

Super reforms: The final countdown Q&A

June 2017

Q1. Patrick: If a client has a death benefit pension that commenced greater than 12 months ago, with the current value exceeding the Transfer Balance Cap, and they have other retirement pensions in place, they will be able to commute the retirement pensions to accumulation and a portion of the death benefit pension to accumulation before 1 July 2017. Is this correct? If so, is the 'templated' guidance for the commutation request confirmed by the ATO sufficient for the commutation of the death benefit?

A1: Yes, they will be able to commute a portion of the death benefit pension (provided the commutation is a superannuation member benefit) and/or other pension accounts to accumulation phase prior to 1 July 2017 in order to comply with the transfer balance cap. Within PCG 2017/6 the ATO has indicated that commutations of death benefit income streams prior to 1 July 2017 that do not meet their clarified guidance on cashing of death benefits will not lead to compliance action. We expect the 'templated' guidance will be sufficient for the commutation of the death benefit pension, subject to the funds governing rules.

Q2. Patrick: Can you please comment on the ATO's view of running two SMSFs for a member: 1 for accumulation and 1 for pension(s)? How can they determine if there is a tax benefit obtained, particularly if the taxable return in the accumulation SMSF is greater than that for the pension SMSF in a given year?

A2: I quote a response issued recently from James O'Halloran, Deputy Commissioner Superannuation on this question: If you are considering strategies such as this, we strongly encourage you to seek independent professional advice and/or approach the ATO for advice beforehand.

Whilst the establishment of a second SMSF by itself does not give rise to compliance issues, we will further examine the circumstances of those cases where it appears that the establishment of a second SMSF has been a pre-cursor to subsequent behaviour intended to manipulate tax outcomes. Such behaviour could include, for example, switching each of the respective funds between accumulation and retirement phase.

<https://www.smsfadvisor.com/strategy/15626-ato-addresses-common-queries-with-the-super-reforms>; cited 29 June

Q3. Bruce: If a fund converts on 30 June 2017, and the income on that one day is only \$ 100, are we compelled to get the actuarial certificate? Or can we pay 15% tax on the \$100 and not get the certificate?

A3: Claiming ECPI for a fund is optional and as such you are not forced to get an actuarial if you are not going to claim ECPI. If the actuarial certificate is only going to apply to income earned on a single day with \$100 of income you can choose to not get the certificate and instead pay 15% tax on the \$100 of income.

Q4. Stephen: Can a pension commutation request at 30 June include both pensions to be withdrawn as a lump sum and pensions to be rolled back to accumulation?

A4: PCG 2017/5 sets out guidelines for the commutation requests made before 1 July 2017 in order to avoid exceeding the \$1.6 million transfer balance cap. This does suggest the agreement (valid member request and trustee resolution of acceptance) contain detail on the pension(s) that may need to be commuted, the methodology for determining the commutation values and the order of priority from which commutations will be made. It would seem reasonable that the request could additionally specify whether commutations will be paid out as lump sums or retained in accumulation phase, however I would recommend you obtain further advice on this since we are not lawyers.

Q5. Valerio: Will the CGT cost base relief be available for a SMSF where a TRIS is paid up to 30/6/17 but converts to an ABP due to member being age 65 years in 2016-17 financial year? The TTR is converted to an ABP on 1/7/17.

A5: The ATO state in their FAQ document on the super changes that the CGT relief is available for certain CGT assets that will lose their tax exemption in complying with the new transfer balance cap and transition to retirement income streams (TRIS). As such we expect that CGT relief will not be available in the case where a TRIS does not lose its tax exempt status

at 1 July 2017 due to Treasury Laws Amendment (2017 Measures No. 2) Bill 2017. This bill allows a TTR income stream to become a retirement phase income stream, eligible for the tax exemption on earnings, upon meeting a condition of release. In your situation as the member is aged 65 in the 2016-17 financial year their TTR income stream would not lose its eligibility for the tax exemption in the 17/18 financial year. As such, the fund's tax position is not affected by the super reforms and we would expect that the CGT relief is not available. If the pension was also valued in excess of \$1.6 million the fund may be eligible for the CGT relief because the trustee will need to commute part of the pension to accumulation in order to avoid an excess transfer balance.

<https://www.ato.gov.au/Individuals/Super/In-detail/Super-changes---FAQs/> cited 29 June 2017

Q6. Tracey: Does the change to pension payments and lump sum payments result in the requirement that all pension payments will need to be a cash payment after 1 July 2017?

A6: Correct. A 'pension payment' must be a cashed payment. A lump sum payment made via a partial commutation of a pension will not count towards a member's minimum pension requirements; it will however create a debit against the member's transfer balance account.

Q7. Cathy: If a member has two account-based pensions (one is a reversionary pension) and the member also has an accumulation balance, which all total less than \$1.6 million, can the whole lot be commuted on 1/7/17 and recommenced as one pension? Assume that this is the total superannuation balance of that member.

A7: From 1 July 2017, ATO PCG 2017/6 advises that a death benefit pension cannot be commuted unless to pay a lump sum death benefit, otherwise the compulsory cashing requirements will not be met (unless the amount commuted is being rolled over for immediate cashing). Therefore if this pension was commuted to accumulation on 1 July 2017 (in order to facilitate moving to a new pension) this would breach the cashing requirements of the death benefit and could result in compliance action from the ATO.

However in recognition of current industry practice, the ATO will not apply compliance resources to review such death benefit transactions provided they related to a commutation of a superannuation member benefit which occurred before 1 July 2017. Therefore if the commutation and pension commencement was to occur on 30 June 2017 we would not expect this to attract the attention of the ATO.

The issue of the death benefit aside, if a member has total balance of less than \$1.6 million then on 1 July 2017 a new pension can be commenced with that amount. Commutations of existing pensions will create a debit of the account balance against the member's transfer balance account, and a credit will arise equal to the value of the new account-based pension.

Q8. Kerrie: How is the annual entitlement calculated for a market linked pension? Is it the specified amount or can you select the minimum (being 10% less than the specified amount)?

A8: The annual entitlement is based on the annual payment determined under Schedule 6 of the Superannuation Industry (Supervision) Regulations. Therefore in line with that Schedule if the member elects to take the minimum payment in 2017-18 that is the payment that will be used in determining the member's annual entitlement.

Q9. Naween: If we currently had a 2 member Fund with rev pensions each of \$1.5 million and one passed away 1 May 2017, does it mean that we have until 1 May 2018 to commute any excess over the \$1.6 million cap, potential saving 10 months of cap space?

A9: A reversionary pension will not count towards the recipients balance transfer cap until 1 year after it has been received by the beneficiary. This does not only apply to reversionary pensions received after 1 July 2017 but also to those received before that date. With this being the case you are correct in that a reversionary pension received by the member on 1 May 2017 will not count towards their transfer balance cap until 1 May 2018.

Q10. Leah: Can you please confirm, if I have a TTR pension in place and the client meets a condition of release (age 65+ or retired) do they still have a maximum limit on pension withdrawals and only the tax effect on income is changed or does it convert to an ABP with no max limit on pensions.

A10: The TTR pension will count as a retirement phase income stream once the member reaches 65 or the member informs the trustees that they have satisfied another condition of release. At this point the tax effect on the income will change, with the income now being exempt. Subject to the governing rules of the fund, we would generally expect, as described in the Treasury Laws Amendment (2017 Measures No. 2) Bill 2017, the pension continues to be a TTR income stream subject to the 10% maximum withdrawal limit.

Q11. Sarah: What if don't take min pension from death benefit pension?

A11: If the member does not meet the minimum pension standards on their pension account the pension will generally be taken by the ATO to have ceased on the later of 1 July of that year or on the pension commencement date. Since a death benefit pension cannot be commuted to accumulation under the death benefit cashing requirements, nor used to commence a new income stream, it would make sense that if the minimum pension standards were not met the remaining balance would need to be paid out as a lump sum death benefit.

Q12. Cameron: Are any of the changes relevant for clients with TRIS pensions that are valued less than \$1.6 million? Can we still reset the CGT cost base?

A12: If the TTR pensions will lose their tax exempt status at 1 July 2017, for example if the member has not attained age 65, then the fund may be eligible to access the CGT relief on assets held at 9 November 2016. How the CGT relief will apply will depend on whether assets supporting the TTR pension were segregated or unsegregated at 9 November 2016.

Q13. Yongmei: Which ATO approved form do SMSF use for the CGT Relief?

A13: Appropriate records of all assets which may be subject to CGT relief need to be kept. The ATO have stated that reporting of the CGT relief election will be part of the CGT schedule. There will be two new data fields: the election to apply for CGT relief, and any deferred amount. This means that funds who would not currently complete the CGT schedule will need to do so if they wish to make an election to defer the CGT.

The updated CGT schedule will be available alongside the 2016–17 SMSF annual return as part of tax time 2016–17, in advance of the lodgement due dates for funds. The choice to apply CGT relief is only valid if it is made on or before the fund is 'required to lodge' its 2016–17 annual return. Remember that the lodgement date for the 2015–16 SMSF annual return is 30 June 2017, if a fund fails to lodge the 2015-16 return on time the lodgement date for 2016–17 will be brought forward to 31 October 2017.



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