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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule X | The day after this Act receives the Royal Assent. |  |

Schedule X—Taxation of military superannuation benefits

Income Tax Assessment (1997 Act) Regulations 2021

1 After paragraph 307‑70.02(1)(b)

Insert:

(ba) an income stream in respect of which these conditions are satisfied:

(i) the income stream is a defined benefit pension within the meaning of regulation 1.03 of the SIS Regulations; and

(ii) the income stream commenced on or after 20 September 2007; and

(iii) the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations), or an exempt public sector superannuation scheme (within the meaning of the SIS Act); and

(iv) if the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations) that is not a public sector superannuation scheme—the fund or scheme has more than 6 members; and

(v) the income stream is not invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; and

(vi) the income stream is not an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

2 After subsection 307‑70.02(1)

Insert:

(1A) Paragraphs (1)(a) and (ba) do not apply to any of the following:

(a) a pension payable under subsection 39(1) of the *Defence Force Retirement and Death Benefits Act 1973* if:

(i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to the deceased member mentioned in that subsection; and

(ii) that invalidity pay commenced on or after 20 September 2007;

(b) a pension payable under subsection 42(1) of the *Defence Force Retirement and Death Benefits Act 1973* if:

(i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to a member (as mentioned in subsection 42(3)); and

(ii) that invalidity pay commenced on or after 20 September 2007;

(c) a pension payable under subsection 43(1) of that Act if:

(i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to a member (as mentioned in subsection 43(3)); and

(ii) that invalidity pay commenced on or after 20 September 2007;

(d) a pension payable under subrule 42(1) or (3) of the Rules (within the meaning of the *Military Superannuation and Benefits Act 1991*) if:

(i) the deceased retirement pensioner’s pension mentioned in that subrule was an invalidity pension (within the meaning of those Rules); and

(ii) that invalidity pension commenced on or after 20 September 2007;

(e) a pension payable under subrule 46(1) of those Rules if the deceased person’s notional pension mentioned in that subrule was a pension covered by paragraph (d).

3 In the appropriate position in Chapter 7

Insert:

Part 1000‑3—Transitional matters relating to the Treasury Laws Amendment (Measures for a later sitting) Act 2022

1000‑3.01 Application of amendments

The amendments of section 307‑70.02 made by Schedule X to the *Treasury Laws Amendment (*Measures for a later sitting*) Act 2022* apply in relation to income years starting on or after 1 July 2007.

4 Application of amendments

Part 1000-3 of the *Income Tax Assessment (1997 Act) Regulations 2021*, as inserted by this Schedule, has effect despite subsection 12(2) of the *Legislation Act 2003*.

Income Tax Assessment Act 1997

5 Section 13‑1 (at the end of the table item headed “superannuation”)

Add:

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| veterans’ invalidity pensions | Subdivision 301‑F |

6 Subsection 63‑10(1) (after table item 20)

Insert:

|  |  |  |
| --- | --- | --- |
| 21 | \*Tax offset under Subdivision 301‑F (veterans’ superannuation (invalidity pension) tax offset) | Apply it against your liability (if any) to pay \*Medicare levy for the income year.  To the extent that an amount of it remains, apply it against your liability (if any) to pay \*Medicare levy (fringe benefits) surcharge for the income year.  To the extent that an amount of it remains, you cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year |

7 At the end of Division 301

Add:

Subdivision 301‑F—Veterans’ superannuation (invalidity pension) tax offset

Table of sections

301‑275 Veterans’ superannuation (invalidity pension) tax offset

301‑275 Veterans’ superannuation (invalidity pension) tax offset

(1) You are entitled to a \*tax offset for an income year if:

(a) you are an individual; and

(b) during the income year, you receive one or more \*superannuation lump sums that are payments of:

(i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or

(ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

(iii) a pension mentioned in a paragraph of subsection 307‑70.02(1A) of the *Income Tax Assessment (1997 Act) Regulations 2021*.

(2) The amount of your \*tax offset is worked out as follows:

(a) first, work out the amount by which your basic income tax liability exceeds the total of the amount of your tax offsets (if any) for the income year under:

(i) this Division (other than this Subdivision); and

(ii) Subdivision AB of Division 17 of Part III of the *Income Tax Assessment Act 1936*;

(b) next, work out the total of:

(i) the amount worked out under paragraph (a); and

(ii) the amounts (if any) of \*Medicare levy and \*Medicare levy (fringe benefits) surcharge you are liable to pay for the income year;

(c) next, work out the total of:

(i) the amount worked out under paragraph (a); and

(ii) the amounts (if any) of Medicare levy and Medicare levy (fringe benefits) surcharge you are liable to pay for the income year;

on the assumptions mentioned in subsection (3);

(d) next, work out the amount (if any) by which the total worked out under paragraph (b) exceeds the total worked out under paragraph (c).

(3) For the purposes of paragraph (2)(c), the assumptions are that:

(a) each \*superannuation lump sum mentioned in paragraph (1)(b) were a \*superannuation income stream benefit; and

(b) for the purposes of section 307-125 (proportioning rule), the invalidity pay or invalidity pension mentioned in paragraph (1)(b) of this section were a \*superannuation income stream.

Income Tax (Transitional Provisions) Act 1997

8 At the end of Division 301

Add:

301‑90 Application of Subdivision 301‑F of the *Income Tax Assessment Act 1997*

Subdivision 301‑F of the *Income Tax Assessment Act 1997* applies in relation to income years starting on or after 1 July 2007.

301‑95 Amendment of assessments to give effect to Subdivision 301‑F of the *Income Tax Assessment Act 1997* etc.

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to the following in respect of an income year that starts on or before 1 July 2020:

(a) Subdivision 301‑F of the *Income Tax Assessment Act 1997*;

(b) the amendments of the *Income Tax Assessment (1997 Act) Regulations 2021* made by Schedule X to the *Treasury Laws Amendment (*Measures for a later sitting*) Act 2022*.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.