

295-385 Income from assets set aside to meet current pension liabilities

- (1) The *ordinary income and *statutory income of a *complying superannuation fund for an income year is exempt from income tax to the extent that:
 - (a) it would otherwise be assessable income; and
 - (b) it is from *segregated current pension assets.

Exception

- (2) Subsection (1) does not apply to:
 - (a) *non-arm's length income; or
 - (b) amounts included in assessable income under Subdivision 295-C.

Meaning of segregated current pension assets

- (3) Assets of a *complying superannuation fund are ***segregated current pension assets*** at a time if:
 - (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of *RP superannuation income stream benefits of the fund at that time; and
 - (b) the trustee of the fund obtains an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (4) Assets of a *complying superannuation fund are also ***segregated current pension assets*** of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of *superannuation income stream benefits:
 - (a) that are *RP superannuation income stream benefits of the fund at that time; and
 - (b) prescribed by the regulations for the purposes of this section.
- (5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay *RP superannuation income stream benefits of the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.
- (6) However, assets of a *complying superannuation fund that are supporting a *superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not ***segregated current pension assets*** to the extent that the *market value of the assets exceeds the account balance supporting the benefit.
- (7) Also, *disregarded small fund assets are not segregated current pension assets.

295-387 Disregarded small fund assets

- (1) The assets of a *complying superannuation fund are *disregarded small fund assets* at all times in an income year if the fund is covered by subsection (2) for the income year.
- (2) A *complying superannuation fund is covered by this subsection for an income year if:
 - (a) any of these requirements are satisfied:
 - (i) the fund is a *self managed superannuation fund at a time during the income year;
 - (ii) there are less than 5 *members of the fund at a time during the income year; and
 - (b) at a time during the income year, there is at least one *superannuation interest in the fund that is in the *retirement phase; and
 - (c) just before the start of the income year:
 - (i) a person has a *total superannuation balance that exceeds \$1.6 million; and
 - (ii) the person is the *retirement phase recipient of a *superannuation income stream (whether or not the fund is the *superannuation income stream provider for the superannuation income stream); and
 - (d) at a time during the income year, the person has a superannuation interest in the fund (whether or not the superannuation interest is the superannuation interest mentioned in paragraph (b)).

295-390 Income from other assets used to meet current pension liabilities

- (1) A proportion of the *ordinary income and *statutory income of a *complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

Exception

- (2) Subsection (1) does not apply to:
 - (a) *non-arm's length income; or
 - (b) amounts included in assessable income under Subdivision 295-C; or
 - (c) income *derived from *segregated non-current assets; or
 - (d) income that is exempt from income tax under section 295-385.

Formula

- (3) The proportion is:

where:

average value of current pension liabilities is the average value for the income year of the fund's current liabilities (contingent or not) in respect of *RP superannuation income stream benefits of the fund at any time in that year. This does not include liabilities for which *segregated current pension assets are held.

average value of superannuation liabilities is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of *superannuation benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which *segregated current pension assets or *segregated non-current assets are held.

Actuary's certificate

- (4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an *actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.
- (5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except *segregated current pension assets or *segregated non-current assets).

Superannuation liabilities where no current certificate

- (6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no *segregated current pension assets or *segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

current value of assets is the value of all of the fund's assets at a time in the income year, as specified in an *actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.

last value of assets is the most recent value of all of the fund's assets specified in an *actuary's certificate.

last value of superannuation liabilities is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an *actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

- (7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of *RP superannuation income stream benefits of the fund at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

307-80 When a superannuation income stream is in the *retirement phase*

- (1) A *superannuation income stream is in the ***retirement phase*** at a time if a *superannuation income stream benefit is payable from it at that time.
- (2) A *superannuation income stream is also in the ***retirement phase*** at a time if:
 - (a) it is a *deferred superannuation income stream; and
 - (b) a *superannuation income stream benefit will be payable from it to a person after that time; and

- (c) the person has satisfied (whether at or before that time) a condition of release specified in any of the following items of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*:
 - (i) 101 (retirement);
 - (ii) 102A (terminal medical condition);
 - (iii) 103 (permanent incapacity);
 - (iv) 106 (attaining age 65).
- (3) However, a *superannuation income stream from which a*superannuation income stream benefit is payable is not in the ***retirement phase*** at a time if:
- (a) the superannuation income stream is any of the following:
 - (i) a transition to retirement income stream (within the meaning of Part 6 of the *Superannuation Industry (Supervision) Regulations 1994*);
 - (ii) a non-commutable allocated annuity (within the meaning of those regulations);
 - (iii) a non-commutable allocated pension (within the meaning of those regulations);
 - (iv) a transition to retirement pension (within the meaning of Part 4 of the *Retirement Savings Accounts Regulations 1997*);
 - (v) a non-commutable allocated pension (within the meaning of those regulations); and
 - (b) at or before that time, the person to whom the benefit is payable:
 - (i) has not satisfied a condition of release specified in paragraph (2)(c); or
 - (ii) has satisfied a condition of release specified in subparagraph (2)(c)(i), (ii) or (iii), but has not notified the *superannuation income stream provider for the superannuation income stream of that fact.
- (4) A *superannuation income stream is also not in the ***retirement phase*** in an income year if:
- (a) the superannuation income stream is specified in a commutation authority issued by the Commissioner under Subdivision 136-B in Schedule 1 to the *Taxation Administration Act 1953* to a *superannuation income stream provider; and
 - (b) the superannuation income stream provider is required by section 136-80 in that Schedule to pay a *superannuation lump sum but fails to do so within the 60-day period mentioned in that section; and
 - (c) the income year is the income year in which the 60-day period ended, or a later income year.

Note: The operation of this subsection in relation to the part of the income year before the end of the 60-day period is modified for the purposes of the transfer balance cap: see section 294-50.