

Minimum pension payments officially lowered!

New legislation has officially enacted the recent announcement that the minimum pension payments for the current financial year would be halved. This measure addresses concerns that the minimum payment amounts were set based on account balances at 1 July 2008, when most balances were higher.

The change applies to the following pensions:

- account-based pensions ('ABPs')
- transition to retirement income streams ('TRISs')
- allocated pensions ('APs') and transition to retirement allocated pensions ('TRAPs')
- market linked pensions (also known as term allocated pensions) ('MLPs').

Minimum pension amounts for other types of pensions remain the same. This means that the new rules have no impact on defined benefit pensions such as lifetime, fixed term or flexi-pensions.

Essentially, this means the relevant minimum percentage factors for ABPs for the current financial year are as follows:

Age of pensioner on 1/7/2008	Percentage factor
Under 65	2
65 – 74	2.5
75 – 79	3
80 – 84	3.5
85 – 89	4.5
90 – 94	5.5
95 or more	7

Consider the following example: John is receiving an ABP commenced on 1 July 2007 and was 64 on 1 July 2008. The amount of the pension account balance on 1 July 2008 was \$850,000. For the current financial year, the minimum pension payment necessary is $2\% \times \$850,000 = \$17,000$.

Naturally, equivalent tables and examples can be made for TRISs, APs, TRAPs and MLPs.

There are a number of key points to note:

Only affects the current financial year

The legislation only applies to the current financial year (ie, the year commencing 1 July 2008). In future

financial years, the usual amounts will apply unless further relief is forthcoming.

No concessions for those who have already paid their minimum

Unfortunately, the changes come too late for those who have already paid their minimum pension amounts for the current year. For example, no special rules were introduced to allow pensioners to return amounts paid in the current financial year in excess of the new minimums to their fund without the returned amount being counted as a contribution subject to the regular rules relating to contributions.

Pensions commenced during the year

Remember that in the year when a pension starts, the minimum payment amount is prorated based on the number of days in the financial year that include and follow the commencement day. The changes will also affect the prorated minimum payment amount in the commencement year.

For example, Joan commences a TRIS on 5 February 2009 at 57 years of age. There are 146 days between 5 February 2009 and 30 June 2009 inclusively. The amount of the pension account balance on the commencement day was \$500,000. This means the minimum pension payment for the current financial year is $[146/365] \times 2\% \times \$500,000$ (rounded to the nearest 10 whole dollars).

Prorated commutation

Remember that for a pension to be able to be commuted (ie terminated), a prorated minimum must be paid. These changes also affect pensions that are commuted in the current financial year.

For example, Bon is receiving an ABP commenced on 1 July 2007 and he was 59 on 1 July 2008. The amount of the pension account balance on 1 July 2008 was \$700,000. The trustee and Bon wish for the ABP to be commuted on 31 May 2009. There are 335 days between 1 July 2008 and 31 May 2009 inclusive. In order for the ABP to be allowed to be commuted, at least the following amount must be paid: $[2\% \times \$700,000 \text{ (rounded to the nearest 10 whole dollars)}] \times [335/365]$

Proper documentation is vital to take advantage of changes

The legislation does not stipulate that all ABPs, TRISs, etc, automatically adopt the new lower minimum. They merely stipulate that rules for the provision of a benefit meet the standard necessary to be a 'pension' if the specific governing rules of the fund ensure certain requirements are met (eg, that

the total of payments in any year is at least the amount calculated under the table detailed above).

Therefore, the governing rules of the fund — including the trust deed and documentation establishing the pension — should be checked to ensure that they have been drafted in a fashion to allow the lower minimums to be adopted in the current financial year.

DBA Butler's SMSF trust deeds* and pension documentation have been drafted in a sufficiently flexible fashion to allow pensioners to take advantage of the lower minimums.

*Express provisions for particular pensions are not included in DBA Butler SMSF trust deeds acquired before the relevant type of pension was introduced (eg, a DBA Butler SMSF trust deed acquired in 2003 where the fund is paying an ABP, which is a type of pension that was introduced in 2007). For such a fund, a deed update is not necessarily required as a general benefits rule exists, however the documentation commencing the pension will need to have quite specific provisions. If DBA Butler provided the documentation commencing the pension, we confirm that the documentation contains adequate provisions.

Is a supplementary PDS required?

Trustees and their advisers might consider providing a supplementary PDS to members receiving a pension that is affected by the changes. This might not be the case if the fund does not have a trust deed or pension commencement documentation drafted by DBA Butler.

Further information

These changes will be discussed at DBA Network's upcoming May seminars (registration details are available from our website).

For further information, see also:

- the media release announcing the change (<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/013.htm&pageID=003&min=njs&Year=&DocType=0>)
- *Superannuation Industry (Supervision) Amendment Regulations 2009 (No. 2)* (Cth), the legislative instrument enacting the change (<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/asmade%5Cbynumber/2DCFECC3795C768DCA2575740083B8EB?OpenDocument>)
- The explanatory statement that accompanied the legislative instrument (<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/asmade/bynumber/2DCFECC3795C768DCA2575740083B8EB?OpenDocument&VIEWCAT=attachment&COUNT=999&START=1>)

DBA can assist trustees and their advisers with any advice or documentation required or to assist with broader pension planning and strategies.

Very special offers on deed updates

In light of the real possibility of further changes to the superannuation rules and our determination to provide superior quality, value for money solutions, we now offer the *Annual Update Service*, a convenient, legally effective way of keeping SMSF governing rules up to date, thereby maximising strategic flexibility, compliance and peace of mind, from just \$137.50 per annum (for direct debit). Subscribers to the service are provided with a new set of governing rules each year via a secure website, trustees adopting the new rules by resolution.

Joining the Annual Update Service is free, but generally only when you establish a new SMSF or update the deed of an existing one through us. However, the following **special offers apply until 31 May 2009 only**:

- **All funds with 2008 or 2009 DBA deeds can join the service for free** if they subscribe and sign up to pay \$137.50 per annum by direct debit. First direct debit and update will be on or about 1 July 2009.
- **All funds with 2005, 2006 or 2007 DBA deeds can have their deed updated now for just \$275 – saving up to 50%** – if they subscribe to the service and sign up to pay \$137.50 per annum by direct debit. \$275 update will be delivered as soon as workflow permits via the Annual Update Service website. Payment due on receipt of invoice. First direct debit and Annual Update Service update will be on or about 1 July 2010.

Offers only apply where there have been no trustee or membership changes and deeds have not been amended since they were drafted by us. Terms and conditions apply. For more details, visit www.smsf.com.au.

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