



Transition to retirement – information for superannuation professionals

The transition to retirement measure means that people who have superannuation can now access their benefits – once they reach their preservation age – without having to retire or leave their job.

This measure only gives people access to their non-commutable income streams. The limited condition of release which is part of this measure applies from 1 July 2005.

NON-COMMUTABLE INCOME STREAMS

For this measure, a non-commutable income stream is:

- a non-commutable pension
- a non-commutable annuity
- a non-commutable allocated pension, or
- a non-commutable allocated annuity.

NON-COMMUTABLE PENSIONS OR ANNUITIES

A non-commutable pension or annuity can be paid by a superannuation fund or life insurance company as a:

- lifetime pension or annuity
- life expectancy pension or annuity, or
- market linked pension or annuity (sometimes marketed as a term allocated pension or annuity).

A **lifetime pension or annuity** is paid at least annually throughout the life of the member (and of the reversionary beneficiary, if any), and the payment is a fixed amount each year.

A **life expectancy pension or annuity** is paid for a term equal to life expectancy if the life expectancy of the primary beneficiary is less than 15 years, or a term between 15 years and life expectancy. The total amount of payments in the first year and subsequent years is fixed. The amount can only be varied in line with changes to the prescribed indexation limits or commutation in certain circumstances.

A **market linked pension or annuity** does not provide a fixed income stream for the term of the product. As they are generally linked to the value of the assets providing the benefit, the account balance of a beneficiary and the amount of pension or annuity which is paid each year may fluctuate accordingly.

If any one of these pensions or annuities is commuted under the six month 'cooling-off' period for these products, the resulting eligible termination payment (ETP) cannot be taken in cash.

There are exceptions to this restriction which allow an ETP to be taken in cash, if there is a commutation where the recipient:

- satisfies a condition of release with a 'nil' cashing restriction (for example retirement)
- cashes an unrestricted non-preserved benefit
- pays a superannuation contributions surcharge liability, or
- gives effect to a payment split under the family law provisions.

The six month 'cooling-off' period is only for non-commutable pensions and annuities.

➤ For further information about ETPs, refer to the guides *Eligible termination payments – a practical guide for superannuation funds* (NAT 2699), *Eligible termination payments – a guide for financial advisers on procedures* (NAT 2736) and *Eligible termination payments – a guide for tax agents on procedures* (NAT 2733). These are available by going to our website www.ato.gov.au/super or phone our publications ordering service on **1300 720 092**.

NON-COMMUTABLE ALLOCATED PENSIONS OR ANNUITIES

A non-commutable pension or annuity can be paid by a superannuation fund as an allocated pension or annuity.

The allocated pension or annuity can be paid just once a year. The amount of money that is paid can be any amount between a minimum and a maximum limit, and can be varied in line with the prescribed indexation limits.

Exceptions to the restrictions of non-commutable allocated pensions and annuities, allow an ETP resulting from such a commutation, to be taken in cash, where the member:

- satisfies a condition of release of benefits with a 'nil' cashing restriction (for example, retirement)
- cashes an unrestricted non-preserved benefit
- pays a superannuation contributions surcharge liability, or
- gives effect to a payment split under family law.

The six month 'cooling-off' period does not apply to non-commutable allocated pensions and annuities.

COMMUTATIONS OF NON-COMMUTABLE INCOME STREAMS

Commutations of non-commutable income streams are allowed in limited circumstances outlined below.

Non-commutable pension or annuity

Non-commutable pensions and annuities can be commuted within six months of starting, provided the pension or annuity has not been funded by the commutation of another complying pension or annuity.

The six month 'cooling-off' period **does** apply if:

- the member previously received an allocated or fixed term pension or annuity and commutes to a transition to retirement income stream, or
- the member has not previously received any superannuation pension or annuity.

The six month cooling-off period **does not** apply if the member previously received a lifetime, life expectancy or market linked pension or annuity and commutes to a transition to retirement income stream.

A member can commute a non-commutable pension or annuity after the six month cooling-off period:

- if it is rolled over or transferred within the superannuation system, for example, to return a superannuation benefit to the accumulation phase, or
- to buy another non-commutable pension or annuity or a non-commutable allocated pension or annuity – because it retains its preservation status.

The restrictions on commutation only prevent commutations for the purpose of cashing the resulting ETP.

Non-commutable allocated pension or annuity

A member can commute a non-commutable allocated pension or annuity:

- if it is rolled over or transferred within the superannuation system, for example, to return a superannuation benefit to the accumulation phase, or
- to buy another non-commutable pension or annuity or a non-commutable allocated pension or annuity.

The restrictions on commutation only prevent commutations for the purpose of cashing the resulting ETP.

The six month 'cooling-off' period does not apply to non-commutable allocated pensions and annuities.

RETIREMENT AND TRANSITION TO RETIREMENT

A member is eligible to access their superannuation benefits while they are still working if they have reached their preservation age. They can continue working in any capacity while they receive their superannuation benefits in a non-commutable income stream as there is no work test prescribed by the legislation.

Retirement after starting a non-commutable pension or annuity

If a member retires within six months of starting a non-commutable pension or annuity they can either:

- A** continue to receive their non-commutable pension or annuity
- B** commute their non-commutable pension or annuity and roll it back into the superannuation system
- C** commute their non-commutable pension or annuity to buy another pension or annuity, or
- D** commute their non-commutable pension or annuity and take the resulting ETP in cash.

However, if they don't retire within six months of starting their pension or annuity, they don't have options B or D.

Retirement after starting a non-commutable allocated pension or annuity

If a member retires after starting a non-commutable allocated pension or annuity they can either:

- A** continue to receive their non-commutable allocated pension or annuity
- B** commute their non-commutable allocated pension or annuity and roll it back into the superannuation system
- C** commute their non-commutable allocated pension or annuity to buy another pension, or
- D** commute their non-commutable allocated pension or annuity and take the resulting ETP in cash.

The six month restriction (cooling-off period) does not apply to non-commutable allocated pensions and annuities.

People may seek your advice about whether your fund will provide all of these options.

SELF MANAGED SUPERANNUATION FUNDS AND TRANSITION TO RETIREMENT

The way you administer your self managed superannuation fund (SMSF) may need to change. A self managed superannuation fund may pay a non-commutable income stream as a non-commutable allocated pension or a non-commutable market linked pension, provided your trust deed allows you to pay this type of income stream. If you are a trustee and you need more information, talk to your financial or tax professional.

If a member continues to work part time and receive a superannuation benefit from your fund at the same time, your fund may be accepting contributions (superannuation guarantee) and paying benefits. Generally, you should have two accounts to make this arrangement work.

Is there a cap on the amount of superannuation that can be accessed by members?

No, there is no cap on the amount of superannuation benefits your members can access whilst in the workforce. However, please be aware that the usual cashing of benefits rules apply and your governing rules may impose limits on the amount of superannuation benefits that can be accessed.

Do superannuation funds have to offer non-commutable income streams?

It is not compulsory for superannuation funds to offer their members non-commutable income streams.

How should the start of a non-commutable income stream be reported for reasonable benefit limit purposes?

To report the start of a non-commutable income stream, you should complete these sections of the *Superannuation funds – Reasonable benefit limits (RBL) reporting form* (NAT 14345):

- Sections A and B (questions 1–16), providing details of the fund and the recipient
- Section C (questions 17–21), providing details of the report type (new or amended)
- Section D (questions 22–34), providing details of the benefit type at question 31 (on this form, put a cross in the box to indicate either a lifetime purchased pension or non-lifetime purchased pension)
- Section E (questions 35–45), providing details of the lifetime purchased pension (only complete if necessary)

- Section F (questions 46–53), providing details of a previous pension or annuity from which this benefit arose (only complete if necessary), and
- Section H, declaring that the benefit information you have provided is accurate and complete.

➤ For copies of the *Superannuation funds – Reasonable benefit limits (RBL) reporting form* (NAT 14345) phone our publications ordering service on **1300 720 092** or download the form by going to our website **www.ato.gov.au/super** and searching for '14345'.

How should the commutation of a non-commutable income stream be reported for reasonable benefit limit purposes?

To report the commutation of a non-commutable income stream for reasonable benefit limit purposes, you should follow the same process as commuting other pensions:

- complete a reasonable benefit limit form, to report the commutation of the original income stream, and
- complete a second reasonable benefit limit form report the commencement of the new benefit.

➤ To complete the second reasonable benefit limit form, follow the directions listed above under the heading 'How should the commencement of a non-commutable income stream be reported for reasonable benefit limit purposes?'.

On the reasonable benefit limit form used to report the commutation of the original income stream, you should complete the following sections:

- Sections A and B (questions 1–16), providing details of the fund and the recipient
- Section C (questions 17–21), providing details of the report type (new or amended)
- Section D (questions 22–34), including details of the benefit type at question 31 (on this form, put a cross in the box to indicate a direct roll over of a commutation)
- Section F (questions 46–53), providing details of the original non-commutable income stream from which this benefit arose, and
- Section H, declaring that the benefit information provided is accurate and complete.

MORE INFORMATION

For further information on the transition to retirement measure:

- visit **www.ato.gov.au/super**
- for copies of our publications, phone our publications ordering service on **1300 720 092**
- to speak to a tax officer, phone our information line on **13 10 20** between 8.00am and 6.00pm, Monday to Friday, or
- write to:
Australian Taxation Office
PO Box 277
WORLD TRADE CENTRE VIC 8005

Translating and Interpreting Service

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

People with a hearing or speech impairment with access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

OUR COMMITMENT TO YOU

We are committed to providing you with advice and information you can rely on.

We make every effort to ensure that our advice and information is correct. If you follow advice in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it. However, we will not charge you a penalty or interest if you acted reasonably and in good faith.

If you make an honest mistake when you try to follow our advice and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

You are protected under GST law if you have acted on any GST advice in this publication. If you have relied on GST advice in this publication and that advice later changes, you will not have to pay any extra GST for the period up to the date of the change. Similarly, you will not have to pay any penalty or interest.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at May 2006.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at **www.ato.gov.au** or contact us.

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