

EXPOSURE DRAFT EXPLANATORY STATEMENT

Income Tax Assessment Act 1997

Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016

Section 909-1 of the *Income Tax Assessment Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of Schedule 3 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016* (the Regulation) is to amend the *Income Tax Assessment Regulations 1997* to remove the ability for individual's to elect to treat certain payments as superannuation lump sums.

This measure forms part of the Government's Superannuation Reform Package announced in the 2016-17 Budget. It will improve the integrity of the superannuation system by removing an election that has been used by some individuals to gain a tax advantage by treating certain payments as superannuation lump sums rather than superannuation income stream benefits.

Schedule 1 to the Regulation relates to the low income superannuation tax offset that has already been released for public consultation. Schedules 2 and 4 to the Regulation contain minor consequential changes to regulations concerning the anti-detriment and catch-up concessional contributions measures. The amendments to these regulations are described together with the changes to the primary legislation in Chapters 6 and 9 respectively in the related Exposure Draft Explanatory Material to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016*.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Act does not specify any conditions that must be met before the power to make the Regulation may be exercised.

Schedule 3 to the Regulation commences on the first day of the first quarter following its registration on the Federal Register of Legislation.

Details of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Section 3 – Authority

This section provides that the Regulation is made under the *Income Tax Assessment Act 1997*.

Section 4 – Schedule

This section provides that 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 – Improve the integrity of superannuation income streams

Schedule 3 to the Regulation amends the *Income Tax Assessment Regulations 1997* (ITAR 1997) to remove the ability for individual's to elect to treat certain payments as superannuation lump sums.

Currently, regulation 995-1.03 of the ITAR 1997 provides that a person can elect to not treat a payment from a superannuation income stream that meets certain conditions as a superannuation income stream benefit.

If a person makes an election to not treat a payment as a superannuation income stream benefit then the payment is a superannuation lump sum. This is because section 307-65 of the *Income Tax Assessment Act 1997* defines a superannuation lump sum as a superannuation benefit that is not a superannuation income stream benefit.

Whether a superannuation benefit is a superannuation lump sum or a superannuation income stream is significant because there are different tax consequences for each. For example, under the current law, a person who has reached preservation age but is under 60 years of age could commence a transition to retirement income stream and elect under regulation 995-1.03 of the ITAR 1997 to not treat the payment received as a superannuation income stream benefit (making the payment a superannuation lump sum). The person would then be able to receive superannuation lump sums tax-free,

up to the low rate cap to the extent it is taxable component (which was \$195,000 in the 2015-16 financial year). If no election was made the payment would be a superannuation income stream benefit and the person would receive the income taxed at their marginal tax rate less a 15% tax offset.

Item 2 of the Regulation repeals regulation 995-1.03 to remove this election. Item 1 of the Regulation makes a consequential amendment to paragraph (a) of the definition of 'superannuation income stream benefit' in subregulation 995-1.01(2) of the ITAR 1997 to remove a reference to regulation 995-1.03 of the ITAR 1997.