

# Technically Speaking...

## Minimum Pension Requirements and Pension Documentation

In November last year we wrote to the ATO to seek clarification of whether entirely new pension documentation was required if a pension failed to meet the definition in SIS Regulation 1.06 and meets the requirements in the following year. The recent reply from the ATO says that in this situation the trustee is required to have new documentation evidencing the revaluation of assets at market value and recalculation of the minimum pension amount as well as records which indicated the tax free and taxable components at the time the new pension commenced.

Paragraph 19 of Taxation Ruling 2013/5 states that if a pension has not met the requirements in the Superannuation Industry (Supervision) Regulations 1994 (SISR) at any time during a year of income 'the trustee is taken not to have been paying a superannuation income stream at any time during the income year'.

If the pension that did not meet the rules then complies with the SIS rules in the following income year, a new pension is taken to have started at the beginning of that income year providing the SISR are met. This would result in the pension ceasing at the commencement of the financial year in which the pension did not meet the SISR requirements and recommencing in the relevant financial year from the time the SISR requirements have been met.

TR 2013/5 does not comment on or provide guidance on whether new pension documentation (i.e. member application, trustee resolution, pension agreement, etc.) is required in the income year in which recommences to comply with the SISR rules. For example, paragraph 44 in Example 6 of the ruling states '[if] the relevant SISR 1994 requirements are again complied with in the 2013-14 year, this results in the commencement of a new pension' and paragraph 101 of the ruling which states that, 'in the following year the relevant rules are again complied with this in effect results in the commencement of a new superannuation income stream...'. It is not clear from the ruling that the commencement of a new pension in these circumstances requires new pension documentation.

The main implication for the fund's tax position where the pension requirements are not met is that the pension will be deemed to have lapsed and will revert to accumulation phase from the start of that income year. Once the pension ceases and reverts to accumulation phase, the income and capital gains on assets supporting the lapsed income stream will not be exempt current pension income for the year it fails to meet the requirements and will be taxed at 15%. As the relevant assets are no longer supporting a pension any payments made by the fund during the year will be treated as lump sums for SISR purposes. As lump sums are taxed very differently to pensions it may inadvertently result in a higher personal tax bill and adjusted Centrelink income support payments.



The answer from the ATO in relation to the clarification sought by the SMSF Association provided the following guidance:

*It is strongly recommended that where a trustee is paying an income stream, appropriate documentation is maintained at all times. Where the regulatory rules such as meeting the minimum payment amount for a superannuation income stream were met in the following income year, a new pension would be taken to have commenced for the purposes of the regulatory and income tax law. At a minimum, the trustee would be required to have new documentation evidencing the revaluation of assets at market value and the recalculation of the minimum payment amount required under Clause 7 of Schedule 7 to the SISR 1994. Additionally, the trustee would be required to have records reflecting the recalculation of the tax free and taxable components of the superannuation interest supporting the superannuation income stream.*

In view of the reply provided by the ATO it is clear that new documentation, which provides at least the minimum referred to in the above extract, is provided to ensure that the relevant requirements are met.

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