

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

Division 290—Contributions to superannuation funds .....	2
Guide to Division 290 .....	2
290-1 What this Division is about .....	2
Subdivision 290-A—General rules.....	2
290-5 Non-application to roll-over superannuation benefits etc.....	2
Division 295—Taxation of superannuation entities .....	3
Guide to Division 295 .....	3
295-1 What this Division is about .....	3
Subdivision 295-A—Provisions of general operation .....	3
295-5 Entities to which Division applies .....	3
295-10 How to work out the tax payable by superannuation entities .....	4
295-35 Acronyms used in tables.....	5
Subdivision 295-B—Modifications of provisions of this Act .....	5
295-95 Deductions related to contributions.....	5
Subdivision 295-C—Contributions included.....	6
Guide to Subdivision 295-C .....	6
295-155 What this Subdivision is about .....	6
Contributions and payments .....	7
295-160 Contributions and payments .....	7
295-165 Exception—spouse contributions.....	7
295-175 Exception—payments by a member spouse .....	8
Personal contributions and roll-over amounts .....	8
295-190 Personal contributions and roll-over amounts .....	8
Transfers from foreign funds.....	9
295-200 Transfers from foreign superannuation funds .....	9
Subdivision 295-E—Other income amounts .....	9
Amounts included.....	9
295-320 Other amounts included in assessable income.....	9
295-330 Previously foreign funds .....	10
Division 305—Superannuation benefits paid from non-complying superannuation plans .....	10
Guide to Division 305 .....	10
305-1 What this Division is about .....	10
Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds.....	10
305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds .....	10

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

---

## Appendix A – Selected legislative provisions

Subdivision 305-B—Superannuation benefits from foreign superannuation funds .....	11
Application of Subdivision .....	11
305-55 Restriction to lump sums received from certain foreign superannuation funds .....	11
Lump sums received within 6 months after Australian residency or termination of foreign employment etc. ....	11
305-60 Lump sums tax free—foreign resident period.....	11
305-65 Lump sums tax free—Australian resident period.....	12
Lump sums to which sections 305-60 and 305-65 do not apply.....	12
305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc. ....	12
305-75 Lump sums— <i>applicable fund earnings</i> .....	13
305-80 Lump sums paid into complying superannuation plans—choice .....	14

### Division 290—Contributions to superannuation funds

#### Table of Subdivisions

Guide to Division 290

290-A	General rules
290-B	Deduction of employer contributions and other employment-connected contributions
290-C	Deducting personal contributions
290-D	Tax offsets for spouse contributions

#### Guide to Division 290

##### 290-1 What this Division is about

This Division sets out the rules for deductions and tax offsets for superannuation contributions.
---

##### Subdivision 290-A—General rules

#### Table of sections

290-5	Non-application to roll-over superannuation benefits etc.
290-10	No deductions other than under this Division

##### 290-5 Non-application to roll-over superannuation benefits etc.

This Division does not apply to a contribution that is any of the following:

- ...
- (b) a \*superannuation lump sum that is paid from a \*foreign superannuation fund;
  - (c) an amount transferred to a \*complying superannuation fund or an \*RSA from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
    - (i) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
    - (ii) was not established in Australia; and
    - (iii) is not centrally managed or controlled in Australia;

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

---

## Appendix A – Selected legislative provisions

...

### Division 295—Taxation of superannuation entities

#### Table of Subdivisions

	Guide to Division 295
295-A	Provisions of general operation
295-B	Modifications of provisions of this Act
295-C	Contributions included
295-D	Contributions excluded
295-E	Other income amounts
295-F	Exempt income
295-G	Deductions
295-H	Components of taxable income
295-I	No-TFN contributions
295-J	Tax offset for no-TFN contributions income (TFN quoted within 4 years)

#### Guide to Division 295

##### 295-1 What this Division is about

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

#### Subdivision 295-A—Provisions of general operation

##### Table of sections

295-5	Entities to which Division applies
295-10	How to work out the tax payable by superannuation entities
295-15	Division does not impose a tax on property of a State
295-20	Exempting laws ineffective
295-25	Assessments on basis of anticipated SIS Act notice
295-30	Effect of revocation etc. of SIS Act notices
295-35	Acronyms used in tables

##### 295-5 Entities to which Division applies

- (1) This Division applies to these entities:
- (a) a \*complying superannuation fund;
  - (b) a \*non-complying superannuation fund;
  - (c) a \*complying approved deposit fund;
  - (d) a \*non-complying approved deposit fund;

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

- (e) a \*pooled superannuation trust;  
whether they are established by an \*Australian law, by a public authority constituted by or under such a law or in some other way.

...

### 295-10 How to work out the tax payable by superannuation entities

- (1) Use this method for \*superannuation funds, \*approved deposit funds and \*pooled superannuation trusts:

*Method statement*

- Step 1. For a \*superannuation fund, work out the \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.
- Step 3. Work out the entity's taxable income as if its trustee:
- (a) were an Australian resident (except where paragraph (b) applies); or
- (b) for a \*non-complying superannuation fund that is a \*foreign superannuation fund for the income year—were not an Australian resident.
- Step 4. Work out the \*low tax component and \*non-arm's length component of the taxable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components, or to the taxable income of a \*non-complying superannuation fund or \*non-complying approved deposit fund.
- Step 6. Subtract the entity's \*tax offsets from the step 5 amount or, for a \*superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

- (2) Use this method for \*RSA providers:

*Method statement*

- Step 1. Work out the entity's \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division.
- Step 3. Work out the \*RSA component and \*standard component of the entity's taxable income.
- Step 4. If the entity is also an \*FHSA provider, work out the \*FHSA component of the entity's taxable income.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The \*RSA component and the \*FHSA component are taxed at a concessional rate.

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

Step 6. Subtract the entity's *tax offsets from the sum of the entity's step 1 and step 5 amounts.
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### 295-35 Acronyms used in tables

In tables in this Division, these acronyms are used for these entities:

Acronyms used in tables		
Item	Entity	Acronym
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

### Subdivision 295-B—Modifications of provisions of this Act

#### Table of sections

295-85	CGT to be primary code for calculating gains or losses
295-90	CGT rules for pre-30 June 1988 assets
295-95	Deductions related to contributions
295-100	Deductions for investing in PSTs and life policies
295-105	Distributions to PST unitholders

### 295-95 Deductions related to contributions

(1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:

- (a) \*complying superannuation funds;
- (b) \*non-complying superannuation funds that are \*Australian superannuation funds;
- (c) \*complying approved deposit funds;
- (d) \*non-complying approved deposit funds;
- (e) \*RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

Note 2: Examples of contributions that are not assessable are:

- ◆ contributions which the contributor cannot deduct;
- ◆ contributions excluded from assessable income under Subdivision 295-D.

(2) A \*superannuation fund is an *Australian superannuation fund* at a time, and for the income year in which that time occurs, if:

- (a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and
- (b) at that time, the central management and control of the fund is ordinarily in Australia; and
- (c) at that time either the fund had no member covered by subsection (3) (an *active member*) or at least 50% of:

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

- (i) the total \*market value of the fund's assets attributable to \*superannuation interests held by active members; or
  - (ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;  
is attributable to superannuation interests held by active members who are Australian residents.
- (3) A member is covered by this subsection at a time if the member is:
- (a) a contributor to the fund at that time; or
  - (b) an individual on whose behalf contributions have been made, other than an individual:
    - (i) who is a foreign resident; and
    - (ii) who is not a contributor at that time; and
    - (iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.
- (4) To avoid doubt, the central management and control of a \*superannuation fund is ordinarily in Australia at a time even if that central management and control is temporarily outside Australia for a period of not more than 2 years.

### Subdivision 295-C—Contributions included

#### Guide to Subdivision 295-C

#### 295-155 What this Subdivision is about

There are basically 3 types of assessable contributions:

- (a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and
- (b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and
- (c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

#### Table of sections

##### Contributions and payments

- 295-160 Contributions and payments
- 295-165 Exception—spouse contributions
- 295-170 Exception—Government co-contributions and contributions for a child
- 295-171 Exception—payments from FHSAs and Government FHSA contributions
- 295-173 Exception—trustee contributions
- 295-175 Exception—payments by a member spouse
- 295-180 Exception—choice to exclude certain contributions
- 295-185 Exception—temporary residents

##### Personal contributions and roll-over amounts

- 295-190 Personal contributions and roll-over amounts
- 295-195 Exclusion of personal contributions

##### Transfers from foreign funds

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

295-200 Transfers from foreign superannuation funds

### Application of tables to RSA providers

295-205 Application of tables to RSA providers

### Former constitutionally protected funds

295-210 Former constitutionally protected funds

## Contributions and payments

### 295-160 Contributions and payments

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

Note: For an explanation of the acronyms used, see section 295-35.

Contributions and payments included in assessable income		
Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)
2	N-CSF that is a *foreign superannuation fund for the income year	Contribution to provide *superannuation benefits for someone else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)
3	CSF CADF *RSA provider	Payment under section 65 of the <i>Superannuation Guarantee (Administration) Act 1992</i>
4	CSF *RSA provider	Payment under section 61 or 61A of the <i>Small Superannuation Accounts Act 1995</i>

### 295-165 Exception—spouse contributions

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a \*complying superannuation fund or an \*RSA:
- (a) to provide \*superannuation benefits for the individual's \*spouse (regardless whether the benefits are payable to the individual's spouse's \*SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and
  - (b) that the individual cannot deduct under Subdivision 290-B.

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

- (2) Paragraph (1)(a) does not apply to \*superannuation benefits for a \*spouse living permanently separately and apart from the individual.

### 295-175 Exception—payments by a member spouse

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an \*RSA provider, to be held for the benefit of the \*non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the \*superannuation interest concerned.

### Personal contributions and roll-over amounts

#### 295-190 Personal contributions and roll-over amounts

- (1) The assessable income of an entity includes amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

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Personal contributions and roll-over amounts included in assessable income		
Item	Assessable income of this entity:	Includes:
1	CSF *RSA provider	A contribution covered by a valid and acknowledged notice under section 290-170
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund; and (b) is not an *excess untaxed roll-over amount for that individual
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the <i>Income Tax (Transitional Provisions) Act 1997</i> )

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- (1A) Item 2 of the table in subsection (1) does not apply to a \*roll-over superannuation benefit that is a \*departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the \*superannuation provider by the day the provider lodges its \*income tax return for that income year.
- (3) Otherwise it is included in the income year in which the notice is received.
- (4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the \*superannuation provider.

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

### Transfers from foreign funds

#### 295-200 Transfers from foreign superannuation funds

- (1) The assessable income of a fund that is an \*Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.
- (2) The assessable income of a fund that is a \*complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year as is specified in a choice made by a former member of the foreign fund under section 305-80.
- (3) The amount is included in the income year in which the transfer happens.
- (4) This section also applies to an amount transferred from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
  - (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.

#### Subdivision 295-E—Other income amounts

##### Table of sections

###### Amounts included

295-320	Other amounts included in assessable income
295-325	Previously complying funds
295-330	Previously foreign funds

###### Amounts excluded

295-335	Amounts excluded from assessable income
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### Amounts included

#### 295-320 Other amounts included in assessable income

The assessable income of an entity includes the amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

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Amounts included in assessable income			
Item	Assessable income of this entity:	Includes:	For the income year:
...			
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund

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# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

Amounts included in assessable income			
Item	Assessable income of this entity:	Includes:	For the income year:
	and that was a *foreign superannuation fund for the previous income year		
...			

### 295-330 Previously foreign funds

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the \*market values of the fund's assets just before the start of the income year – Amount in the fund at that time representing contributions made by current members

## Division 305—Superannuation benefits paid from non-complying superannuation plans

### Table of Subdivisions

	Guide to Division 305
305-A	Superannuation benefits from Australian non-complying superannuation funds
305-B	Superannuation benefits from foreign superannuation funds

### Guide to Division 305

#### 305-1 What this Division is about

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).
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### Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds

#### Table of sections

305-5	Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds
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#### 305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds

A \*superannuation benefit that you receive from a \*non-complying superannuation fund that is an \*Australian superannuation fund (for the income year in which the benefit is paid) is \*exempt income if:

- (a) the fund:
  - (i) has never been a \*complying superannuation fund; or
  - (ii) last stopped being a complying superannuation fund for the income year in which 1 July 1995 occurred or a later income year; and
- (b) the fund:

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

- (i) has never been a \*foreign superannuation fund; or
- (ii) last stopped being a foreign superannuation fund for the income year in which 1 July 1995 occurred or a later income year.

### Subdivision 305-B—Superannuation benefits from foreign superannuation funds

#### Table of sections

##### Application of Subdivision

305-55 Restriction to lump sums received from certain foreign superannuation funds

##### Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

305-60 Lump sums tax free—foreign resident period

305-65 Lump sums tax free—Australian resident period

##### Lump sums to which sections 305-60 and 305-65 do not apply

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75 Lump sums—*applicable fund earnings*

305-80 Lump sums paid into complying superannuation plans—choice

#### Application of Subdivision

##### 305-55 Restriction to lump sums received from certain foreign superannuation funds

- (1) This Subdivision applies if:
  - (a) you receive a \*superannuation lump sum from a \*foreign superannuation fund; and
  - (b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).
- (2) This Subdivision also applies if you receive a payment, other than a pension payment, from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
  - (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.
- (3) This Subdivision applies to a payment mentioned in subsection (2) from a scheme mentioned in that subsection in the same way as it applies to a \*superannuation lump sum from a \*foreign superannuation fund.

##### Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

##### 305-60 Lump sums tax free—foreign resident period

A \*superannuation lump sum you receive from a \*foreign superannuation fund is not assessable income and is not \*exempt income if:

- (a) you receive it within 6 months after you become an Australian resident; and
- (b) it relates only to a period:
  - (i) when you were not an Australian resident; or
  - (ii) starting after you became an Australian resident and ending before you receive the payment; and

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix A – Selected legislative provisions

- (c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

### 305-65 Lump sums tax free—Australian resident period

- (1) A \*superannuation lump sum you receive is not assessable income and is not \*exempt income if:
- (a) you receive it in consequence of:
    - (i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or
    - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
  - (b) it relates only to the period of that employment, holding of office, or engagement; and
  - (c) you were an Australian resident during the period of the employment, holding of office or engagement; and
  - (d) you receive the lump sum within 6 months after the termination; and
  - (e) the lump sum is not exempt from taxation under the law of the foreign country; and
  - (f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
  - (g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, the lump sum will fall within section 305-70.

- (2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:
- (a) retirement from the employment, office or engagement; and
  - (b) cessation of the employment, office or engagement because of death.

### Lump sums to which sections 305-60 and 305-65 do not apply

#### 305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

*Superannuation lump sums to which section applies*

- (1) This section applies to a \*superannuation lump sum you receive from a \*foreign superannuation fund if:
- (a) you are an Australian resident when you receive the lump sum; and
  - (b) sections 305-60 and 305-65 do not apply to the lump sum.

*Assessable part*

- (2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:
- (a) your \*applicable fund earnings (worked out under section 305-75); or
  - (b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

---

## Appendix A – Selected legislative provisions

### *Non-assessable, non-exempt part*

- (3) The remainder of the lump sum is not assessable income and is not \*exempt income.

### *Amount paid into another foreign superannuation fund*

- (4) Any part of the lump sum that is paid into another \*foreign superannuation fund is not assessable income and is not \*exempt income.

Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign superannuation fund may include an amount (*previously exempt fund earnings*) attributable to the lump sum.

### **305-75 Lump sums—*applicable fund earnings***

- (1) This section applies if you need to work out an amount (your ***applicable fund earnings***) in relation to a \*superannuation lump sum to which section 305-70 applies that you receive from a \*foreign superannuation fund.

### *If you were an Australian resident at all times*

- (2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your ***applicable fund earnings*** is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
    - (i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the ***start day***);
    - (ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the period;
  - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

### *If you were not an Australian resident at all times*

- (3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your ***applicable fund earnings*** is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
    - (i) the amount in the fund that was vested in you just before the day (the ***start day***) you first became an Australian resident during the period;
    - (ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;
    - (iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the remainder of the period;
  - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;
  - (d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

## Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

---

### Appendix A – Selected legislative provisions

#### *Previous lump sums from the fund*

- (4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the **start day** is the day after you received the most recent such lump sum.

#### *Previously exempt fund earnings*

- (5) You have an amount of **previously exempt fund earnings** in respect of the lump sum if:
- (a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax) is attributable to the amount; and
  - (b) the amount is attributable to a payment received from a \*foreign superannuation fund; and
  - (c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this section, but for the payment having been received by another foreign superannuation fund.
- (6) The amount of your **previously exempt fund earnings** is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

#### **305-80 Lump sums paid into complying superannuation plans—choice**

- (1) This section applies if:
- (a) section 305-70 applies to a \*superannuation lump sum that is paid from a \*foreign superannuation fund; and
  - (b) you are taken to receive the lump sum under section 307-15; and
  - (c) all of the lump sum is paid into a \*complying superannuation fund; and
  - (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a \*superannuation interest in the foreign superannuation fund.
- (2) You may choose for all or part of your \*applicable fund earnings worked out under section 305-75 (but not exceeding the amount of the lump sum) to be included in the assessable income of the \*complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.

- (3) Your choice:
- (a) must be in writing; and
  - (b) must comply with the requirements (if any) specified in the regulations.