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The Treasury

TREASURY LAWS AMENDMENT (2022 MEASURES NO. 4) BILL 2022: TAXATION OF MILITARY SUPERANNUATION BENEFITS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 25 July 2022 that it would retrospectively and prospectively reverse the impact of the *Commissioner of Taxation v Douglas* (the *Douglas* decision) in relation to all schemes other than the invalidity benefits and death benefits for beneficiaries of invalidity pensioners paid from the Defence Force Retirement and Death Benefits (DFRDB) and Military Superannuation Benefits (MSB) schemes that commence on or after 20 September 2007. The measure also introduces a non-refundable tax offset to prevent any adverse income tax outcomes for affected veterans in the DFRDB and MSB schemes. These changes will also apply to the Spouse and Children's pensions following the death of a member of a DFRDB or MSB scheme affected by the *Douglas* decision.

This measure was included in *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022: Taxation of military superannuation benefits*, which was introduced into Parliament on 23 November 2022.

Consultation process

The public consultation period for the draft legislation was between 25 July 2022 and 5 August 2022. 17 submissions were received, nine of which are not confidential.

Submissions that are not confidential can be viewed on the Treasury website www.treasury.gov.au.

Summary of key issues

A key issue raised during the consultation process was that lump sum tax treatment should be extended to contemporary veterans in receipt of Invalidity Benefits under Australian Defence Force (ADF) Cover and members in receipt of invalidity benefits paid from DFRDB and MSB schemes that commenced before 20 September 2007. The Government has responded to the veterans directly affected by the *Douglas* decision and considers that it is appropriate for other superannuation income streams to retain income stream tax treatment, consistent with longstanding policy settings around common law pensions and the intent of those defined benefit schemes.

Another key issue raised was in relation to the non-tax flow-on impacts of the *Douglas* decision (e.g., social security obligations and entitlements), and whether Government would allow these to occur. The Government will ensure, where relevant, that *Douglas*-affected veterans retain any non-tax benefits that flow to them as a result of the Court's decision.

It was identified during consultation that a number of schemes have payments that have historically been taxed as lump sums rather than income streams prior to the *Douglas* decision because they do not satisfy the superannuation pension requirements at regulation 1.06 of *Superannuation Industry*



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(Supervision) Regulations 1994 (SISR). To avoid retrospectively imposing income stream tax treatment on permanent incapacity disability pensioners' payments that were historically assessed as lump sums, the Commissioner of Taxation will be prevented from amending any past tax assessments for this group of schemes that would convert these pensions from lump sums to income streams. The Commissioner will not be prevented from amending assessments for other lawful reasons such as fraud or evasion. Also, the Assistant Treasurer and Minister for Financial Services will be provided with a legislative instrument power to make transitional arrangements for the 2022-23 and 2023-24 income years, including the tax treatment of these pensions.

The exposure draft legislation was intended to ensure that the relevant schemes that had more than six members were only captured by the new superannuation income stream definition in the income tax regulations. Consultation revealed that the intention of the amendments could be defeated by changes in numbers of members in the schemes after the pension commences. The final legislation will ensure that the number of members is only referenced to the period on or before the pension is commenced for the individual.

Finally, other feedback received during consultation made it clear that there was some confusion about how the proposed amendments would affect the tax outcomes of individuals. In response the Government has included additional material, including examples, in the explanatory memorandum for the Bill.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au

Thank you to all participants in the consultation process.