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Individuals receiving military invalidity benefits – impact of court decisions

This information will help you to work out if you are affected by the recent Full Federal Court decisions relating to [military invalidity benefits \(/Individuals/Super/In-detail/Withdrawing-and-using-your-super/Treatment-of-military-invalidity-benefits-following-Federal-Court-decision/\)](#).

Broadly, the court decisions affect the treatment of invalidity benefits paid under pensions provided under the Defence Force Retirement and Death Benefits (DFRDB) Scheme and the Military Superannuation and Benefits (MSB) Scheme and which started on or after 20 September 2007.

If you received an invalidity pension provided under either of these schemes starting on or after 20 September 2007, you may be affected by the recent court decisions.

If you received an invalidity pension provided under either scheme starting before 20 September 2007, you are not affected and your pension payments have been correctly taxed as superannuation income stream benefits.

To work out whether you are affected by the court decisions, you may need the following details:

- your date of discharge
- your invalidity benefit commencement date
- if your classification has changed between Class A, Class B or Class C, the date or dates from which you were reclassified.

Working out if you are affected

If you have received invalidity benefits paid by the DFRDB Scheme or the MSB Scheme, follow the steps below to work out if you are affected by the court decisions.

Step 1:

Were you discharged on or after 20 September 2007?

If Yes, **you are affected**.

If No, go to step 2.

Step 2:

Did your invalidity pension start on or after 20 September 2007?

If Yes, **you are affected**.

If No, **you are not affected**. Your invalidity benefits were correctly taxed as superannuation income stream benefits.

Note: The information below may assist you in working out when your invalidity pension started.

When your invalidity pension started

The date your invalidity pension started will be stated on documentation provided to you by the Commonwealth Superannuation Corporation (CSC).

This will generally align with when you were classified as Class A or B.

Example 1: Invalidity pension started before 20 September 2007

Sandra was discharged on 2 July 2007. On 24 July 2007, she was determined by CSC as having a Class B incapacity and started receiving invalidity pension payments. The classification has remained the same since.

As Sandra's invalidity pension started before 20 September 2007, she is not affected, and her invalidity payments were correctly taxed as superannuation income stream benefits.

There may have been some time between when you were discharged and when your invalidity pension started. Whether you are affected will depend on **when your invalidity pension started**, rather than the date of discharge.

However, the date of discharge will always be earlier than the date the invalidity pension starts, so if your date of discharge was on or after 20 September 2007, then any invalidity pension that started will always start on or after 20 September 2007.

Example 2: Invalidity pension started on or after 20 September 2007

David was discharged on 15 September 2007. On 19 November 2007, he started receiving invalidity pension payments in accordance with being determined by CSC as having a Class A incapacity – the classification has remained the same since.

Even though David was discharged before 20 September 2007, his invalidity pension started after 20 September 2007. As such, he is affected by the court decisions and his invalidity payments are taxed as superannuation lump sums.

Impact of reclassification

Reclassification may result in an invalidity pension ending or starting, depending on the relevant change between the class of incapacity. For example, your invalidity pension may have ceased where you were originally classified as either Class A or Class B incapacity and you were subsequently reclassified as Class C incapacity. A different invalidity pension may then start if you were again reclassified as either Class A or Class B incapacity.

An invalidity pension that you are receiving will not end where you are reclassified as Class A or Class B incapacity.

It is therefore necessary to identify the relevant invalidity pension and determine when that pension started.

Multiple reclassifications

If you were classified as Class A or B and reclassified to Class C, then reclassified as Class A or B, then you will have two invalidity pensions to consider:

- the first invalidity pension started when you were first classified as Class A or B and ceased when you were reclassified as Class C
 - the second invalidity pension started when you were reclassified from Class C to Class A or B and your invalidity benefits recommenced.
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Example 3: Reclassified on multiple occasions

Simon was discharged on 3 August 1996 when aged 25. Simon was subject to reclassification on multiple occasions, including to Class C for a period. On 4 February 2006, he was reclassified as Class A and recommenced receiving invalidity pension payments and remains in receipt of invalidity pension payments.

Simon is not affected by the decision and his invalidity payments are taxed as super income stream benefit.

Example 4: Reclassified from Class A to Class B

Alison was discharged on 2 May 2006. On 14 June 2006, she commenced receiving invalidity pension payments in accordance with being determined by CSC as having a Class A incapacity. On 3 September 2015, she was reclassified as Class B and the classification has remained the same since.

Alison is not affected by the court decisions. Her invalidity payments are taxed as super income stream benefits.

Impact of backdating

A classification (or reclassification) with a retrospective effective date does not change the date that the invalidity pension started.

Example 5: Classification to Class A with backdated effect

Roger was discharged on administrative grounds on 2 October 2005. On 14 October 2005, he started receiving retirement benefits and was not considered eligible for an invalidity pension.

On 19 May 2010, it was determined by CSC that Roger should have been discharged on medical grounds and classified as Class A incapacity with an effective commencement date for the invalidity pension of 14 October 2005.

While the invalidity pension had an effective commencement date of 14 October 2005, CSC commenced paying the invalidity pension (including a lump sum payment in arrears) on 14 June 2010.

Roger is affected by the court decisions as the invalidity pension commenced for tax and superannuation purposes after 20 September 2007. His invalidity pension payments are taxed as superannuation lump sums.

If you are affected

We expect to provide more detailed information on the streamlined amendment process for affected individuals in March 2021. You don't need to call CSC to get additional information – we are obtaining relevant data from CSC for you.

Note: Even if you are affected, an amendment to your income tax assessment may not result in a credit or refund. We will need to consider your specific circumstances before the outcome can be determined.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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