

EXPOSURE DRAFT

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016

No. , 2016

(Treasury)

**A Bill for an Act to amend the law relating to
taxation and superannuation, and for related
purposes**

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**A Bill for an Act to amend the law relating to
taxation and superannuation, and for related
purposes**

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Fair and Sustainable
Superannuation) Act 2016*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table
commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect
according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 3 and 10	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally
enacted. It will not be amended to deal with any later amendments of
this Act.

(2) Any information in column 3 of the table is not part of this Act.
Information may be inserted in this column, or information in it
may be edited, in any published version of this Act.

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2016

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Non-concessional contributions Schedule 3

Schedule 3—Non-concessional contributions

Income Tax Assessment Act 1997

1 Before subsection 292-85(1)

Insert:

Your excess non-concessional contributions

2 Subsections 292-85(2) to (4)

Repeal the subsections, substitute:

Your non-concessional contributions cap—general rule

(2) Your ***non-concessional contributions cap*** for a ^{*}financial year is:

- (a) unless paragraph (b) applies—the amount (the ***general non-concessional cap*** for the year) that is 4 times your ^{*}concessional contributions cap under subsection 291-20(2) for the year; or
- (b) if, immediately before the start of the year, your ^{*}total superannuation balance equals or exceeds the ^{*}general transfer balance cap for the year—nil.

Note: This subsection does *not* take into account any increase in your concessional contributions cap under subsection 291-20(4).

When you can bring forward your non-concessional contributions cap

(3) Despite subsection (2), work out your ***non-concessional contributions cap*** for a ^{*}financial year (the ***first year***) under subsection (5), and your ***non-concessional contributions caps*** for the following 2 financial years (the ***second year*** and ***third year***) under subsections (6) and (7), if:

- (a) your ^{*}non-concessional contributions for the first year exceed the general non-concessional cap for that year; and
- (b) paragraph (2)(b) does not apply to you in relation to the first year; and

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Schedule 3 Non-concessional contributions

- 1 (c) you are under 65 years at any time in the first year; and
2 (d) a previous operation of subsection (6) or (7) does not
3 determine your non-concessional contributions cap for the
4 first year; and
5 (e) the difference (the *first year cap space*) between the *general
6 transfer balance cap for the first year and your *total
7 superannuation balance immediately before the start of the
8 first year exceeds the general non-concessional cap for the
9 first year.

- 10 (4) However, do not work out your *non-concessional contributions
11 cap for the third year under subsection (7) if the first year cap
12 space does not exceed an amount equal to twice the general
13 non-concessional cap for the first year.

14 Note: If this subsection applies, your non-concessional contributions cap for
15 the third year will be worked out under subsection (2) (unless the third
16 year becomes a new first year under a further application of
17 subsection (3)).

18 *First year of bring forward*

- 19 (5) Your *non-concessional contributions cap* for the first year is an
20 amount equal to:
21 (a) if the first year cap space does not exceed an amount equal to
22 twice the general non-concessional cap for the first year—
23 twice the general non-concessional cap for the first year; or
24 (b) otherwise—3 times the general non-concessional cap for the
25 first year.

26 *Second year of bring forward*

- 27 (6) Your *non-concessional contributions cap* for the second year is:
28 (a) if:
29 (i) your *total superannuation balance immediately before
30 the start of the second year is less than the *general
31 transfer balance cap for the second year; and
32 (ii) your *non-concessional contributions for the first year
33 fall short of your cap for the first year (worked out
34 under subsection (5));

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Non-concessional contributions **Schedule 3**

- that shortfall; or
(b) otherwise—nil.

Third year of bring forward

(7) Your ***non-concessional contributions cap*** for the third year is:

(a) if:

- (i) your *total superannuation balance immediately before the start of the third year is less than the *general transfer balance cap for the third year; and
(ii) your *non-concessional contributions for the second year fall short of your cap for the second year (worked out under subsection (6));

that shortfall; or

(b) if:

- (i) your total superannuation balance immediately before the start of the third year is less than the general transfer balance cap for the third year; and
(ii) your cap for the second year is nil; and
(iii) your non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));

that shortfall; or

(c) otherwise—nil.

3 Subsection 292-465(9)

Repeal the subsection, substitute:

Review

(9) If you are dissatisfied with:

- (a) a determination made under this section in relation to you; or
(b) a decision the Commissioner makes not to make such a determination;

you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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Schedule 3 Non-concessional contributions

1 (10) To avoid doubt:

- 2 (a) subject to subsection 14ZVC(3) of the *Taxation*
3 *Administration Act 1953*, you may also object, on the ground
4 that you are dissatisfied with such a determination or
5 decision, relating to all or part of your *non-concessional
6 contributions for a *financial year:
- 7 (i) under section 175A of the *Income Tax Assessment Act*
8 *1936* against an assessment made in relation to you for
9 the corresponding income year; or
- 10 (ii) under section 97-35 in Schedule 1 to the *Taxation*
11 *Administration Act 1953* against an *excess
12 non-concessional contributions determination made in
13 relation to you for the financial year; and
- 14 (b) for the purposes of paragraph (e) of Schedule 1 to the
15 *Administrative Decisions (Judicial Review) Act 1977*, the
16 making of a determination under this section is a decision
17 forming part of the process of making an assessment of tax,
18 and making a calculation of charge, under this Act.

19 4 At the end of Subdivision 307-D

20 Add:

21 307-230 Total superannuation balance

- 22 (1) Your ***total superannuation balance***, at a particular time, is the sum
23 of the following:
- 24 (a) if you have one or more *superannuation interests that are not
25 in the *retirement phase—the *accumulation phase values, at
26 that time, of each such interest;
- 27 (b) if you have a *transfer balance account—the balance of the
28 account at that time (but not less than nil);
- 29 (c) the amount of each *roll-over superannuation benefit:
- 30 (i) paid at or before that time; and
- 31 (ii) received by the *complying superannuation plan or the
32 entity from which the *superannuation annuity is being
33 purchased after that time; and
- 34 (iii) not reflected in the value in paragraph (a) or the balance
35 in paragraph (b).
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Non-concessional contributions **Schedule 3**

- 1 (2) However, the sum of the *accumulation phase values mentioned in
2 paragraph (1)(a) is reduced (but not below zero) by the sum of any
3 contributions that:
4 (a) are covered under section 292-95 (payments that relate to
5 structured settlements or orders for personal injuries); and
6 (b) have been made at or before that time to a *complying
7 superannuation plan in respect of you;
8 except to the extent that, as a result of those contributions being
9 made in relation to a *superannuation interest, that interest supports
10 a *superannuation income stream of which you are a *retirement
11 phase recipient.
- 12 (3) For the purposes of subsection (2), treat a contribution to a
13 *complying superannuation plan in respect of you as if it were
14 covered under section 292-95 if the contribution would be covered
15 by that section if:
16 (a) the section applied to contributions made before 10 May
17 2006; and
18 (b) paragraphs 292-95(1)(b) and (d) were disregarded.
- 19 (4) For the purposes of working out the balance mentioned in
20 paragraph (1)(b), if at that time you have a *superannuation interest
21 that supports a *superannuation income stream covered by
22 subsection (5):
23 (a) disregard the operation of the following provisions in relation
24 to the superannuation income stream:
25 (i) items 1 and 2 of the table in subsection 294-25(1);
26 (ii) items 1, 3, 4 and 5 of the table in subsection 294-70(1);
27 and
28 (b) increase the amount of that balance by the total amount of the
29 *superannuation benefits that would become payable if:
30 (i) you had the right to cause the superannuation interest to
31 cease at that time; and
32 (ii) you voluntarily caused the superannuation interest to
33 cease at that time.
- 34 (5) This subsection covers a *superannuation income stream that is any
35 of the following:

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Schedule 3 Non-concessional contributions

- 1 (a) an *allocated annuity;
- 2 (b) an *allocated pension;
- 3 (c) an allocated pension (within the meaning of the *Retirement*
- 4 *Savings Accounts Regulations 1997*);
- 5 (d) an *account-based annuity;
- 6 (e) an account-based pension (within the meaning of the
- 7 *Superannuation Industry (Supervision) Regulations 1994*);
- 8 (f) an account based pension (within the meaning of the
- 9 *Retirement Savings Accounts Regulations 1997*);
- 10 (g) a market linked annuity (within the meaning of the
- 11 *Superannuation Industry (Supervision) Regulations 1994*);
- 12 (h) a market linked pension (within the meaning of the
- 13 *Superannuation Industry (Supervision) Regulations 1994*);
- 14 (i) a market linked pension (within the meaning of the
- 15 *Retirement Savings Accounts Regulations 1997*).

16 *Income Tax (Transitional Provisions) Act 1997*

17 **5 After section 292-80C**

18 Insert:

19 **292-85 Non-concessional contributions cap for a financial year**

- 20 (1) For the purposes of working out your non-concessional
- 21 contributions cap for the 2017-2018 financial year, if:
- 22 (a) your non-concessional contributions cap for the 2015-2016
- 23 financial year was worked out under subsection 292-85(4) of
- 24 the *Income Tax Assessment Act 1997*; and
- 25 (b) that year was a first year within the meaning of
- 26 subsection 292-85(3) of that Act;
- 27 subsection 292-85(7) of that Act as amended by the *Treasury Laws*
- 28 *Amendment (Fair and Sustainable Superannuation) Act 2016*
- 29 applies after the commencement of this section as if:
- 30 (c) the amount worked out under subsection 292-85(5) of that
- 31 Act as so amended were \$460,000; and
- 32 (d) subsection 292-85(6) of that Act as so amended had been
- 33 applied (taking into account paragraph (c) of this subsection)

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Non-concessional contributions **Schedule 3**

for the purposes of working out your non-concessional contributions cap for the 2016-2017 financial year.

- (2) For the purposes of working out your non-concessional contributions caps for the 2017-2018 financial year and the 2018-2019 financial year, if:
- (a) your non-concessional contributions cap for the 2016-2017 financial year was worked out under subsection 292-85(4) of the *Income Tax Assessment Act 1997*; and
 - (b) that year was a first year within the meaning of subsection 292-85(3) of that Act;
- subsections 292-85(6) and (7) of that Act as amended by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* apply after the commencement of this section as if the amount worked out under subsection 292-85(5) of that Act as so amended were \$380,000.
- (3) To avoid doubt, this section does not affect your non-concessional contributions cap for any financial year that ended before 1 July 2017.

Superannuation (Government Co-contribution for Low Income Earners) Act 2003

6 After paragraph 6(1)(d)

Insert:

- (da) the person's non-concessional contributions for the financial year corresponding to the income year do not exceed the person's non-concessional contributions cap for the financial year; and
- (db) immediately before the start of that financial year, the person's total superannuation balance is less than the general transfer balance cap for that financial year; and

7 Section 56

Insert:

Schedule 3 Non-concessional contributions

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Release authorities **Schedule 10**

Main amendments **Part 1**

Schedule 10—Release authorities

Part 1—Main amendments

Taxation Administration Act 1953

1 Before Division 133 in Schedule 1

Insert:

Division 131—Releasing money from superannuation

Table of Subdivisions

131-A Releasing money from superannuation

Subdivision 131-A—Releasing money from superannuation

Guide to Subdivision 131-A

131-1 What this Subdivision is about

You may request the Commissioner to require the release of an amount from your superannuation interests if you are given:

- (a) an excess concessional contributions determination or excess non-concessional contributions determination; or
- (b) a notice of an assessment of assessed Division 293 tax.

The Commissioner may also require the release of an amount from your superannuation interests in related circumstances.

Superannuation providers must usually pay the amount required to be released. However, for certain superannuation interests the provider may choose whether or not to pay.

Released amounts are paid to the Commissioner. You get a credit for the released amount. Surplus credits are refunded to you under Division 3A of Part IIB.

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Schedule 10 Release authorities

Part 1 Main amendments

Table of sections

Requesting a release authority

- 131-5 Requesting the release of amounts from superannuation interests
- 131-10 Restrictions on the amount you can request to be released

Issuing a release authority to superannuation provider

- 131-15 Issuing release authorities
- 131-20 Amount to be stated in a release authority
- 131-25 Contents of a release authority
- 131-30 Varying and revoking a release authority

Complying with a release authority

- 131-35 Obligations of superannuation providers
- 131-40 Voluntary compliance with a release authority relating to voluntary release interests and defined benefit interests
- 131-45 Meaning of *maximum available release amount*
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Consequences of releasing amounts

- 131-65 Entitlement to credits
- 131-70 Interest for late payments of money received by the Commissioner in accordance with release authority
- 131-75 Income tax treatment of amounts released—proportioning rule does not apply

Requesting a release authority

131-5 Requesting the release of amounts from superannuation interests

- (1) You may make a request under this section for a *financial year if you are given any of the following:
 - (a) an *excess concessional contributions determination for the financial year;
 - (b) an *excess non-concessional contributions determination for the financial year;

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Release authorities **Schedule 10**

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- 1 (c) a notice of an assessment of *assessed Division 293 tax for
2 the income year that corresponds to the financial year.
- 3 (2) You make the request by:
- 4 (a) notifying the Commissioner of the total amount to be
5 released; and
- 6 (b) identifying your *superannuation interest or interests from
7 which that total amount is to be released; and
- 8 (c) if you identify more than one superannuation interest—
9 stating the amount to be released from each such interest.
- 10 (3) The request must:
- 11 (a) ensure that the total amount to be released for the
12 determination or assessment complies with section 131-10;
13 and
- 14 (b) be in the *approved form; and
- 15 (c) be given to the Commissioner within:
- 16 (i) 60 days after the Commissioner issues the determination
17 or notice referred to in subsection (1); or
- 18 (ii) a further period allowed by the Commissioner.
- 19 *Unsuccessful requests—making a further request*
- 20 (4) If:
- 21 (a) you make a valid request under this section; and
- 22 (b) the Commissioner gives you a notice under
23 subsection 131-55(1) stating an amount (the ***unreleased***
24 ***amount***) that a *superannuation provider did not pay in
25 relation to a release authority issued for that request;
26 you may make a further request to release the unreleased amount
27 from another of your *superannuation interests.
- 28 (5) The further request must comply with subsection (2) and
29 paragraphs (3)(a) and (b), and must be given to the Commissioner
30 within:
- 31 (a) 60 days after the Commissioner issues the notice mentioned
32 in paragraph (4)(b); or
- 33 (b) a further period allowed by the Commissioner.
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Schedule 10 Release authorities

Part 1 Main amendments

Request is irrevocable

(6) A request under this section is irrevocable.

131-10 Restrictions on the total amount you can request to be released

(1) The total amount you can request to be released complies with this section if that amount:

(a) if item 1 or 3 of the following table applies—does not exceed the relevant amount referred to in that item; or

(b) if item 2 of the following table applies—is nil or equals the relevant amount referred to in that item.

Amount you can request to be released

Item	If the request relates to this kind of determination or assessment (see subsection 131-5(1)):	The relevant amount is:
-------------	--	--------------------------------

1	an *excess concessional contributions determination	85% of the contributions stated in that determination
---	---	---

2	an *excess non-concessional contributions determination	the *total release amount stated in that determination
---	---	--

3	an assessment of *assessed Division 293 tax	that amount of *assessed Division 293 tax
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(2) However, for an amended determination or assessment, reduce the relevant amount referred to in the above table by any amount released under this Subdivision for an earlier determination or assessment of that kind that you are given for the *financial year or corresponding income year.

(3) An amendment of a determination or assessment does not affect the validity of a request you make under section 131-5 before you are given the amended determination or the notice of the amended assessment.

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Release authorities **Schedule 10**

Main amendments **Part 1**

Issuing a release authority to superannuation provider

131-15 Issuing release authorities

Issuing in response to a valid request

- (1) If you make a valid request under section 131-5, the Commissioner must issue a release authority to each *superannuation provider that holds a *superannuation interest identified in the request.

Issuing if you do not make a valid request in response to an excess non-concessional contributions determination etc.

- (2) If:

- (a) on a particular day, the Commissioner issues you with:
- (i) an *excess non-concessional contributions determination for a *financial year; or
 - (ii) a notice to which paragraph 131-5(4)(b) applies for such a determination; and
- (b) within 120 days after that day, you do not make a valid request under section 131-5 for that determination;
- the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you are liable to pay excess non-concessional contributions tax

- (3) If you are given a notice of an *excess non-concessional contributions tax assessment for a *financial year, the Commissioner may issue a release authority to one or more *superannuation providers that hold *superannuation interests for you.

Issuing if you have an unpaid amount of assessed Division 293 tax that is not deferred to a debt account

- (4) If:

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Schedule 10 Release authorities

Part 1 Main amendments

- 1 (a) for an income year, you are given a notice of an assessment
2 of *assessed Division 293 tax that is not *deferred to a debt
3 account for a *superannuation interest; and
4 (b) on the 120th day after the day the Commissioner issues that
5 notice, the sum of the following falls short of that amount of
6 tax:
7 (i) any payments of that tax for the income year that you
8 have already made;
9 (ii) any amounts that have already been released under this
10 Subdivision for that assessment;
11 the Commissioner may issue a release authority to one or more
12 *superannuation providers that hold superannuation interests for
13 you.

14 **131-20 Amount to be stated in a release authority**

- 15 (1) The amount to be released from one or more *superannuation
16 interests under a release authority issued under section 131-15
17 must be:
18 (a) for a release authority issued under subsection 131-15(1)—
19 the amount stated in the request; or
20 (b) otherwise—worked out so that the total amount stated for all
21 release authorities for the applicable determination or
22 assessment does not exceed:
23 (i) for a release authority issued under
24 subsection 131-15(2)—the *total release amount stated
25 in the determination referred to in that subsection; or
26 (ii) for a release authority issued under
27 subsection 131-15(3) or (4)—the amount of tax stated in
28 the assessment referred to in that subsection.
29 (2) For the purposes of paragraph (1)(b), disregard an amount stated in
30 another release authority to the extent that a notice given under
31 subsection 131-50(2) states that the amount will not be paid.

32 **131-25 Contents of a release authority**

33 Each release authority issued under section 131-15 must:

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Release authorities **Schedule 10**

Main amendments **Part 1**

- 1 (a) be issued to a single *superannuation provider; and
- 2 (b) state:
 - 3 (i) the amount to be released from each *superannuation
 - 4 interest under the release authority; or
 - 5 (ii) the total amount to be released for the superannuation
 - 6 interests under the release authority; and
- 7 (c) be dated; and
- 8 (d) contain any other information that the Commissioner
- 9 considers relevant.

10 **131-30 Varying and revoking a release authority**

11 The Commissioner may vary or revoke a release authority issued
12 under section 131-15 at any time before the Commissioner is given
13 a notice under section 131-50 relating to the release authority.

14 **Complying with a release authority**

15 **131-35 Obligations of superannuation providers**

- 16 (1) A *superannuation provider issued with a release authority under
17 section 131-15 must, within 7 *business days after the release
18 authority is issued (or a further period allowed by the
19 Commissioner), pay to the Commissioner the lesser of:
- 20 (a) the amount stated in the release authority; and
 - 21 (b) the sum of the *maximum available release amounts for each
 - 22 *superannuation interest held by the superannuation provider
 - 23 for you in *superannuation plans.

24 Note 1: Subsection 288-95(3) provides for an administrative penalty for
25 failing to comply with this section.

26 Note 2: For the taxation treatment of the payment, see section 131-75.

27 *Exception—interests not subject to compulsory release*

- 28 (2) However, the *maximum available release amount for a
29 *superannuation interest is not to be included in the sum worked
30 out under paragraph (1)(b) if the interest is a *defined benefit
31 interest (a *voluntary release interest*).

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Schedule 10 Release authorities

Part 1 Main amendments

131-40 Voluntary compliance with a release authority relating to voluntary release interests and defined benefit interests

- (1) A *superannuation provider issued with a release authority under section 131-15 may, within 7 *business days after the release authority is issued (or a further period allowed by the Commissioner), pay to the Commissioner the lesser of:
- (a) the amount stated in the release authority; and
 - (b) the sum of the *maximum available release amounts for each voluntary release interest held by the superannuation provider for you in *superannuation plans.
- (2) For the purposes of paragraph (1)(a), reduce the amount mentioned in that paragraph by any amount the provider pays under section 131-35 in relation to the release authority.

131-45 Meaning of maximum available release amount

The *maximum available release amount* for a *superannuation interest at a particular time is the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

131-50 Notifying Commissioner

- (1) A *superannuation provider issued with a release authority under section 131-15 must notify the Commissioner of a payment made in accordance with this Subdivision.
- (2) A *superannuation provider that:
- (a) has been issued with a release authority under section 131-15; and
 - (b) is not required to pay an amount under section 131-35, or is required under that section to pay an amount less than the amount stated in the release authority;
- must notify the Commissioner that the provider is not required to comply with the release authority.

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Release authorities **Schedule 10**

Main amendments **Part 1**

- 1 (3) A notice under this section must be given in the *approved form
2 within the period applying under subsection 131-35(1) or
3 131-40(1) for the release authority.

4 Note: Subsection 286-75(1) provides for an administrative penalty for
5 failing to comply with this section.

6 **131-55 Notifying you**

- 7 (1) The Commissioner must notify you if, in relation to a release
8 authority issued under section 131-15 in relation to you, the
9 Commissioner:
10 (a) is given a notice from a *superannuation provider under
11 section 131-50; or
12 (b) does not receive a payment from a superannuation provider
13 of the full amount stated in the release authority within the
14 time mentioned in subsection 131-35(1) or 131-40(1).
- 15 (2) A notice under subsection (1) must:
16 (a) be in writing; and
17 (b) identify the *superannuation provider; and
18 (c) state how much of the amount stated in the release authority
19 was not paid within the applicable time.

20 **131-60 Compensation for acquisition of property**

- 21 (1) If the operation of section 131-35 would result in an acquisition of
22 property (within the meaning of paragraph 51(xxxi) of the
23 Constitution) from an entity otherwise than on just terms (within
24 the meaning of that paragraph), the Commonwealth is liable to pay
25 a reasonable amount of compensation to the entity.
- 26 (2) If the Commonwealth and the entity do not agree on the amount of
27 the compensation, the entity may institute proceedings in:
28 (a) the Federal Court of Australia; or
29 (b) the Supreme Court of a State or Territory;
30 for the recovery from the Commonwealth of such reasonable
31 amount of compensation as the court determines.

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Schedule 10 Release authorities

Part 1 Main amendments

Consequences of releasing amounts

131-65 Entitlement to credits

- (1) If a *superannuation provider pays an amount in relation to a release authority issued under section 131-15 in relation to you, you are entitled to a credit equal to that amount.

Note: Division 3 of Part IIB provides for the treatment of credits that you are entitled to under a taxation law.

- (2) The credit arises on the day the Commissioner receives the amount.

Exception for voluntary payments of Division 293 tax debt account

- (3) However, if the amount paid in relation to the release authority relates to an assessment of *assessed Division 293 tax that is *deferred to a debt account for a *superannuation interest:
- (a) subsection (1) does not apply in relation to the payment; and
 - (b) treat the payment as if it were a voluntary payment under section 133-70 in relation to that debt account.

131-70 Interest for late payments of money received by the Commissioner in accordance with release authority

- (1) You are entitled to an amount of interest worked out under subsection (2) if:
- (a) the Commissioner is required under Division 3A of Part IIB to refund all or part of a credit you are entitled to under section 131-65; and
 - (b) the Commissioner does not so refund all or part of that credit within 60 days after receiving the payment that gave rise to the credit.
- (2) The interest is to be calculated:
- (a) on so much of the amount of the credit as the Commissioner fails to refund under that Division; and
 - (b) for the period:

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- 1 (i) beginning 60 days after the day the Commissioner
2 receives the amount; and
3 (ii) ending on the day the Commissioner refunds the amount
4 mentioned in paragraph (1)(a); and
5 (c) on a daily basis; and
6 (d) at the *base interest rate for the day the interest is calculated.

7 **131-75 Income tax treatment of amounts released—proportioning**
8 **rule does not apply**

9 Section 307-125 of the *Income Tax Assessment Act 1997* (the
10 proportioning rule) does not apply to a payment made as required
11 or permitted under this Subdivision.

12 Note: The income tax treatment of released amounts is also affected by
13 Subdivision 292-B, and section 303-15, of that Act.

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Part 2 Other amendments

Part 2—Other amendments

Income Tax Assessment Act 1997

2 Section 10-5 (table item headed “superannuation”)

Omit “304-15(4)”.

3 Section 11-55 (table item headed “superannuation”)

Omit “303-17”.

4 Section 11-55 (table item headed “superannuation”)

Omit “304-15”.

5 Subsections 280-15(3) and (4)

Repeal the subsections, substitute:

- (3) If non-concessional contributions exceed an indexed cap, the individual can request the release of either:
- (a) nothing; or
 - (b) an amount equal to the sum of that excess and 85% of the associated earnings on that excess;
- from the individual’s superannuation interests. Whether or not such a request is made, an amount relating to those associated earnings may be included in the individual’s assessable income and may give rise to a tax offset.

- (4) In the absence of such a request, the Commissioner may require the release of the amount described in paragraph (3)(b) as doing so will almost always leave the individual better off.

Note: This can be done under subsection 131-15(2) in Schedule 1 to the *Taxation Administration Act 1953*.

- (5) The individual is taxed:
- (a) on any shortfall between the amount released as described in subsection (3) or (4) and the excess referred to in subsection (3); or

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Other amendments **Part 2**

1 (b) on that excess, if the individual requested that nothing be
2 released from the individual's superannuation interests.

3 (6) The Commissioner may require the release of an amount equal to
4 this tax liability from the individual's superannuation interests.

5 Note: This can be done under subsection 131-15(3) in Schedule 1 to the
6 *Taxation Administration Act 1953*.

7 **6 Section 291-15 (note 3)**

8 Omit "Division 96", substitute "Division 131".

9 **7 Section 292-1**

10 Repeal the section, substitute:

11 **292-1 What this Division is about**

12 This Division limits the superannuation contributions made in a
13 financial year that receive concessional tax treatment.

14 You become liable for tax if:

- 15 (a) your non-concessional contributions exceed an indexed
16 cap; and
17 (b) a corresponding amount is not released from your
18 superannuation interests.

19 An amount may be included in your assessable income, and you
20 may become entitled to a tax offset, if your non-concessional
21 contributions exceed that indexed cap.

22 **8 Section 292-15**

23 Repeal the section, substitute:

24 **292-15 What this Subdivision is about**

25 An amount is included in your assessable income, and you are
26 entitled to a tax offset, if:

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- (a) your non-concessional contributions exceed an indexed cap; and
- (b) you are not liable to pay excess non-concessional contributions tax for the financial year.

This amount included in your assessable income relates to:

- (a) your associated earnings on those excess contributions; and
- (b) any amounts that have been released from your superannuation interests.

9 Section 292-20

Repeal the section, substitute:

292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions

Your assessable income for an income year includes an amount, and you are entitled to a *tax offset for the income year, if:

- (a) you receive one or more *excess non-concessional contributions determinations for a *financial year that corresponds to the income year; and
- (b) you are not liable to pay *excess non-concessional contributions tax for the financial year on the full amount of the excess stated in the most recent of those determinations.

10 Paragraph 292-25(2)(a)

Omit “to you”.

11 Subsection 292-25(2) (note 2)

Repeal the note, substitute:

Note 2: Any amounts paid in response to those release authorities are non-assessable non-exempt income (see section 303-15).

12 Paragraph 292-85(1)(b)

Omit “to you”.

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1 **13 Paragraph 292-85(1)(b)**

2 Omit “96-12”, substitute “131-15”.

3 **14 Paragraph 292-85(1A)(a)**

4 Omit “to you”.

5 **15 Paragraph 292-90(1A)(a)**

6 Omit “election under section 96-5”, substitute “request under
7 section 131-5”.

8 **16 Paragraph 292-90(1A)(b)**

9 Omit “96-10”, substitute “131-15”.

10 **17 Paragraph 292-90(1A)(b)**

11 Omit “election”, substitute “request”.

12 **18 Sections 292-405, 292-410 and 292-415**

13 Repeal the sections.

14 **19 Paragraphs 292-467(1)(b) and (c)**

15 Repeal the paragraphs, substitute:

16 (c) the sum of any amounts paid in response to any release
17 authorities issued under section 131-15 in Schedule 1 to the
18 *Taxation Administration Act 1953* for those determinations is
19 less than the excess amount stated in the most recent of those
20 determinations; and

21 **20 Subsection 292-467(1) (note 1)**

22 Omit “to you”.

23 **21 Sections 303-15 and 303-17**

24 Repeal the sections, substitute:

25 **303-15 Payments from release authorities—general**

26 A *superannuation benefit that you receive (or are taken to receive)
27 is not assessable income and is not *exempt income if it is paid in

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1 response to a release authority issued under section 131-15 in
2 Schedule 1 to the *Taxation Administration Act 1953* in relation to
3 you.

4 Note: In some cases, a related amount may still be included in your
5 assessable income (see Subdivision 292-B and section 304-20).

6 **22 Section 303-20 (heading)**

7 Repeal the heading, substitute:

8 **303-20 Payments from release authorities—paying debt account**
9 **discharge liability for a superannuation interest**

10 **23 Section 304-15**

11 Repeal the section.

12 **24 Section 304-20 (heading)**

13 Repeal the heading, substitute:

14 **304-20 Excess payments from release authorities—paying debt**
15 **account discharge liability for a superannuation interest**

16 **25 Subsection 995-1(1) (definition of *maximum available*** 17 ***release amount*)**

18 Omit “96-30”, substitute “131-45”.

19 **26 Subsection 995-1(1) (definition of *total release amount*)**

20 Repeal the definition, substitute:

21 *total release amount*, in relation to an *excess non-concessional
22 contributions determination, has the meaning given by
23 paragraph 97-25(1)(c) in Schedule 1 to the *Taxation*
24 *Administration Act 1953*.

25 ***Taxation Administration Act 1953***

26 **27 Division 96 in Schedule 1**

27 Repeal the Division.

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28 Section 135-1 in Schedule 1

Omit “amounts relating to the Division 293 tax”, substitute “your debt account discharge liability”.

29 Section 135-5 in Schedule 1

Omit “assessed Division 293 tax that is due and payable, make voluntary payments in reduction of a debt account, or pay”.

30 Subsection 135-10(1) in Schedule 1 (table items 1 and 2)

Repeal the items.

31 Section 135-35 in Schedule 1

Omit:

<p>The Commissioner may give the release authority to a superannuation provider if you fail to pay assessed Division 293 tax that is due and payable within 120 days after the release authority being issued.</p>
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32 Section 135-45 in Schedule 1

Repeal the section.

33 Subsection 135-75(3) in Schedule 1 (not including the notes)

Repeal the subsection.

34 Section 135-85 in Schedule 1 (note)

Omit “96-30”, substitute “131-45”.

35 Subsection 135-90(1) in Schedule 1

Omit “(1)”.

36 Subsections 135-90(2) and (3) in Schedule 1

Repeal the subsections.

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37 Subsection 250-10(2) in Schedule 1 (table item 135R)

Omit “96-20”, substitute “131-35”.

38 Subsection 288-95(3) in Schedule 1

Omit “96-20 (about release authority for excess superannuation contributions)”, substitute “131-35 (about release authorities for superannuation)”.

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Release authorities **Schedule 10**
Application of amendments **Part 3**

1 **Part 3—Application of amendments**

2 **39 Application of amendments**

3 The amendments made by this Schedule apply in relation to financial
4 years commencing on or after 1 July 2017.

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