

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Taxation Administration Act 1953

Taxation Administration (Meaning of End Benefit) Instrument 2024

Subsection 133-130(2) of Schedule 1 of the *Taxation Administration Act 1953* (the Act) provides that the Minister may, by legislative instrument, specify a superannuation benefit that is not an end benefit.

The purpose of this instrument is to remake the *Taxation Administration (Meaning of End Benefit) Instrument 2013* before it sunsets.

The instrument ensures that family law superannuation payments are not end benefits under section 133-130 in Schedule 1 to the Act and therefore do not trigger an individual's liability to pay Division 293 tax that has been deferred to a debt account.

The Act does not specify any conditions that must be satisfied before this instrument is made.

The Instrument is subject to sunseting under subsection 50(1) of the *Legislation Act 2003*.

The Government released the Instrument for a two-week consultation period.

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

The instrument commenced on the day after the instrument was registered on the Federal Register of Legislation.

Details of the Instrument are set out in [Attachment A](#).

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA23-05455) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

Details of the *Taxation Administration (Meaning of End Benefit) Instrument 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Taxation Administration (Meaning of End Benefit) Instrument 2024* (the Instrument).

Section 2 – Commencement

The Instrument commenced on the day after the instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

The Instrument is made under the *Taxation Administration Act 1953* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedules to this instrument has effect according to its terms.

Section 5 – Definitions

This section remakes section 4 of the *Taxation Administration (Meaning of End Benefit) Instrument 2013* (the former Instrument).

It provides that the terms end benefit, family law superannuation benefit, and superannuation benefit have the meaning given by the *Income Tax Assessment Act 1997*. Other terms and expressions in the Instrument have the same meaning as in the Act as in force from time to time.

Section 6 – Specified superannuation benefits that are not end benefits

This section remakes section 5 of the former Instrument.

The *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* (the Amending Act) amended the *Income Tax Assessment Act 1997* (ITAA 1997) and the Act to give effect to the Division 293 measure.

It did this by imposing tax at 15 per cent on certain superannuation contributions for individuals whose income broadly exceeds \$300,000 to ensure that the tax concession received by such individuals is more closely aligned with the concession received by average income earners.

Special arrangements apply to contributions in respect of a defined benefit interest. The tax on these contributions is deferred to a debt account and the due date for payment deferred until the payment of the first superannuation benefit (**end benefit**) from the relevant interest.

Certain benefits are excluded from being end benefits, including benefits specified by legislative instrument.

This instrument specifies that a family law superannuation payment is not an end benefit.

Family law superannuation payments are defined in subsection 307-5(7) of the ITAA 1997 as payments in accordance with Part VIII B of the *Family Law Act 1975*, the *Family Law (Superannuation) Regulations 2001*, Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*, Part 4A of the *Retirement Savings Accounts Regulations 1997* or as specified in the regulations.

Broadly, family law superannuation payments arise in the context of property settlements following the end of relationships. In this situation, individuals have not in substance received a benefit from their superannuation fund, and as such it would not be appropriate to treat these payments as an end benefit.

Schedule 1 – Repeals

This Schedule repeals the former Instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Taxation Administration (Meaning of End Benefit) Instrument 2024

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of this instrument is to specify that family law superannuation payments are not end benefits. These payments therefore do not trigger an individual's liability to pay Division 293 tax that has been deferred to a debt account.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.