Super reforms… where are we now?

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Agenda

- Transfer balance account reporting
- Capital gains tax relief
- Exempt current pension income and segregation
- Issues…

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Transfer Balance Account Reporting

New reporting obligations

Transfer balance account reporting (TBAR)

- Transfer balance accounts started 1 July 2017, reporting is optional until 1 July 2018
  - Separate reports for each member
- Common events you must report:
  - Commencing an income stream/receiving reversionary income stream
  - Commutation of an income stream
- Timeframes for reporting based on a member's TSB at 30 June of prior income year
  - All members < $1million can report when annual return due
  - **Any** member with > $1million report events within **28 days** after end of quarter
- ATO webpage: New reporting obligations for SMSFs/

Valuing income streams for TBAR

Initial assessment at 1 July 2017

Super income stream type	Credit value
Account based pension	Account balance
Term and lifetime annuities/pensions	Identifiable lump sum[1]
Capped defined benefit income stream	Special value
Transition to retirement income stream *in retirement phase*	Account balance

- Reversionary pensions have grace period of 12 months before credit received
- Death benefit pensions have credit apply immediately

1. Identifiable lump sum is the purchase price of the annuity/pension less commutations (based on current Regulations)

Dealing with an excess transfer balance

Commute	Tax
Determination from commissioner	Notional earnings
Election	15% up to 1 July 2018 From 1 July 2018: 15% first breach, 30% after
Commutation authority	

- Excess of up to $100,000 rectified by 31 December 2017 will raise no penalty
- If capped DB income stream leads to excess transfer balance, will not raise an excess
  - Instead may incur additional tax on payments under DB income cap

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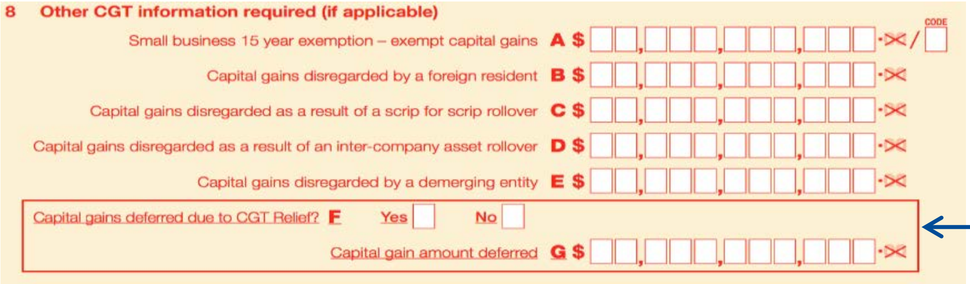
CGT Relief

How does the CGT relief work?

- Eligible if TRIS lost retirement phase status or had a commutation to comply with TBC


8 Other CGT information required (if applicable)

Small business 15 year exemption – exempt capital gains **A** $ CODE

Capital gains disregarded by a foreign resident **B** $

Capital gains disregarded as a result of a scrip for scrip rollover **C** $

Capital gains disregarded as a result of an inter-company asset rollover **D** $

Capital gains disregarded by a demerging entity **E** $

Capital gains deferred due to CGT Relief? **F** Yes No

Capital gain amount deferred **G** $

CGT schedule 2017, section 8F

1. Elect on a per asset basis, it’s not automatic
2. Reset cost base of the asset to its market value
3. Keep appropriate records for each asset
4. Report in the CGT schedule for 2016-17 income tax return the total deferred gain (if any)

Segregated method

- Asset was solely supporting pensions at 9 November 2016 and it ceased to be a segregated pension asset prior to 1 July 2017
- Two options where were in full pension and commuted to comply with TBC:
  1. Pick specific assets to commute to accumulation phase
  2. Decide to move to using the unsegregated method on all assets

- Date asset was no longer segregated is the date you apply the relief
- Reset cost base to market value at that date
- Gain or loss on asset is disregarded

Unsegregated method

- Asset was supporting pension and accumulation from 9 November 2016 to 30 June 2017
- If an asset became ‘segregated’ post 9 November 2016 cannot apply the relief to that asset

1. Reset cost base to market value at 30 June 2017
2. Gain or loss is taxed based on 2016-17 tax exempt percentage
   – Must realise losses in 2016-17 annual return
   – Can realise gain in 2016-17 annual return or defer until asset is sold
3. If gain will be deferred calculate in 2016-17 based on no other capital gains or losses occurring in the year and reduced by tax exempt percentage

Applying the CGT relief

- If using unsegregated method might not apply relief if tax exempt percentage expected to increase prior to when will sell the asset
  - For example if members not yet all fully retired
- Moving to the unsegregated method may provide best outcome for many segregated funds
- Segregated losses will be disregarded so could elect not to apply the relief
  - If sell asset later in a loss position when unsegregated can carry forward the loss
- MUST use segregated method for CGT relief if solely in pension at 9 November 16
  - Even if using unsegregated ECPI method utilising ATO compliance approach to ECPI in 2016-17

Case study: CGT relief in 2016-17

Unsegregated method

- Pension payment in January… TRIS ceased to be retirement phase 1 July 2017

Date	M1 Accumulation	M2 TRIS
1 July 2016	$590,000	$1,720,000
15 Jan 2017		- 100,000
30 June 2017	$600,000	$1,650,000

- Eligible because TRIS will lose retirement phase status
- Unsegregated CGT relief method must be used based on assets at 9 November 2016
- Relief applied at 30 June 2017 based on tax exempt percentage of 73.95% in 2016-17

Case study

Unsegregated method

- Would this fund apply the relief?
  - If sell assets in 2017-18 when all assets taxable, 2016-17 tax exempt percentage might be higher
  - If sell in the future is hard to tell… members will move into retirement phase, and accumulation balance drawn down. If sold once all in pension would be better to *not* to apply relief now.
- Any gains/losses when reset cost base which are not deferred are included in 2016-17 annual return’s net capital gain

Case study: CGT relief in 2016-17

Segregated method

- NCC in April… pension payment in June… commutation to comply with TBC on 30 June

Date	M1 Accumulation	M1 Account-based pension
1 July 2016	$0	$2,000,000
15 April 2017	+ 180,000	
29 June 2017		- 100,000
30 June 2017	+ TBC commutation	- TBC commutation
30 June 2017	$535,000	$1,600,000

- Eligible because ABP > $1.6m made commutation prior to 1 July 2017

Case study

Segregated method

- Must use segregated method for CGT relief as solely supporting pension at 9 November 2016
- When the relief would apply:
  - at 15 April when assets cease to be segregated if no documented segregated pension assets
  - at 30 June if pension assets documented as ‘segregated’ until commutation
- Available on all assets held between 9 November and date of CGT relief assuming move to proportionate method
- For each asset to which apply CGT relief, reset the cost base and gain/loss disregarded
- CGT relief gains and losses do not impact ECPI calculation, are not included in annual return and cannot be deferred

Case study

Segregated method

- Assets in gain position likely to apply the relief
  - lock in 100% tax exempt position
- Assets in loss position may not apply the relief
  - if don’t apply relief now and in future sell asset at a loss it will be on an unsegregated asset (assuming still have an accumulation balance) which means loss can be carried forward
- Consider the individual circumstances of the fund

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ECPI & Segregation

Segregated method

- Section 295.385 of ITAA 1997
- Segregated assets are those solely supporting retirement phase liabilities
  - Deemed segregation
  - Elected segregation
- To claim income on segregated assets as ECPI don’t need an actuarial certificate
  - Income excluding non arm’s length income and contributions is tax exempt
  - Capital gains/losses disregarded

Disregarded small fund assets

SMSF must use unsegregated method

- Section 295.387 of ITAA 1997 and applies from 1 July 2017
  - Excludes a fund from using segregated method for ECPI
  - Can still segregate for investment purposes
- SMSF has disregarded small fund assets in a year if:
  - At previous 30 June a member was in retirement phase and had at least $1.6m TSB
  - In current financial year SMSF had a member in retirement phase
- Can impact SMSF where assets support retirement phase income streams but TSB of a member grows above $1.6m

Unsegregated method

- Section 295.390 of ITAA 1997
- Unsegregated assets are those which
  - Support retirement phase and accumulation liabilities
  - Are disregarded small fund assets
- Actuarial certificate required if want to claim ECPI:
  - Certificate is for a full income year and excludes segregated pension assets
  - Tax exempt percentage applies to unsegregated assessable income and net capital gains excluding non arm’s length income and assessable contributions

Some fine print…

- ATO not applying compliance resources to review actuarial calculation in 2016-17 or prior years
  - Can use unsegregated method for entire year even if had periods of deemed segregation
  - No impact on CGT relief, must use segregated CGT relief method if solely in pension on 9 Nov 16
- Situations where a fund can be considered segregated if fund maintains sufficient documentation:
  - Fund in retirement phase receives contribution and immediately commence pension
  - Fund solely in pension makes a commutation at ‘end of day’ 30 June 2016 to comply with TBC
- If have periods of deemed or elected segregation must use BOTH methods to claim ECPI
  - Multiple accounting periods
  - ECPI = segregated pension income + unsegregated income x actuarial tax exempt percentage

How to claim ECPI

Case studies

1. Pension and accumulation assets but solely in pension at 9 Nov 2016

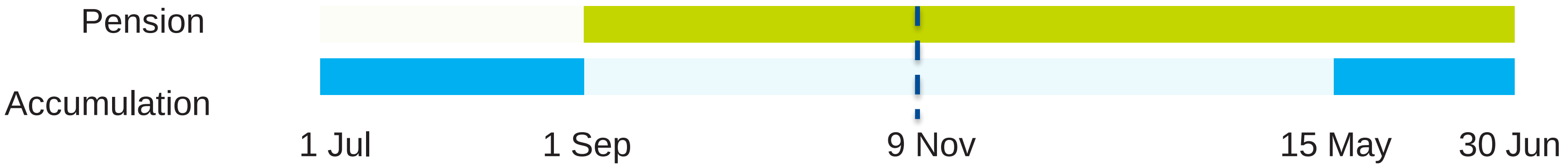
2. Solely in pension phase up to 30 Jun 17 but makes a commutation to comply with TBC

3. Segregation in 2017-18 onwards

4. Avoiding deemed segregation

Case study 1

Pension and accumulation but solely pension at 9 Nov 16



- SMSF events:
  - Commenced TRIS 1 Sep 16, member aged 62 and so will lose retirement phase status 1 Jul 17
  - Made large NCC 15 May 17 and pension payment 20 Jun 17
- Segregated method CGT relief
  - Reset cost base of assets in gain position at time assets cease to be segregated
- Three ways could claim ECPI in 2016-17

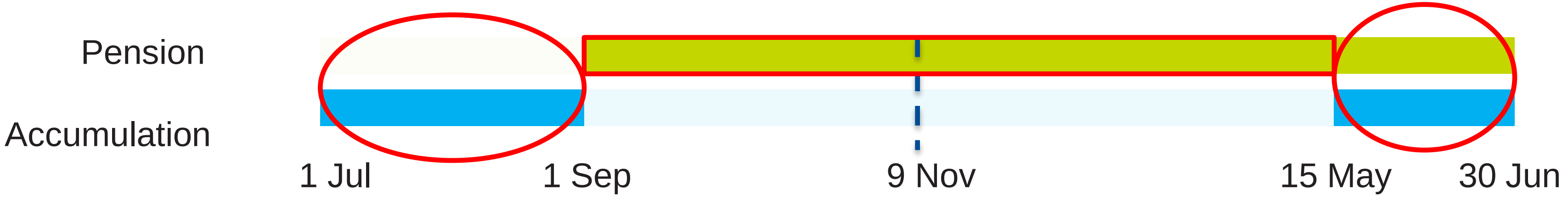
Case study 1

Pension and accumulation but solely pension at 9 Nov 16

- Claim ECPI using the unsegregated method
  - Utilise ATO compliance approach for 2016-17
  - Obtain actuarial certificate, ECPI = tax exempt percentage x all SMSF assessable income
- CGT relief
  - Assets cease to be segregated 15 May 17
  - Reset cost base of assets in gain position and disregard gains (100% tax exempt)

Case study 1

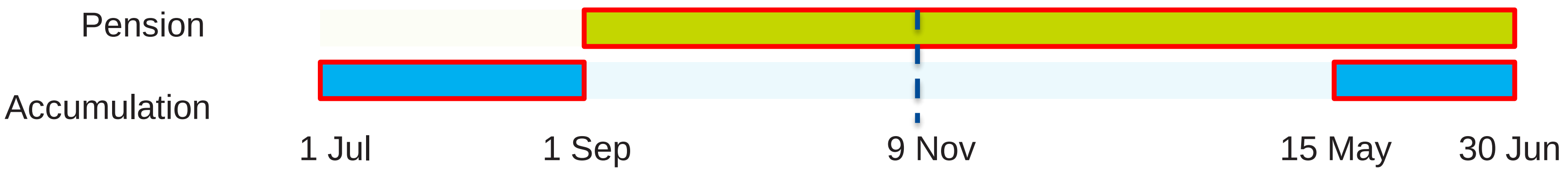
Pension and accumulation but solely pension 9 Nov 16



- Segregated method: assets to 1 Sep to 15 May
- Unsegregated method: assets from 1 Jul to 1 Sep and 15 May to 30 Jun
  - ECPI = segregated pension income + tax exempt percentage x income on unsegregated assets
- CGT relief
  - Assets cease to be segregated 15 May
  - Reset cost base of assets in gain position and disregard gains (100% tax exempt)

Case study 1

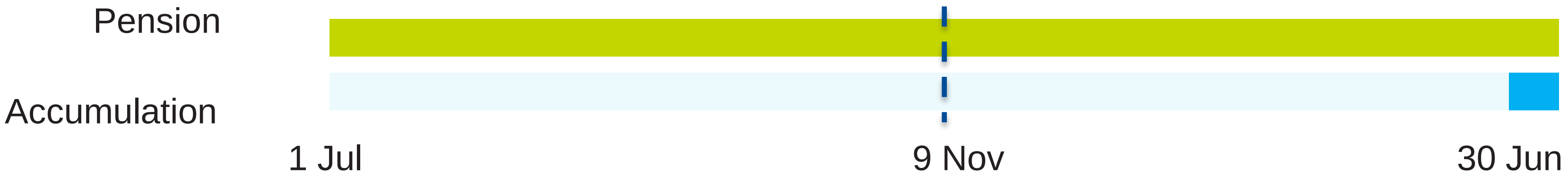
Pension and accumulation but solely pension 9 Nov 16



- Claim ECPI using the segregated method
  - Document segregation of pension assets in order to maintain segregation at 15 May
  - No actuarial certificate required, ECPI = income on segregated pension assets 1 Sep to 30 Jun
- CGT relief
  - Assets cease to be segregated 30 Jun 17 due to TRIS losing retirement phase status 1 Jul 18
  - Reset cost base of any segregated pension assets and disregard gains (100% tax exempt)

Case study 2

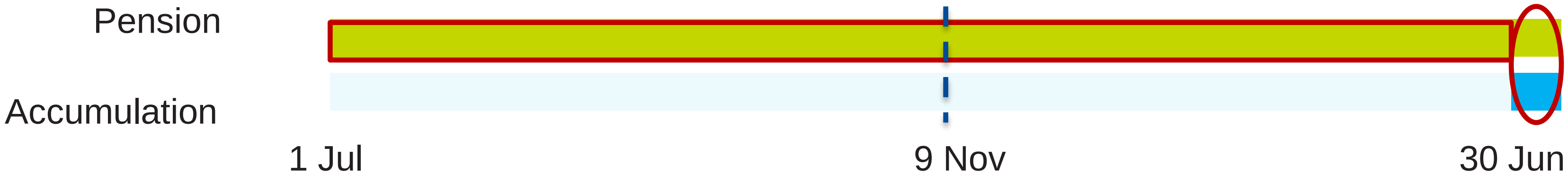
Solely in pension then does TBC commutation 30 Jun 17



- SMSF events:
  - Fully in account-based pensions with a member who has balance > $1.6m
  - Made commutation on 30 June from pension to accumulation to comply with TBC
- Segregated method CGT relief
  - Reset cost base of assets in gain position at time assets cease to be segregated
- Three ways could claim ECPI

Case study 2

Solely in pension then does TBC commutation 30 Jun 17



- Claim ECPI using both methods
  - Obtain actuarial certificate for unsegregated assets on 30 Jun if want to claim ECPI
  - ECPI = segregated pension income + tax exempt percentage x 30 Jun assessable income
- CGT relief
  - Assets cease to be segregated 30 Jun 17
  - Reset cost base of assets in gain position and disregard gains (100% tax exempt)

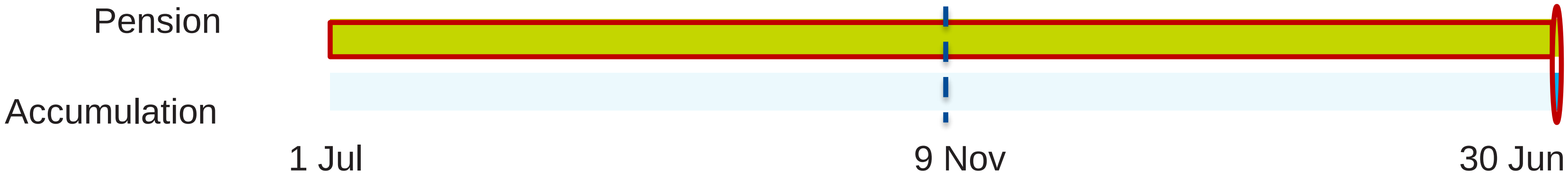
Case study 2

Solely in pension then does TBC commutation 30 Jun 17

- Claim ECPI using the unsegregated method
  - Utilise ATO compliance approach for 2016-17
  - Obtain actuarial certificate, ECPI = tax exempt percentage x all SMSF assessable income
- CGT relief
  - Assets cease to be segregated 30 Jun 17, move to proportionate method
  - Reset cost base of assets in gain position and disregard gains (100% tax exempt)

Case study 2

Solely in pension then does TBC commutation 30 Jun 17



- Claim ECPI using segregated method only
  - **Documentation** sufficient to show commutation occurred ‘end 30 Jun’ after all income received
  - ECPI = all fund income is segregated pension income, no actuarial certificate needed
- CGT relief
  - Assets cease to be segregated 30 Jun 17
  - Reset cost base of assets in gain position and disregard gains (100% tax exempt)

Case study 3

Segregation in 2017-18

- SMSF events:
  - ABPs at 1 Jul 17
  - 1 Aug 17 NCC of $100,000
  - 1 Jun 18 commence new ABP with accumulation balance
- Two options for claiming ECPI

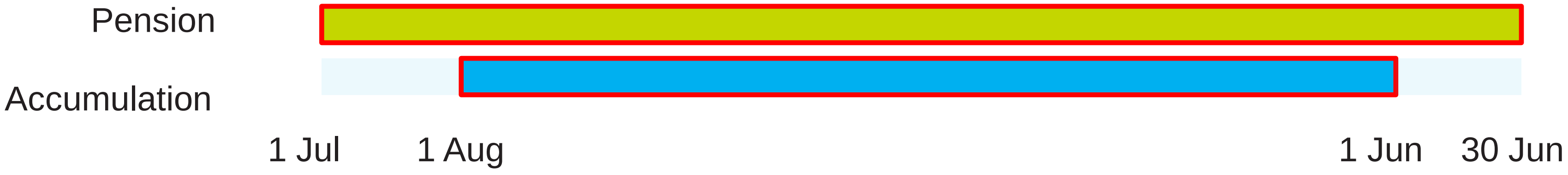
Case study 3

Segregation in 2017-18

- Use both methods to claim ECPI
  - Has periods of deemed segregation + periods where unsegregated
  - 3 sets of accounts
  - ECPI = segregated pension income + tax exempt percentage x unsegregated asset income
- Segregated method 1 Jul to 31 Jul 17 and 1 Jun to 30 Jun 18
- Unsegregated method 1 Aug to 31 May 17

Case study 3

Segregation in 2017-18



- Segregated method
  - Requires documentation ‘in advance’ of contribution being received
  - Ensure all assets supporting the ABP are segregated pension assets for the entire income year
  - Separate accounting records for assets supporting ABP and contribution
  - No actuarial certificate required, ECPI = income on segregated pension assets

Case study 4

Avoiding deemed segregation

- Ensure assets are not deemed segregated pension assets
  - a small accumulation account at all times means can use unsegregated method for full year
- Use unsegregated method to claim ECPI
  - one set of accounts
  - actuarial certificate required
  - ECPI = tax exempt percentage x all fund income

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Outstanding issues

Issues…

- Do you know all your clients superannuation assets?
- TRIS condition of releases
- Reversionary TRIS
- Actuarial certificate requirements if have DB income streams
- ATO’s SMSF Reserves bulletin – 5% rule allocations
- Segregated non-current assets
- What to do if your fund is winding up in 2017-18

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