer contributions are paid to the account for the benefit of the individual;

(iii) the pension payments increase at rates that are consistent with the rates prescribed under the rules of the fund that applied when the pension commences to be paid.

(4) An individual is a non-accruing interest holder for a period in respect of a superannuation interest the individual holds if, for the whole of the period:

(a) the individual member has a benefit entitlement in the scheme but no employer-provided benefits have accrued to the individual; and

(b) the rules of the scheme provide that the benefit:

(i) is not to increase in nominal terms; or

(ii) is to increase at a rate that reflects general price increases (for example, in accordance with the Consumer Price Index); or

(iii) is to increase at a rate reflecting the general level of salary growth or salary growth for relevant scheme membership (for example, in accordance with average weekly earnings, or average weekly ordinary time earnings, published by the Australian Statistician); or

(iv) is to increase at the rate (if any) at which the individual's salary increases; or

(v) is to increase at a rate reflecting the earning rate of the assets of the scheme or the part of the scheme to which the individual belongs; or

(vi) for a deferred benefit—is to increase at a rate that reflects any reduction in the expected period in which pension payments are to be made and any deferral of the date when payments will start; or

(vii) is to increase at a regular rate, or a rate worked out using a formula, that an actuary considers will not result in an increase that is more than the greatest of the increases mentioned in subparagraphs (i) to (vi); and

(c) an actuary considers that the benefit does not result in any increase in the value of employer-provided benefits accruing to the individual.

(5) In determining whether an individual is a non-accruing interest holder for a period in respect of a superannuation interest, any employer contributions paid to the scheme for the period to meet partially, or wholly, unfunded benefit liabilities of the scheme are not to be treated as employer contributions for the benefit of the individual for the period.

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

### 293-145.01 Constitutionally protected State higher level office holders

For paragraph 293-145(1)(b) of the Act, the following individuals are declared:

(a) a Minister of the government of a State;

(b) a member of the staff of a Minister of the government of a State;

(c) the Governor of a State;

(d) a member of staff of the Governor of a State;

(e) a member of the Parliament of a State;

(f) the Clerk of a house of the Parliament of a State;

(g) the head of a Department of the Public Service of a State or a statutory office holder of equivalent seniority, including a statutory office holder who is the head of an instrumentality or agency of a State;

(h) a judge, justice or magistrate of the court of a State.