EXPOSURE DRAFT

Treasury Laws Amendment (Innovative Superannuation Income Streams) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated   2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer **[DRAFT ONLY—NOT FOR SIGNATURE]**
Minister for Revenue and Financial Services

Contents

1 Name

This instrument is the *Treasury Laws Amendment (Innovative Superannuation Income Streams) Regulations 2017*.

2 Commencement

(1) Each provision of this instrument 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. The whole of this instrument	1 July 2017.	1 July 2017

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the following:

(a) the *Income Tax Assessment Act 1997*;

(b) the *Retirement Savings Accounts Act 1997*;

(c) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Income Tax Assessment Regulations 1997

1 Regulation 307-200.05

Repeal the regulation, substitute:

307-200.05 Meaning of superannuation interests—treating a superannuation interest as 2 or more superannuation interests (superannuation income streams)

If a superannuation income stream:

(a) is payable; or

(b) will be payable, and it is a deferred superannuation income stream covered by paragraph (c) of the definition of *superannuation income stream* in subregulation 995-1.01(1);

an amount that supports the superannuation income stream is always to be treated as a separate superannuation interest.

2 Subparagraph 307-205.02(1)(a)(iii)

Omit "307-205.02B (a); and", substitute "307-205.02B(a); or".

3 At the end of paragraph 307-205.02(1)(a)

Add:

(iv) a superannuation income stream that is supported by a superannuation interest that can be valued under regulation 307-205.02C or 307-205.02D; and

4 Regulation 307-205.02A

After "subparagraph 307-205.02(1)(a)(ii)", insert "but not in subparagraph 307-205.02(1)(a)(iv)".

5 At the end of Subdivision 307-D

Add:

307-205.02C Deferred superannuation income streams—value and accumulation phase value of an interest

Value of the superannuation interest

(1) For the purposes of paragraph 307-205(1)(a) of the Act, the value at a particular time of an individual's superannuation interest that supports a deferred superannuation income stream referred to in subregulation (3) is the greater of:

(a) the sum of each amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings, as worked out under subregulation (2) for the day that includes that time; and

(b) the total amount of the superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time.

Note: For paragraph (a), subregulation (2) works out a total amount made up of the amount of consideration and its associated notional earnings.

(2) An amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings, for a particular day (the *valuing day*) is worked out by applying the following formula for each adjustment day (from the earliest to the latest):

$$\text{Compounded amount of consideration just before the adjustment day} \times \left(1 + \frac{\text{Applicable above threshold rate for the adjustment day}}{}\right)$$

where:

above threshold rate, for a particular day, means the rate determined for that day under subsection 1082(2) of the *Social Security Act 1991*.

adjustment day means each of the following:
   (a) each 12-month anniversary of the consideration payment day that happens before the valuing day;
   (b) the valuing day.

applicable above threshold rate, for a particular day, means:
   (a) if that day is a 12-month anniversary of the consideration payment day—the above threshold rate for that day; or
   (b) if that day is the valuing day—the proportion of the above threshold rate for that day equal to the number of days that the valuing day is in the 12 months starting on the day after:
        (i) if the valuing day is at least 12 months after the consideration payment day—the most recent 12-month anniversary of the consideration payment day; or
        (ii) otherwise—the consideration payment day.

compounded amount of consideration just before the adjustment day means:
   (a) for the earliest adjustment day—the amount of consideration; or
   (b) for each later adjustment day—the result of applying the formula for the most recent earlier adjustment day.

consideration payment day means the day the amount of consideration was paid.

(3) Subregulation (1) applies to a deferred superannuation income stream that:
   (a) is covered by paragraph (c) of the definition of *superannuation income stream* in subregulation 995-1.01(1); and
   (b) is not a collective defined contribution scheme income stream.

Accumulation phase value of the superannuation interest

(4) For the purposes of paragraph 307-205(2)(a) of the Act, if the superannuation interest referred to in subregulation (1) is not in the retirement phase at the time referred to in that subregulation, its accumulation phase value at that time is the same as its value (see subregulation (1)) at that time.

307-205.02D Collective defined contribution scheme income streams—value and accumulation phase value of an interest

(1) For the purposes of paragraph 307-205(1)(a) of the Act, the value at a particular time of an individual's superannuation interest that supports a collective defined contribution scheme income stream is the value of the collective pool of assets in the fund at that time attributed to the person:

    (a) as worked out under the rules of the fund; and

    (b) as specified in an actuary's certificate.

(2) For the purposes of paragraph 307-205(2)(a) of the Act, if the superannuation interest is not in the retirement phase at that time, its accumulation phase value at that time is the same as its value (see subregulation (1)) at that time.

(3) A *collective defined contribution scheme income stream* is a superannuation income stream supported by an individual's superannuation interest if:

    (a) the interest is in a superannuation fund; and

    (b) once payments of the income stream start, the income stream is to continue for the remainder of the individual's life; and

    (c) the amounts paid under the income stream depend on:

        (i) the age or life expectancy of each individual who has that kind of superannuation interest in the fund; and

        (ii) the returns on a collective pool of assets in the fund.

6 Subregulation 995-1.01(1)

Insert:

> *collective defined contribution scheme income stream* has the meaning given by subregulation 307-205.02D(3).

7 Subregulation 995-1.01(1) (subparagraph (b)(ii) of the definition of *superannuation annuity*)

Repeal the subparagraph, substitute:

        (ii) is taken to be an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations; or

8 Subregulation 995-1.01(1) (at the end of the definition of *superannuation annuity*)

Add:

    ; or (c) a deferred superannuation income stream that is taken to be an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations because the contract for the provision of the income stream meets the standards of subregulation 1.06A(2) of the SIS Regulations.

9 Subregulation 995-1.01(1) (at the end of the definition of *superannuation income stream*)

Add:

    ; or (c) a deferred superannuation income stream that is taken to be:

(i) an annuity for the purposes of the SIS Act in accordance with subregulation 1.05(1) of the SIS Regulations because the contract for the provision of the income stream meets the standards of subregulation 1.06A(2) of the SIS Regulations; or

(ii) a pension for the purposes of the SIS Act in accordance with subregulation 1.06(1) of the SIS Regulations because the rules for the provision of the income stream meet the standards of subregulation 1.06A(2) of the SIS Regulations.

Retirement Savings Accounts Regulations 1997

10 Schedule 2 (after table item 109)

Insert:

109A	For acquiring a superannuation interest (within the meaning of the 1997 Tax Act) that supports a deferred superannuation income stream (within the meaning of that Act) to be provided under a contract or rules that meet the standards of subregulation 1.06A(2) of the SIS Regulations	The restrictions contained in paragraph 1.06A(3)(e) of the SIS Regulations

Superannuation Industry (Supervision) Regulations 1994

11 Subregulation 1.03(1)

Insert:

access amount, at a particular time (the *access time*) for a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act), means the sum of:

(a) the maximum amount payable if the benefit were commuted on the retirement phase start day for the benefit, as determined by the contract or rules for the provision of the benefit; and

(b) any instalments paid for the benefit after the retirement phase start day for the benefit and before the access time.

deferred superannuation income stream means a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act) if the contract or rules for the provision of the benefit provides for payments of the benefit:

(a) to start more than 12 months after the superannuation interest is acquired; and

(b) to be made at least annually afterwards.

first half of the life expectancy period, for a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act), means the period:

(a) starting on the retirement phase start day for the benefit; and

(b) ending when the number of years that is the life expectancy period for the benefit divided by 2, and rounded down to the nearest whole number, have passed.

life expectancy period, for a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act), means the number of years in the complete expectation of life of the primary beneficiary of the benefit on the retirement phase start day for the benefit as worked out using the prescribed Life Tables, rounded down to the nearest whole number of years.

prescribed Life Tables means the Life Tables prescribed by section 7 of the *Income Tax Assessment (1936 Act) Regulation 2015*, as if references in that section to:

(a) an annuity included a reference to a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act); and

(b) the year in which the annuity first commences to be payable were a reference to the year that includes the retirement phase start day for the benefit.

retirement phase start day, for a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act), means:

(a) if the benefit is a deferred superannuation income stream—the later of:

   (i) the day the primary beneficiary satisfies a condition of release mentioned in item 101, 102A, 103 or 106 in Schedule 1; and

   (ii) the day the superannuation interest is acquired; or

(b) otherwise—the day that payments of the benefit start to be payable.

12 Subparagraph 1.05(1)(a)(i)

After "subregulation (11A)", insert "or 1.06A(2)".

13 Paragraph 1.05(1)(d)

After "to which paragraph (11A)(a) applies", insert "and that meets the standards of subregulation (11A)".

14 Paragraph 1.05(1)(e)

After "to which paragraph (11A)(b) applies", insert "and that meets the standards of subregulation (11A)".

15 Subparagraph 1.06(1)(a)(i)

After "subregulation (9A)", insert "or 1.06A(2)".

16 Paragraph 1.06(1)(b)

After "to which paragraph (9A)(a) applies", insert "and that meet the standards of subregulation (9A)".

17 Paragraph 1.06(1)(c)

After "to which paragraph (9A)(b) applies", insert "and that meet the standards of subregulation (9A)".

18 After regulation 1.06

Insert:

1.06A Standards for certain innovative superannuation income streams

(1) This regulation applies to either of the following (the *governing conditions*):

   (a) a contract for the provision of a benefit supported by a superannuation interest (within the meaning of the 1997 Tax Act);

   (b) the rules for the provision of a benefit supported by a superannuation interest (within the meaning of that Act).

(2) The governing conditions meet the standards of this subregulation if:

   (a) they neither meet the standards in subregulation 1.05(11A) nor the standards in subregulation 1.06(9A) (as applicable); and

   (b) they comply with subregulation (3) of this regulation; and

   (c) either:

      (i) they ensure that payment of the benefit is made at least annually; or

      (ii) the benefit is a deferred superannuation income stream.

(3) The governing conditions comply with this subregulation if they ensure that:

   (a) no payment of the benefit is made before the primary beneficiary satisfies a condition of release mentioned in item 101, 102A, 103 or 106 of Schedule 1; and

   (b) after payments of the benefit start, the benefit is payable throughout the life of the beneficiary (primary or reversionary); and

   (c) the amount of benefit payments is determined using a method that ensures that those payments are not unreasonably deferred after they start, having regard to the following:

      (i) to the extent that the payments depend on the returns on investment of the assets supporting the benefit—when the payments are made and when the returns are derived;

      (ii) to the extent that the payments depend on the ages or life expectancies of other individuals who are beneficiaries of that kind of benefit—the age or life expectancy of each of those other individuals;

      (iii) to the extent that the payments do not depend on the returns mentioned in subparagraph (i) or the ages or life expectancies mentioned in subparagraph (ii)—the relative sizes of the annual totals of the payments from year to year;

      (iv) any other relevant factors; and

   (d) if the benefit is commuted on or after the retirement phase start day for the benefit, the commutation amount does not exceed the amount worked out for the benefit under regulation 1.06B; and

   (e) if the benefit is commuted before the retirement phase start day for the benefit, the commutation happens only in accordance with the rules set out in regulations 6.16, 6.18, 6.19 and 6.22A, if those rules applied in relation to the benefit as if:

      (i) the benefit were in a regulated superannuation fund; and

      (ii) the beneficiary were a member of the fund; and

      (iii) the provider of the benefit were a trustee of the fund; and

   (f) the benefit is transferable to another person only on the death of the beneficiary (primary or reversionary, as applicable); and

(g) the capital value of the benefit and the income from it cannot be used as a security for a borrowing.

(4) However, the governing conditions do not meet the standards of subregulation (2) if, in relation to the death of the beneficiary, the benefit is transferred or paid to a person who would not be eligible under subregulation 6.21(2A) or (2B) to be paid a benefit.

1.06B Maximum commutation amount for certain innovative superannuation income streams

(1) For the purposes of paragraph 1.06A(3)(d), the amount for a commutation of a benefit (the *income stream*) is:

(a) if the income stream is commuted during the 14 day period starting on the retirement phase start day for the income stream—the access amount for the income stream at the time of the commutation; or

(b) if the income stream is commuted on the death of the beneficiary within the first half of the life expectancy period for the income stream and paragraph (a) does not apply—the access amount for the income stream at the time of the death; or

(c) otherwise:

   (i) the amount worked out for the income stream under subregulation (2); or

   (ii) if the amount worked out for the income stream under subregulation (2) is less than or equal to zero—nil.

(2) For the purposes of paragraph (1)(c), the amount for the income stream is worked out using the following formula:

$$\left(\frac{\text{Access amount for the income stream at the time of the commutation}}{\text{Life expectancy period for the income stream}} \times \text{Remaining life expectancy} \right) - \text{Previously commuted amount}$$

where:

previously commuted amount is the sum of any amounts commuted from the income stream before the time of the commutation.

remaining life expectancy is the amount worked out using the following formula:

$$\text{Life expectancy period for the income stream} - \left(\begin{array}{c} \text{Age the primary beneficiary} \\ \text{is or would be at the time} \\ \text{of the commutation} \end{array} - \begin{array}{c} \text{Primary beneficiary's age} \\ \text{at the retirement phase start} \\ \text{day for the income stream} \end{array} \right) - 1$$

19 Subregulation 6.01(2) (subparagraph (a)(i) of the definition of *transition to retirement income stream*)

Repeal the subparagraph, substitute:

   (i) is a contract to which paragraph 1.05(11A)(a) applies and that meets the standards of subregulation 1.05(11A); and

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20 Subregulation 6.01(2) (subparagraph (b)(i) of the definition of *transition to retirement income stream*)

Repeal the subparagraph, substitute:

    (i) are rules to which paragraph 1.06(9A)(a) applies and that meet the standards of subregulation 1.06(9A); and

21 In the appropriate position in Part 14

Add:

Division 14.14—Transitional arrangements arising out of the Treasury Laws Amendment (Innovative Superannuation Income Streams) Regulations 2017

14.15 Arrangements

The amendments of these Regulations made by Schedule 1 to the *Treasury Laws Amendment (Innovative Superannuation Income Streams) Regulations 2017* apply in relation to the following:

    (a) a benefit arising under a contract entered into on or after 1 July 2017;

    (b) a benefit provided under rules made on or after 1 July 2017.

22 Part 1 of Schedule 1 (after table item 109)

Insert:

109A	For acquiring a superannuation interest (within the meaning of the 1997 Tax Act) that supports a deferred superannuation income stream to be provided under a contract or rules that meet the standards of subregulation 1.06A(2)	The restrictions contained in paragraph 1.06A(3)(e)

23 Part 2 of Schedule 1 (after table item 207)

Insert:

207A	For acquiring a superannuation interest (within the meaning of the 1997 Tax Act) that supports a deferred superannuation income stream to be provided under a contract or rules that meet the standards of subregulation 1.06A(2)	The restrictions contained in paragraph 1.06A(3)(e)