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SUPERANNUATION (OBJECTIVE) BILL 2016

TREASURY LAWS AMENDMENT (FAIR AND SUSTAINABLE  
SUPERANNUATION) BILL 2016

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# **Chapter 1**

## ***The primary objective of the superannuation system***

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### **Outline of chapter**

1.1 The exposure draft of the Superannuation (Objective) Bill 2016 (the Bill) establishes a legislative framework to guide the development of future superannuation policy. It does this by enshrining the primary objective of the superannuation system in legislation, and requiring new Bills and regulations relating to superannuation to be accompanied by a statement of compatibility with the primary objective of the superannuation system.

### **Context of amendments**

1.2 Superannuation is important to improving the retirement income of all Australians and is one pillar of the Australian retirement income system, together with the age pension and other voluntary savings. Over 80 per cent of working age Australians have superannuation savings and it is the second largest savings vehicle, making up around 22 per cent of all assets held by Australian households.

1.3 Superannuation is also a key component of the financial services industry and the economy more broadly. Superannuation assets have increased from \$245 billion in 1996 to over \$2 trillion today, representing well over 100 per cent of Gross Domestic Product. Superannuation assets are projected to increase to \$9 trillion by 2040.

1.4 The Government agreed in response to the Financial System Inquiry to enshrine the objective of the superannuation system in legislation. This will provide a way in which competing superannuation proposals can be measured and a framework for evaluating future changes in the superannuation system.

1.5 As the superannuation system matures and assets grow the role of superannuation will increase. It is therefore important that new superannuation proposals be considered in light of the objective of the superannuation system so that future changes build and maintain confidence in the future of the superannuation system.

1.6 The objective of the superannuation system was an important anchor for the development of the Government's 2016-17 Superannuation Reform Package.

## **Summary of new law**

1.7 The Bill enshrines the primary objective of the superannuation system in legislation. It also introduces a requirement for statements of compatibility with the primary objective of the superannuation system to be prepared for every Bill or regulation relating to superannuation.

## **Comparison of key features of new law and current law**

| <i>New law</i>   | <i>Current law</i> |
|--|--------------------|
| A statement of compatibility with the primary objective of the superannuation system must be prepared for every Bill or regulation that relates to superannuation. | No equivalent      |

## **Detailed explanation of new law**

1.8 For every Bill or regulation relating to superannuation, there must be a statement of its compatibility with the primary objective of the superannuation system.

### ***The primary objective of the superannuation system***

1.9 The primary objective of the superannuation system is to provide income in retirement to substitute or supplement the age pension. [Section 4, subsection 5(1)]

1.10 This objective clarifies that the role of the superannuation system is to assist individuals to support themselves by providing income to meet their expenditure needs in retirement.

1.11 Superannuation, through a combination of requiring compulsory employer superannuation guarantee contributions and allowing voluntary contributions, supports the other pillars of the retirement income system - the age pension and other savings. Its purpose is not to allow for tax minimisation or estate planning.

1.12 Enshrining the primary objective of the superannuation system in legislation, in combination with the subsidiary objectives set out below, will provide a framework against which future superannuation policy proposals can be assessed.

1.13 The primary objective of the superannuation system does not affect the meaning of any law of the Commonwealth (other than this Bill). This means that the primary objective cannot be used to interpret any Commonwealth law other than this Bill. [*Subsection 5(2)*]

1.14 As such, the primary objective of the superannuation system will not be applied to instruments issued, or decisions made, by regulators of the superannuation system, such as the Australian Taxation Office (ATO), the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC), in administering relevant superannuation laws.

#### ***Subsidiary objectives***

1.15 The Government has identified five subsidiary objectives to support the primary objective of the superannuation system.

1.16 These subsidiary objectives are:

- facilitate consumption smoothing over the course of an individual's life;
- manage risks in retirement;
- be invested in the best interests of superannuation fund members;
- alleviate fiscal pressures on Government from the retirement income system; and
- be simple, efficient and provide safeguards.

1.17 The subsidiary objectives provide a framework for assessing the compatibility of a Bill or regulation with the primary objective of the superannuation system. In assessing the compatibility of a Bill or regulation with the primary objective, there may be tensions between the subsidiary objectives. Policy makers will need to balance these objectives. For instance, facilitating consumption smoothing over the course of an individual's life will need to be weighed against fiscal pressures on Government.

1.18 Addressing the subsidiary objectives in the statement of compatibility will produce a more comprehensive assessment and would be best practice.

*Facilitate consumption smoothing over the course of an individual's lifetime*

1.19 Superannuation is a vehicle for individuals to fund consumption in retirement largely from working life income. The superannuation system should facilitate consumption smoothing over an individual's lifetime and increase self-reliance. It should also provide people with choice and flexibility as to how they spend retirement and manage their money.

1.20 The concessional tax treatment of the superannuation system is designed to recognise the compulsory nature of superannuation savings and to encourage individuals to make voluntary contributions to their superannuation. This is intended to assist individuals improve their standard of living in retirement but this assistance cannot be unlimited. As superannuation is not for tax minimisation or estate planning purposes, there will be limits to the level of government support provided.

*Manage risks in retirement*

1.21 Superannuation, combined with the age pension and savings outside of superannuation, should assist individuals to manage a range of risks including investment risk, inflation risk and longevity risk. Retirees generally have limited opportunities to replenish losses in their superannuation. Superannuation should also help individuals manage the risk of outliving their savings, including where large costs (such as medical costs) are incurred following unexpected events.

*Be invested in the best interests of superannuation fund members*

1.22 A subsidiary objective of the superannuation system is that funds are invested in the best interests of members. This is consistent with a trustee's obligation to perform their duties and exercise their powers in the best interests of beneficiaries under paragraph 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). This is also consistent with the sole purpose test in section 62 of the SIS Act, which establishes that superannuation trustees must maintain funds solely for one or more of the core purposes, including the provision of benefits for members on or after retirement.

1.23 An important factor for trustees to consider is the returns that their investments will achieve for members over their lifetimes.

1.24 Although superannuation is a significant element of national savings, increasing national savings should not itself guide the superannuation system. Instead, the ability to fund long-term investment could be considered an auxiliary benefit of a well-designed, long-term savings vehicle that invests in the best interests of its members.

*Alleviate fiscal pressures on Government from the retirement income system*

1.25 Australia's retirement income system is based on three pillars: the age pension; compulsory saving through the superannuation guarantee; and other savings (including within the superannuation system). The three-pillar system shares the responsibility for providing retirement income between Government and individuals.

1.26 The Government's total contribution to the retirement income system, through superannuation tax concessions, the age pension, and health and aged care expenditure, needs to be fiscally sustainable. Greater access to private savings during retirement will increase self-provision. The superannuation system should encourage individuals to be self-reliant and if targeted appropriately, can be sustainable and alleviate fiscal pressures on Government from the retirement income system.

*Be simple, efficient and provide safeguards*

1.27 The superannuation system should achieve its objectives at a minimum cost to individuals, taxpayers and the economy. Given the compulsory nature of superannuation, simplicity is important to ensure that the system is accessible for all Australians, not just sophisticated and well-informed investors. The system should be flexible enough to suit Australians in a range of circumstances, such as individuals with inconsistent work patterns, including women who often have lower superannuation balances than men.

1.28 Given the compulsory nature of contributions, the system needs prudential oversight and should provide good outcomes in both the accumulation and retirement phases for individuals who do not make active choices about their superannuation. A range of other benefits may also be provided through superannuation, for example insurance. However these are auxiliary to the primary objective of superannuation, which is to provide income in retirement.

*Statements of compatibility with the primary objective of the superannuation system*

1.29 A statement of compatibility must be prepared for a Bill or regulation relating to superannuation.



1.30 It is the responsibility of the member of Parliament proposing to introduce a Bill into a House of Parliament to cause a statement of compatibility to be prepared. The statement of compatibility must be presented to the House of Parliament by the member of Parliament who introduces the Bill, or another member acting on his or her behalf. *[Subsection 6(1), subsection 6(2)]*

1.31 It is the responsibility of the rule-maker for a regulation to cause a statement of compatibility to be prepared for a regulation relating to superannuation. The statement must be included in the explanatory statement relating to the regulation. *[Subsection 7(1), note to subsection 7(1)]*

1.32 Whether a Bill or regulation relates to superannuation is discussed at paragraphs 1.44 to 1.46.

1.33 The term 'rule-maker' has the same meaning as in the *Legislation Act 2003*. *[Section 4]*

1.34 A regulation is a form of legislative instrument. The note to subsection 8(1) of the *Legislation Act 2003* states that legislative instruments may be described by their enabling legislation in different ways, for example as regulations, rules, ordinances or determinations. As such, regulations are legislative instruments that are so described by their enabling legislation.

1.35 A statement of compatibility will not be required for legislative instruments that are not regulations, for example determinations made by the Commissioner of Taxation or prudential standards made by APRA. This is because Bills and regulations are more likely to contain measures implementing Government policy decisions than legislative instruments made by regulators such as the ATO, ASIC and APRA. Since the purpose of legislating the primary objective of the superannuation system is to guide the development of superannuation policy, it would be unnecessary to require regulators making these kinds of legislative instruments to comply with the requirement to prepare a statement of compatibility.

1.36 There is no prescribed format that a statement of compatibility must take. However, the statement must include an assessment of whether the Bill or regulation is compatible with the primary objective of the superannuation system. *[Subsection 6(3), subsection 7(2)]*

1.37 It would be best practice to also address the subsidiary objectives in the statement of compatibility.

1.38 The statement of compatibility should address the major components of the Bill or regulation. It is not necessary to address any aspects of the Bill or regulation that are minor or machinery in nature.

1.39 The statement of compatibility need only address those parts of the Bill or regulation that relate to superannuation. For example, if an omnibus Bill implements several measures, one of which relates to superannuation, the statement need only be prepared in relation to that measure.

1.40 A statement of compatibility with the primary objective of the superannuation system prepared for a Bill or regulation is not binding on any court or tribunal. [*Subsection 6(4), subsection 7(3)*]

1.41 This is not intended to exclude the operation of section 15AB of the *Acts Interpretation Act 2001*, which deals with the use of extrinsic materials in the interpretation of an Act or legislative instrument. A statement of compatibility with the primary objective of the superannuation system could be used by a court or tribunal to ascertain the meaning of provisions in the Act or regulation to which the statement relates, where the meaning of those provisions is unclear or ambiguous.

1.42 The simplified outline of this Bill states that for every Bill or regulation relating to superannuation, there must be a statement of its compatibility with the primary objective of the superannuation system. [*Section 3*]

1.43 Simplified outlines are non-operative provisions that are used to assist readers understand the legislation. They are not intended to be comprehensive and the substantive provisions of the Bill must be relied upon.

#### *Relating to superannuation*

1.44 Statements of compatibility with the primary objective of the superannuation system must only be prepared for Bills or regulations relating to superannuation. ‘Relating to superannuation’ is not a defined term so takes its ordinary meaning.

1.45 A Bill or regulation will relate to superannuation if it amends a law that is relevant to superannuation, irrespective of whether the relevant instrument being amended predominantly relates to superannuation (such as the *Superannuation Guarantee (Administration) Act 1992*) or merely contains some provisions that deal with superannuation (such as the *Taxation Administration Regulations 1976* or the *Fair Work Act 2009*). It is the subject matter of the amendment that is relevant as to whether it relates to superannuation, rather than the instrument being amended.

1.46 Whether a Bill or regulation relates to superannuation and requires a statement of compatibility to be prepared will ultimately be a decision for the relevant member of Parliament or rule-maker.

### **Example 1.1: Statement required**

The Government proposes to amend the mandatory disclosure requirements for superannuation products in the *Corporations Regulations 2001*. This would require a regulation to be made by the Governor-General in accordance with the regulation making power in section 1364 of the *Corporations Act 2001*.

Provisions in the *Corporations Regulations 2001* predominantly relate to regulating corporations as a whole; however some parts of the Regulations are specific to corporate trustees that are superannuation providers. Part 10 of Schedule 10A of the *Corporations Regulations 2001* contains the provisions that modify mandatory disclosure requirements in relation to superannuation products.

The Treasurer, as the Minister responsible for administering the *Corporations Act 2001*, would need to cause a statement of compatibility with the primary objective of the superannuation system to be prepared in respect of the proposed regulation. This is because the proposed regulation would amend provisions that relate to superannuation.

### **Example 1.2: Statement not required**

Section 15A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMMLMA) allows the Commissioner of Taxation to specify, by legislative instrument, certain dates by which superannuation providers must give to the Commissioner of Taxation statements and payments in relation to unclaimed superannuation money.

The Commissioner of Taxation makes a new legislative instrument under this provision.

Although this legislative instrument would relate to superannuation it is not a regulation because section 15A of the SUMMLMA refers to a 'legislative instrument' rather than a 'regulation'. This means that a statement of compatibility with the primary objective of the superannuation system would not need to be prepared.

### **Example 1.3: Statement not required**

Under section 34C of the SIS Act, APRA may determine prudential standards concerning registrable superannuation entities.

APRA makes a new prudential standard under this provision.

Subsection 34C(10) of the SIS Act states that an instrument made under section 34C is a legislative instrument (with some exceptions).

Although a prudential standard made by APRA under section 34C of the SIS Act would relate to superannuation, it would not be a regulation because the enabling legislation refers to it as a 'legislative instrument'. As such, a statement of compatibility with the primary objective of the superannuation system would not be required.

## **Consequential amendments**

1.47 A consequential amendment is made to the *Legislation Act 2003* to require a statement of compatibility with the primary objective of the superannuation system to be included in an initial explanatory statement, or replacement explanatory statement, for a regulation relating to superannuation. [*Schedule 4 of Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016, item 1, paragraph 15J(2)(fa)*]

## **Commencement**

1.48 The Bill commences from the start of the first day of the first quarter following Royal Assent. [*Section 2*]

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## **Chapter 2**

# **Deducting personal contributions**

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### **Outline of chapter**

2.1 Schedule 1 to the exposure draft Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the Bill) removes the requirement in the income tax law that an individual must earn less than 10 per cent of their income from their employment related activities for them to be able to deduct a personal contribution to superannuation and make it a concessional contribution.

2.2 All references in this Chapter are to the *Income Tax Assessment Act 1997* unless otherwise specified.

### **Context of amendments**

2.3 The measure forms part of the Government's Superannuation Reform Package announced in the 2016-17 Budget.

2.4 This measure improves the flexibility of the superannuation system so that more individuals can make personal contributions to superannuation as concessional contributions.

2.5 Certain contributions to superannuation on behalf of individuals are generally taxed in the fund at a flat rate of 15 per cent rather than in the hands of the entity making the contribution - these contributions are referred to as concessional contributions. There are broadly two types of contributions that qualify as concessional contributions; employer contributions and deductible personal contributions.

2.6 Prior to these amendments, individuals were not able to deduct personal contributions for an income year and have them treated as concessional contributions unless they satisfied a number of requirements. These included a requirement that, broadly, less than 10 per cent of the sum of the individual's assessable income, reportable fringe benefits total and reportable employer superannuation contributions were attributable to employment or similar activities (see section 290-160). This restriction disadvantaged individuals who did not work for employers that allowed them to make salary sacrificed concessional superannuation contributions or those that were substantially self-employed but who received 10 per cent or more of their income from employment.

2.7 The other requirements for a contribution to be deductible are detailed in Subdivision 290-C. They include that individuals must provide superannuation funds with a valid notice of intention to deduct, and also have received an acknowledgement of this notice from the fund (section 290-170) and that the contribution must have been made to a complying superannuation fund (section 290-155).

## Summary of new law

2.8 This measure removes the requirement of the income tax law that an individual must earn less than 10 per cent of their income from employment-related activities for the individual to be able to deduct a personal contribution to superannuation making it a concessional contribution.

## Comparison of key features of new law and current law

| <i>New law</i>  | <i>Current law</i>  |
|---|---|
| <p>An individual is able to deduct personal contributions, making these contributions concessional contributions, regardless of whether they earn 10 per cent or more of their total earnings from employment.</p> <p>Other restrictions apply to limit when an individual can deduct personal superannuation contributions, including new restrictions on deducting contributions to certain defined benefit superannuation funds and contributions that are not included in the taxable income of the superannuation fund..</p> | <p>An individual is not able to deduct personal contributions if 10 per cent or more of their total earnings are from employment. Such personal contributions are non-concessional contributions.</p> <p>Other restrictions apply to limit when an individual can deduct personal superannuation contributions.</p> |

## Detailed explanation of new law

2.9 The amendments made by Schedule 1 to the Bill remove the restriction in the income tax law on individuals deducting personal contributions to superannuation, which broadly required that, less than 10 per cent of the sum of the individual's:

- assessable income;

- reportable fringe benefits total; and
- reportable employer superannuation contributions;

was attributable to employment or similar activities of the individual.  
*[Schedule 1, item 4, section 290-160]*

2.10 This allows individuals that meet the other requirements of Subdivision 290-C to deduct the contribution resulting in it being a concessional contribution to superannuation.

2.11 This ensures that individuals receiving employment income are not dependent on whether their employers offer salary sacrifice arrangements should they wish to make contributions to their superannuation from, effectively, their pre-tax income.

2.12 Entitlement to deductions for personal superannuation contributions still requires that individuals satisfy all of the other requirements for deducting personal superannuation contributions, including the new requirements discussed in paragraphs 2.13 to 2.24.

#### **Example 2.4: Deduction for personal superannuation contribution**

Sarah is 23 years old and decides to start her own luxury chocolate business. She continues to work part time in a retail position where she earns \$10,000 in the 2017-18 financial year, including a \$1,000 superannuation contribution made by her employer. In the same financial year she earns \$70,000 from her chocolate business. From Sarah's \$80,000 assessable income, she makes a personal contribution of \$15,000 to her complying superannuation fund. She has no other concessional superannuation contributions.

Despite receiving more than 10 per cent of her total earnings from employment, Sarah may deduct her \$15,000 personal contribution.

#### ***Personal contributions that are not deductible***

2.13 Schedule 1 to the Bill also prevents certain personal contributions to certain superannuation funds from being deductible, even if the relevant fund is a complying superannuation fund. The amendments apply to certain contributions to two categories of funds. Further categories may be prescribed by regulation. *[Schedule 1, item 4, section 290-155]*

#### ***Contributions to certain defined benefit interest funds***

2.14 The first category of fund is superannuation funds with members with defined benefit interests, which belong to a class of funds that have

indicated to the Commonwealth that they do not wish for their member's contributions to be deductible. [*Schedule 1, item 4, paragraph 290-155(1)(a)*]

2.15 Prior to the amendments, certain superannuation funds that provided defined benefit interests to members were able to operate on the basis that no personal contributions could be deducted by members. This meant that the fund could operate on the basis that none of these contributions were subject to tax in the hands of the superannuation fund (ie. were concessional contributions). These superannuation funds were generally those that linked accrual of benefits in a defined benefit interest to the period of employment of members while permitting or requiring personal contributions by members.

2.16 There would be significant costs if these funds needed to restructure their rules and benefit calculations to allow their members to elect that such personal contributions would be deductible.

2.17 Accordingly, to avoid imposing such costs on these funds, the amendments prevent contributions to these superannuation funds from being deductible. Currently the only funds in this category are Commonwealth public sector superannuation schemes in which an individual has a defined benefit interest. However, following consultation it will also include any State, Territory or private sector defined benefit superannuation funds that advise the Government they face similar difficulties and request to be included in this category to avoid incurring significant costs to restructure their scheme rules.

2.18 Members of these Commonwealth public sector superannuation schemes and members of any similar funds that choose to receive the same treatment continue to be able to deduct personal contributions they make to other types of superannuation funds such as those providing accumulation benefits, provided the contributions satisfy the other requirements to be deductible under the income tax law.

#### *Untaxed funds*

2.19 The second category of superannuation funds for which personal superannuation contributions are now not deductible are funds that do not include an amount in their assessable income under section 295-190 as a result of receiving a superannuation contribution (untaxed funds). [*Schedule 1, item 4, paragraph 290-155(1)(b)*]

2.20 Without the amendment, a deductible personal contribution to an untaxed superannuation fund would not be taxed in the hands of either the fund or its members, providing such members with a benefit in excess of that available to members of other funds.



2.21 To prevent this anomaly arising, Schedule 1 to the Bill ensures that a member of a fund that is an untaxed fund in relation to their personal contribution cannot deduct that personal contribution to that fund.

2.22 For this category of fund, the amendment applies only to contributions by members of such funds that are not included in the assessable income of these funds. It does not apply to contributions made to other funds that are taxed funds by such members or to other member contributions to such funds that are included in the income of the fund.

2.23 In determining if a fund is an untaxed fund in respect of a contribution, amounts that are excluded from the assessable income of the fund due to Subdivision 295-D (such as transfers of liability for contributions to a life insurer or pooled superannuation trust) are disregarded. *[Schedule 1, item 4, subsection 290-155(2)]*

#### *Prescribed funds*

2.24 The amendments also provide that a further category or categories of fund may be prescribed by regulation. This provides flexibility to include additional funds or types of funds if necessary to avoid such funds incurring excessive restructuring costs or other unintended consequences. *[Schedule 1, item 4, paragraph 290-155(1)(c)]*

## **Consequential amendments**

2.25 Schedule 1 to the Bill also makes a number of consequential amendments to the income tax law, including guide material, to reflect the substantive amendments. *[Schedule 1, items 1 to 3 and 6, subsections 280-10(1), 280-10(2) and 290-150(2) and the definition of 'Commonwealth public sector superannuation scheme' in subsection 995 1(1)]*

2.26 These consequential amendments include an amendment to subsection 290-165(1). Currently, this subsection refers to income attributable to, among other things, activities within the meaning of subsection 290-160(1). As this Schedule repeals section 290-160 as part of removing the maximum earnings as an employee condition, it also removes the reference in subsection 290-165(1) and instead inserts the relevant definition of activities into that subsection. *[Schedule 1, item 5, paragraph 290-165(1)(b)]*

2.27 The definition is also simplified. Previously, it applied to activities consisting of:

- holding an office or appointment;

- performing functions or duties;
- engaging in work; or
- doing acts or things;

if those activities resulted in the individual being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act).

2.28 In moving this provision, it was identified that 'doing acts or things' encompassed all possible matters that would result in an individual being treated as an employee. As a result, rather than containing a list of activities, the new rewritten provision streamlines the provision by omitting the list of activities and simply refers to any activities or circumstances that resulted in the individual being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act).

## **Application and transitional provisions**

2.29 The amendments commence from the start of the first day of the first quarter following Royal Assent. [*item 2 of the table in clause 2 of the Bill*]

2.30 The amendments apply to personal superannuation contributions made in the 2017-18 income year and later income years. [*Schedule 1, item 7*]

2.31 In determining whether the amendments apply to a contribution, it only matters in what income year the contribution was made. To the extent that a contribution is made before 1 July 2017, the amendments do not apply even if it is reported on or after that date.

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## **Chapter 3**

### ***Tax offsets for spouse contributions***

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#### **Outline of chapter**

3.1 Schedule 2 to the exposure draft Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the Bill) amends the tax law to encourage individuals to make superannuation contributions for their low income spouses. This is achieved by increasing the amount of income an individual's spouse can earn before the individual ceases to be entitled to a tax offset for making superannuation contributions on behalf of their spouse.

3.2 All references in this Chapter are to the *Income Tax Assessment Act 1997* unless otherwise specified.

#### **Context of amendments**

3.3 The measure forms part of the Government's Superannuation Reform Package announced in the 2016-17 Budget. The measure provides an incentive for individuals to contribute to the superannuation balances of their lower income spouse.

3.4 A tax offset is available to an individual if they make a contribution to a complying superannuation fund or retirement savings account on behalf of their spouse and, amongst other things, the total of the spouse's assessable income, reportable fringe benefits amounts, and reportable employer superannuation contributions for an income year is less than a set threshold amount. Prior to these amendments that threshold was \$13,800.

3.5 The amount of this offset for an individual for an income year is equal to 18 per cent of the lesser of:

- \$3,000 less the amount by which the total of the spouse's assessable income, reportable fringe benefits amounts and reportable employer superannuation contributions for the income year exceeds \$10,800 (total spouse income); and
- the sum of the spouse contributions made by the individual in the income year.

3.6 The amount of the offset that an individual is entitled to for an income year cannot exceed \$540 (18 per cent of \$3,000), even if an individual has multiple spouses during different times in an income year.

## Summary of new law

3.7 Schedule 2 to the Bill increases to \$40,000 from \$13,800 the total spouse income threshold below which superannuation contributions made by an individual for their spouse entitle the contributing individual to a tax offset.

## Comparison of key features of new law and current law

| <i>New law</i>  | <i>Current law</i>   |
|---|--|
| A resident individual is entitled to a tax offset up to a maximum of \$540 in an income year for contributions made to a complying superannuation fund or retirement savings account if the contributions are for the purpose of providing superannuation benefits for their eligible spouse. A spouse is eligible, if, among other things, the total of the spouse's assessable income, reportable fringe benefits amounts and reportable employer superannuation contributions for the income year is less than \$40,000. | A resident individual is entitled to a tax offset up to a maximum of \$540 in an income year for contributions made to a complying superannuation fund or retirement savings account if the contributions are for the purpose of providing superannuation benefits for their eligible spouse. A spouse is eligible, if among other things, the total of the spouse's assessable income, reportable fringe benefits amounts and reportable employer superannuation contributions for the income year is less than \$13,800. |

## Detailed explanation of new law

3.8 Schedule 2 to the Bill increases the amount of income an individual's spouse may earn before the individual ceases to be entitled to a tax offset when they make superannuation contributions on behalf of their spouse.

3.9 Previously, the threshold for the total of the spouse's assessable income, reportable fringe benefits amounts, and reportable employer superannuation contributions (total spouse income) was \$13,800. As a result of the amendments, this threshold is now \$40,000. [*Schedule 2, item 1, paragraph 290-230(2)(c)*]

3.10 The calculation of the amount of the offset for an income year is also changed to account for the increased spouse income threshold. It is now 18 per cent of the lesser of:

- \$3,000 less the amount by which total spouse income exceeds \$37,000 (previously \$10,800); and
- the sum of the spouse contributions made by the individual in the income year.

*[Schedule 2, item 3, paragraph 290-235(1)(a)]*

3.11 This means that an individual is entitled to a tax offset for an income year of the lesser of 18 per cent of their contributions on behalf of their spouse or \$540 (18 per cent of \$3000) until their spouse's total spouse income reaches \$37,000. If the total spouse income of an individual's spouse is between \$37,000 and \$40,000, the maximum tax offset available to the individual proportionally decreases, until at \$40,000 it is reduced to nil.

3.12 Other than this update to account for the increase in the threshold for total spouse income, the amendments do not alter the method for calculating the tax offset for an income year. The amendments also do not change the maximum tax offset amount of \$540 that is available to the individual under the current law. This maximum applies even if the individual has more than one spouse during an income year.

### **Example 3.5: Tax offset entitlement to low income spouse superannuation contributions – partial entitlement**

Eloise and Leon are Australian residents who are married. In the 2017-18 income year, Leon works part-time and has a total of \$39,000 of assessable income, reportable fringe benefits amounts and reportable employer superannuation contributions (total spouse income).

Eloise makes a contribution of \$3,000 on behalf of Leon to his complying superannuation fund during the 2017-18 income year. Accordingly, for the 2017-18 income year, Eloise has spouse contributions of \$3,000 and is entitled to a tax offset of \$180 calculated as follows:

Amount of the offset = 18 % of the lesser of:

- spouse contributions; and
- \$3000 – (the amount by which total spouse income exceeds \$37,000).

Spouse contributions = \$3000

$\$3,000 - (\text{the amount by which total spouse income exceeds } \$37,000)$   
 $= \$3,000 - (\$39,000 - \$37,000) = \$1,000.$

\$1,000 is less than \$3,000 and therefore the amount of the offset available to Eloise in 2017-18 is

$\$1,000 \times 18\% = \$180.$

**Example 3.6: Tax offset entitlement to low income spouse superannuation contributions – full entitlement**

In the 2018-19 income year, Eloise continues to make superannuation contributions for the benefit of Leon. Leon reduces his work hours slightly and has total spouse income of \$31,000.

Eloise makes a contribution of \$6,000 on behalf of Leon to his complying superannuation fund during the 2018-19 income year. Accordingly, as Leon's total spouse income does not exceed \$37,000, Eloise is entitled to a tax offset of:

Amount of the offset = 18 % of the lesser of:

- spouse contributions; and
- $\$3,000 - (\text{the amount by which total spouse income exceeds } \$37,000).$

Spouse contributions = \$6000

$\$3,000 - (\text{the amount by which total spouse income exceeds } \$37,000)$   
 $= \$3,000 - \$0 = \$3,000.$

\$3,000 is less than \$6,000 and therefore the amount of the offset available to Eloise in 2017-18 is

$= \$3,000 \times 18\% = \$540.$

**Example 3.7: Tax offset entitlement to low income spouse superannuation contributions - no entitlement**

In the 2019-20 income year, Eloise continues to make superannuation contributions for the benefit of Leon. Leon has been promoted and has total spouse income of \$41,000.

Eloise is not entitled to a tax offset for any contributions made for the benefit of Leon, as Leon's total spouse income is \$40,000 or more.

**Example 3.8: Tax offset entitlement to low income spouse superannuation contributions – multiple spouses**

Larry and Tess are Australian residents in a de facto relationship. In the 2017-18 income year, Tess works part time and has total spouse income of \$25,000.

Larry makes a contribution of \$3,000 on behalf of Tess to her complying superannuation fund. Later in the year, Tess and Larry's relationship breaks down, and Larry and Carmen enter into a de facto relationship. Also during the 2017-18 income year, Larry makes a contribution of \$1,000 on behalf of Carmen to her complying superannuation fund during the period of their de facto relationship. Carmen is an Australian resident who works part time during the 2017-18 financial year and has total spouse income of \$30,000.

Larry is entitled to a tax offset for the 2017-18 income year in relation to his contributions for both spouses but not exceeding \$540. Larry is entitled to a tax offset of:

18 % of the lesser of:

- spouse contributions; and
- \$3000 – (the amount by which total spouse income exceeds \$37,000).

Spouse contributions = \$4000 (\$3000 for Tess and \$1000 for Carmen)

\$3,000 – (the amount by which total spouse income exceeds \$37,000)  
= \$3,000 – \$0 = \$3,000 (as both Tess and Carmen had total spouse income for 2017-18 that was less than \$37,000).

\$3,000 is less than \$4,000 and therefore the amount of the offset is

$\$3,000 \times 18\% = \$540.$

## **Consequential amendments**

3.13 Prior to these amendments, because of the lower threshold for total spouse income and the annual caps on non-concessional contributions it was unlikely that spouse contributions would be made that would result in the spouse having excess non-concessional contributions.

3.14 However, with the changes to the spouse income threshold and the non-concessional contribution cap, it is more likely that there will be individuals with a spouse who has:

- exceeded their non-concessional contributions cap in a financial year; and
- total spouse income low enough that the individual would ordinarily be entitled to a tax offset for superannuation contributions for their spouse.

3.15 In this situation, an individual could receive the spouse tax offset for a contribution that the spouse withdraws from superannuation as an excess non-concessional contribution.

3.16 To address this, Schedule 2 also makes a consequential amendment to the eligibility criteria for the tax offset to prevent individuals being entitled to the spouse tax offset for an income year when making contributions for a spouse whose non-concessional contributions exceed the non-concessional contribution cap in the corresponding financial year. *[Schedule 2, item 2, subsection 290-230(4A)]*

## **Application and transitional provisions**

3.17 The amendments commence from the start of the first day of the first quarter following Royal Assent. *[item 2 of the table in clause 2 of the Bill]*

3.18 The amendments apply in determining entitlement to the tax offset for superannuation contributions made in the 2017-18 income year and later income years. *[Schedule 2, item 4]*



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## **Chapter 4**

### **Low income superannuation tax offset**

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#### **Outline of chapter**

4.1 Schedule 3 to this Bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to enable eligible low income earners to receive the low income superannuation tax offset.

#### **Context of amendments**

4.2 The low income superannuation tax offset compensates low income individuals for the tax that concessional contributions to their superannuation bear in the hands of their superannuation fund or retirement saving account provider.

#### **Summary of new law**

4.3 Concessional contributions are generally contributions to a superannuation fund that receive concessional tax treatment. Concessional contributions are generally ‘before tax’ contributions that include an employer’s superannuation guarantee contributions, contributions made under a salary sacrifice arrangement and an individual’s personal contributions that are deducted.

4.4 The low income superannuation tax offset seeks to effectively return the tax paid on concessional contributions by a person’s superannuation fund or retirement savings account provider to a person who is a low income earner. Low income earners are defined as individuals with an adjusted taxable income of \$37,000 or less.

4.5 The maximum amount payable is \$500 per year for each eligible individual.

#### **Detailed explanation of new law**

4.6 Currently concessional contributions to superannuation are taxed at 15 per cent regardless of the individual’s relevant marginal income tax

rate. An individual may have an effective tax rate that is lower than 15 per cent. The low income superannuation tax offset will ensure that individuals who have an effective tax rate below 15 per cent do not pay more tax on their concessional contributions through their fund or retirement savings account provider than if they had received the money as salary or wages and paid tax in their own hands.

4.7 A person is entitled to the low income superannuation tax offset if they satisfy the following requirements:

- the individual was not a holder of a temporary visa at any time in that income year other than certain limited situations;
- at least one concessional contribution has been made by or for that individual in the corresponding financial year; and
- either:
  - the individual has adjusted taxable income for that income year that does not exceed \$37,000 and at least 10 per cent of the individual's income for the income year is from business or employment; or
  - 12 months after the end of the income year the Commissioner reasonably believes there is insufficient information to determine the taxpayer's adjusted taxable income and estimates it does not exceed \$37,000 and at least 10 per cent of the individual's income for the income year is from employment.

*[Schedule 3, item 2, section 12C]*

**Example 4.9 Entitlement to the low income superannuation tax offset**

Kerry is an Australian resident. She has an adjusted taxable income of \$35,000 which comprises of \$1,000 in interest from her savings and \$34,000 from working part time. Kerry's employer makes superannuation guarantee contributions on her behalf. These employer contributions are concessional contributions for Kerry. Kerry is entitled to receive the low income superannuation tax offset with respect to the tax paid on her concessional contributions, as greater than 10 per cent of her income is from her employment.

4.8 There is no taper of adjusted taxable income. Individuals who have an adjusted taxable income of more than \$37,000 will not be eligible for the low income superannuation tax offset.

4.9 **Adjusted taxable income** is defined in Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* (disregarding Clauses 3 and 3A of that Schedule) as including taxable income, adjusted fringe benefits total, target foreign income, total net investment loss, tax-free pension or benefit, reportable superannuation contributions less any deductible child maintenance expenditure for that year.

4.10 When an individual does not lodge an income tax return (for example, an individual is under the tax-free threshold), the Commissioner of Taxation (Commissioner) will determine eligibility for the low income superannuation tax offset based on information available to the Australian Taxation Office (ATO). The Commissioner will generally do this at the end of 12 months after the end of the individual's income year.

4.11 The Commissioner can have regard to a broad range of information when determining eligibility for the low income superannuation tax offset. This includes information already held within the ATO which has been collected for another purpose as well as information from other agencies with respect to the components of an individual's adjusted taxable income and an individual's member contribution statement. The Commissioner can also use information relating to an individual's tax file number (TFN) if this has been provided to the ATO for another purpose.

4.12 These information-sharing provisions do not enable the ATO to gather additional information with respect to an individual, but, to make use of the information the ATO already has access to.

4.13 These information-sharing provisions allow the ATO to automatically make a payment of the low income superannuation tax offset to a superannuation fund and operate in conjunction with section 353-10 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) which is a broad information-gathering power of the ATO. This ensures that individuals who are not required to lodge a tax return are not required to apply for the payment of the low income superannuation tax offset.

4.14 In accordance with paragraph 14(1)(d) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the ATO is able to make a payment if the Commissioner is reasonably satisfied that an individual is eligible for the payment based on the information the ATO holds for the individual. However the Commissioner may recover the amount that has been paid if the ATO later obtains information which shows that the person is not eligible for the low income superannuation tax offset. [*Schedule 3, item 2, section 12F*]

**Example 4.10 Payment of the low income superannuation tax offset where individual does not lodge an income tax return**

Domenik is a university student and will earn \$18,000 as a part time retail shop assistant in the 2017-18 income year and will have superannuation guarantee contributions of \$1,710. As Domenik will earn below the tax-free threshold of \$18,200 for that income year he may not be required to submit an income tax return. The ATO receives information about Domenik's income and his employer's superannuation contributions from his member contribution statement. The ATO is reasonably satisfied that Domenik is eligible for the low income superannuation tax offset and makes the payment of \$256.50 to his superannuation fund.

4.15 The low income superannuation tax offset will normally be paid to a superannuation account of an individual, but can be paid in other ways. For example, it can be paid to the individual, if they have no eligible account and have retired, or to the individual's estate if they have passed away. *[Schedule 3, item 2, section 12B]*

4.16 Eligible contributions that will attract a payment of the low income superannuation tax offset must be concessional contributions of the person. *[Schedule 3, item 2, paragraphs 12C(1)(a) and 12C(2)(a)]*

4.17 'Concessional contributions' is defined in the *Income Tax Assessment Act 1997* (ITAA 1997). Examples of concessional contributions that will be eligible include:

- superannuation guarantee contributions;
- notional taxed contributions;
- allocations from reserves that are concessional contributions;
- contributions an employer makes under a salary sacrifice arrangement; or
- personal contributions which are allowed as an income tax deduction.

4.18 As eligible concessional contributions include amounts allocated from a fund's reserves and the notional taxed contributions worked out for a defined benefit interest of an individual, the low income superannuation tax offset may be payable in relation to an amount that is not an actual contribution that has been included in a fund's assessable income as a contribution.

4.19 The ITAA 1997 defines *concessional contributions* as belonging to a ‘complying superannuation plan’. As this legislation incorporates the definition of ‘concessional contribution’ from that Act, a concessional contribution must for the purposes of the low income superannuation tax offset belong to a complying superannuation plan.

**Example 4.11 Allocation of superannuation fund reserves to members**

Julia works for a company that has its own corporate superannuation fund. The trustee of the superannuation fund allocates an amount from the reserves of the superannuation fund to every member’s interest in the fund. The superannuation fund reports this amount on Julia’s member contribution statement. The ATO may make a payment of the low income superannuation tax offset in relation to the amount allocated to Julia’s superannuation interest.

**Example 4.12 Public sector superannuation fund contributions**

Martin is a member of a public sector superannuation scheme. His interest in the fund is a defined benefit interest. Martin’s employer is required to make contributions for Martin to fund part of the superannuation benefits payable to him (or his beneficiaries on his death). These contributions are included in the assessable income of the scheme. These contributions are the notional taxed contributions for Martin and are eligible for the low income superannuation tax offset.

**Example 4.13 Defined benefit scheme superannuation fund notional taxed contributions**

Georgina is a member of a public sector superannuation scheme. Her interest in the fund is a defined benefit interest. Notional taxed contributions for Georgina are worked out using the formula in the *Income Tax Assessment Regulations 1997*. These notional taxed contributions are eligible for the low income superannuation tax offset.

4.20 This payment will only apply to ‘concessional contributions’. For example, payments to ‘constitutionally protected funds’ would be excluded.

4.21 The amount of the low income superannuation tax offset is calculated at a rate of 15 per cent of the total eligible concessional contributions for the year up to a maximum payment of \$500. However, the amount of the low income superannuation tax offset payable in relation to an income year cannot be less than \$10 (if an amount is payable) or more than \$500. [*Schedule 3, item 2, subsection 12E(2)*]

4.22 The general administrative machinery provisions that applied to payments under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* will apply to the low income superannuation tax offset. [Schedule 3, item 2, section 12B]

4.23 When the ATO has made a payment to an individual or their legal representative, the ATO must give information as prescribed in the regulations when the payment is made.

4.24 The ATO may be liable to pay interest on late payments and underpayments after certain time periods, as may be prescribed in the regulations, are exceeded. The Commissioner may recover overpayments directly from individuals or funds that the payment was made into.

4.25 In accordance with section 353-15 of Schedule 1 to the TAA, the ATO has broad powers of entry to premises to obtain and make copies of examinable documents to ensure compliance with the Act.

4.26 To ensure that Parliament is kept informed of how the low income superannuation tax offset is operating and details of how much low income superannuation tax offset is being paid, these amendments contain a requirement that the Commissioner must give the Minister a quarterly and annual report to be tabled in Parliament regarding the low income superannuation tax offset. [Schedule 3, item 2, section 12G]

4.27 The Governor-General may make regulations pertaining to the low income superannuation tax offset.

4.28 The low income superannuation tax offset is not a tax offset within the meaning of the income tax law. The name instead reflects the operation of the payment in offsetting the tax detriment that eligible low income earners would otherwise face as a result of the flat rate of tax on concessional contributions being in excess of their effective tax rate.

## **Consequential amendments**

4.29 Schedule 3 to this Bill also makes a number of minor consequential amendments to the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. [Schedule 3, items 3 to 6, subsection 49(1) and sections 55 and 56]

## **Application**

4.30 These provisions apply to the 2017-18 income year and later income years. [*Schedule 3, item 7*]