

EXPLANATORY MATERIAL

The purpose of the proposed regulations is to facilitate the splitting of superannuation contributions between a member and their spouse.

The splitting of superannuation contributions will assist families to maximise the benefits available in superannuation and provide an avenue for spouses to share in superannuation benefits. It will be of particular benefit to low income or non working spouses by allowing them to have superannuation assets under their own control and have their own income in retirement.

It will provide single income couples with access to two low rate ETP thresholds and two reasonable benefit limits in a similar way to dual income families.

The proposed regulations provide for an 'annual split' model for the splitting of superannuation contributions. That is, after the end of the financial year the member could request that contributions made in the previous year be split with their spouse.

In effect, the 'split of contributions' will take the form of a transfer, roll-over or allotment of part of the member's benefit to their spouse, with the amount to be split limited by reference to the amount of contributions made in the previous year.

The fund would give effect to the request by transferring the relevant amount from the member's account to an account for the spouse (either in the same or a different fund).

The proposed Regulations would only apply to superannuation fund members who hold an accumulation interest in a fund, and would be voluntary on superannuation funds. That is, funds would not have to offer contributions splitting to their members.

Funds would be able to offer contributions splitting for contributions made on or after 1 January 2006.

Details of the proposed Regulations are set out in the Attachment.

ATTACHMENT

Superannuation Industry (Supervision) Amendment Regulations 2005 (No.)

Explanation of the amendments

Regulation 1 – specifies the name of the proposed Regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2005 (No.)*.

Regulation 2 – provides that the proposed Regulations commence on 1 January 2006.

Regulation 3 – provides that Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 – Amendments

Item 1 inserts the definition of receiving spouse into subregulation 1.03(1). The definition provides that the term has the meaning given by new regulation 6.44.

Listing the definition of receiving spouse in subregulation 1.03(1) allows its application throughout the *Superannuation Industry (Supervision) Regulations 1994*, rather than confining it to new Division 6.7 (refer to item 7).

Items 2 and 3 amend the definition of prescribed class in existing regulation 3.01.

Under subparagraph 18(1)(a)(ii) of the *Superannuation Industry (Supervision) Act 1993*, a standard employer-sponsored fund becomes a public offer fund if it contains any members that are not standard employer-sponsored members and not members of a prescribed class.

Item 2 places an ‘or’ at the end of paragraph 3.01(h) to allow for the insertion of a new prescribed class clause.

Item 3 inserts new paragraph 3.01(i), which provides that a current or former spouse of a current or former standard employer-sponsored member for whom an interest has been created in the fund under new Division 6.7 is a member of a prescribed class. This means that creating an interest in the fund for the spouse in such circumstances will not cause the fund to become a public offer fund.

Item 4 substitutes a new paragraph 5.06(1). The current paragraph provides that benefits rolled over or transferred to a regulated superannuation fund are taken to be minimum benefits in the regulated superannuation fund. The new paragraph retains this meaning but also provides that benefits allotted under new Division 6.7 to an interest in a regulated superannuation fund held by, or created for a receiving spouse are taken to be minimum benefits in a regulated superannuation fund.

Item 5 replaces existing regulation 6.15 by moving the provision to subregulation 6.15(1) and inserting new subregulation 6.15(2), which provides that benefits allotted under new Division 6.7 to an interest in a regulated superannuation fund held by, or created for, a receiving spouse are taken to be preserved benefits until and unless the trustee can satisfy themselves that they are not preserved benefits.

Item 6 replaces subparagraph 6.17(2)(a)(ii) with new subparagraphs 6.17(2)(a)(ii) and 6.17(2)(a)(iii). Current subregulation 6.17(2) lists the ways in which superannuation benefits may be paid. The substituted subparagraphs retain the payment standards previously set out in subparagraph 6.17(2)(a)(ii) and extend it to ensure that benefits transferred, rolled over or allotted under new Division 6.7 are within the circumstances under which a superannuation fund is allowed to make payment.

Item 7 inserts new Division 6.7 **Spouse contributions-splitting amounts**.

The new Division 6.7 provides the mechanism for members to request a split of their contributions (which is in effect a request to roll over, transfer or allot an amount of their benefit to their spouse with the amount determined by reference to the previous year's contributions) and outlines the circumstances in which a trustee may accept such an application.

New Regulation 6.40 – Interpretation

This regulation provides the following definitions, which apply in respect of new Division 6.7:

applicant is defined as a member who makes an application under subregulation 6.42(1).

defined benefit component is defined by reference to the existing meaning of the term in regulation 6.31.

eligible non-resident non-complying superannuation fund is defined by reference to the meaning given to the term by section 27A of the *Income Tax Assessment Act 1936*.

relevant financial year is defined as the financial year immediately preceding the financial year in which a splitting application has been made.

splitable contribution is defined as a contribution (which is a term defined in subregulation 1.03(1) of the Superannuation Industry (Supervision) Regulations) made on or after 1 January 2006 or an amount of allocated surplus within the meaning of section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

Clarification of those amounts which are not splitable contributions is also provided. Amounts that are rolled over, transferred or allotted, lump-sum payments from an eligible non-resident non-complying superannuation fund and employer ETPs described in paragraphs (a) and (jaa) of the definition of eligible termination payment in subsection 27A(1) of the *Income Tax Assessment Act 1936* are not splitable contributions and may not be split with a person's spouse.

Those items mentioned in subregulation 6.40(3) are excluded from being splitable contributions because of their ability to contain amounts related to a number of years of contributions or service. Allowing such amounts to be split is contrary to the Government's policy of limiting splitting to amounts contributed on or after 1 January 2006.

New Regulation 6.41 – Application

This regulation provides that only members who hold an accumulation interest in a superannuation fund or a defined benefit interest that does not include a defined benefit component (for example accumulation members in a scheme that contains both defined benefit and accumulation members) will be able to make a request under Division 6.7.

The regulation further provides that Division 6.7 cannot be used to transfer benefits out of a superannuation interest that is subject to a payment split or on which a payment flag (within the meaning of Part VIIIIB of the *Family Law Act 1975*) is operating.

This prevents members using Division 6.7 to transfer benefits to an interest of a current spouse to prevent them being accessed by a former spouse under family law provisions.

New Regulation 6.42 – Application to roll over, transfer or allot an amount of contributions

New subregulation 6.42(1) provides that a member of a regulated superannuation fund may apply to the trustee of the fund to roll over, transfer or allot an amount of the member's benefit for the benefit of the member's spouse with the amount determined by reference to the amount of contributions made by, for, or on behalf of the member in the previous financial year.

New subregulation 6.42(2) requires the application to include a statement by the receiving spouse to the effect that they have not satisfied a relevant condition of release (and hence cannot immediately access the amount if transferred to them).

New Regulation 6.43 – Decision on application

This regulation provides that the trustee of a superannuation fund may accept an application made by a member under subregulation 6.42(1) provided that certain conditions, listed as paragraphs (a) to (e), are met.

To ensure clarity this new regulation is also followed by a note specifying that the provision of the ability to split contributions is entirely voluntary upon superannuation funds.

The regulations do not prevent a fund from rejecting a contributions splitting application for other reasons, for instance, if accepting an application would leave the member account with insufficient funds to meet a tax liability or fund charges.

The conditions which must be satisfied before an application can be accepted are:

- (a) the application complies with regulation 6.42;
- (b) that the trustee has no reason to believe that the statement mentioned in subregulation 6.42(2) (which requires the receiving spouse to confirm that they have not met a condition of release) is untrue;
- (c) the application relates to the rollover, transfer or allotting of an amount that is not more than 100% of the amount of splittable contributions made by, for or on behalf of the member for the relevant financial year;
- (d) the trustee has not already rolled over, transferred or allotted an amount or amounts equal to 100% of the splittable contributions made by, for or on behalf of the member for the relevant financial year; and
- (e) the total of the current application plus any previous application in respect of the relevant financial year does not exceed 100% of the splittable contributions by, for or on behalf of the member for the relevant financial year;

The effect of conditions (c) through (e) is to allow a trustee to receive and action multiple splitting requests in relation to a particular financial year provided that all amounts split, whether in one application or across many, do not exceed 100% of the splittable contributions for the year in question (termed the *relevant financial year*).

New Regulation 6.44 – Receiving spouse

This regulation defines the ‘receiving spouse’ for the purposes of the Part. A ‘receiving spouse’ is the spouse of the applicant (and hence the person who will receive the transferred, rolled over or allotted benefits).