



Superannuation reform: commutation requests made before 1 July 2017 to avoid exceeding the \$1.6 million transfer balance cap

Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. This Guideline outlines the circumstances in which the ATO will not apply compliance resources to review commutations made before 1 July 2017 by a member of a self-managed superannuation fund (SMSF) to avoid exceeding the \$1.6 million transfer balance cap.

Date of effect

2. This Guideline is proposed to apply both before and after date of issue.

Who this Guideline applies to

3. This Guideline applies to a member of a SMSF who requests an amount or amounts to be commuted from their superannuation income stream(s) to avoid exceeding the \$1.6 million transfer balance cap.

4. This Guideline does not apply in respect of commutation requests made on or after 1 July 2017.

Background

5. A member of a SMSF may need to take action before 1 July 2017 to ensure that they do not exceed the \$1.6 million transfer balance cap by requesting the trustee of the SMSF to commute some or all their superannuation income stream(s) to be rolled-over as an accumulation interest within the SMSF or withdrawn from the SMSF as a lump sum payment. The member may not be in a position on 30 June 2017 to know precisely the value of the superannuation interests that support the superannuation income streams. One strategy to address this is for the member to make a request, which is subsequently accepted by the trustee of the SMSF, to commute their superannuation income stream(s) by the amount that the value of the superannuation interests that support their superannuation income streams exceeds \$1.6 million.

6. A member or a dependant beneficiary commutes their superannuation income stream if they consciously and validly exercise their right to exchange some or all of their entitlement to receive future superannuation income stream benefits for an entitlement to be paid a lump sum.¹

7. A request to commute is valid if it is consistent with the governing rules of the superannuation fund and the agreement between the member and trustee under which the superannuation income stream is provided.²

8. Whether and at what time a valid commutation takes effect is a question of fact to be determined from the particular circumstances. It must be clear that some or all of the member's right, or dependant beneficiary's right, to receive future superannuation income stream benefits has been exchanged for a right to receive a lump sum.³

Our compliance approach

9. The Commissioner will not apply compliance resources to review the commutation of a superannuation income stream a member has in an SMSF that is made before 1 July 2017 where the request and acceptance to commute:

- (a) are both made in writing. The agreement by the trustee may be documented as a trustee resolution
- (b) are made before 1 July 2017
- (c) specifies a methodology that allows the precise quantum of the amount commuted to be calculated (such amount may be ascertained at a later point in time)

¹ See paragraph 110 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases*.

² See paragraph 111 of TR 2013/5.

³ See paragraph 112 of TR 2013/5

- (d) specifies the superannuation income stream which will be subject to the commutation. Where the request may cover more than one superannuation income stream, the request and acceptance will need to specify the different superannuation income streams that may be covered and the order of priority in which the commutations will occur, and
- (e) do not conflict with a similar agreement to commute that the member has agreed to with a trustee of a different superannuation fund. Entering into an agreement with the trustee of one superannuation fund to which this Guideline applies in conjunction with the commutation of a specific amount from another superannuation fund does not in itself cause a conflict.

10. The amount of the commutation is required to be worked out by the trustee of the SMSF, and reflected in the SMSF's financial accounts for the year ended 30 June 2017, no later than the due date of the SMSF's annual return for the year ended 30 June 2017.

11. The agreement to commute cannot be subsequently revoked after the date of the agreement. If the agreement to commute or the governing rules of the superannuation fund allowed a discretion for either the member or the trustee of the SMSF to revoke the agreement, it would be questionable whether a valid commutation had in fact been effected before 1 July 2017.

12. This Guideline does not apply where:

- (a) the request is dependent on the later exercise of a discretion by either the member or trustee of the SMSF with respect to the amount to be commuted or the superannuation income stream that will be commuted
- (b) the request and/or whether the amount is to be commuted is subject to certain actions occurring after the date the trustee of the SMSF accepts the request
- (c) the request does not provide sufficient certainty with respect to identifying the superannuation income streams that are subject to the commutation request, and
- (d) the request and/or the amount to be commuted is dependent on a decision or the exercise of discretion by the trustee of a different fund. For example, where the member specifies the amount to be commuted is the excess amount over the member's transfer balance cap taking into account all superannuation income streams the member has in multiple funds and the member provides a similar request to commute to a trustee of a different fund. In this situation, neither request specifies a methodology that allows the precise quantum of the amount commuted to be calculated. The amount to be commuted under each request is dependent on the amount to be commuted under the other request.

13. An agreement to commute covered by this Guideline cannot be subsequently revoked or altered by the member or trustee of the SMSF after the date the agreement is made.

Example 1

14. *On 1 May 2017, Liz has a single superannuation interest supporting a superannuation income stream in her SMSF that is valued at \$1.8 million.*

15. Liz requests the trustee of her SMSF in writing to commute amounts on 30 June 2017 in excess of \$1.6 million based on the value of the interest supporting her superannuation income stream valued at 30 June 2017. The trustee of the SMSF accepts the request which is documented.

16. The amount of the commutation is worked out by the trustee of the SMSF and is reflected in the SMSF's financial accounts for the year ended 30 June 2017 by the due date of the SMSF's annual return for the year ended 30 June 2017.

17. The ATO will not review the commutation as the agreement to commute is in accordance with paragraphs 9 and 10 of this Guideline.

Example 2

18. On 1 May 2017, Jim has the following three superannuation interests supporting superannuation income streams in his SMSF:

- superannuation income stream A – valued at \$100,000
- superannuation income stream B – valued at \$1,200,000, and
- superannuation income stream C – valued at \$600,000.

19. Jim requests the trustee of his SMSF in writing to commute amounts on 30 June 2017 in excess of \$1.6 million based on the value of the interests supporting his superannuation income streams valued at 30 June 2017. The trustee of the SMSF accepts the request which is documented.

20. The amount of the commutation is worked out by the trustee of the SMSF and is reflected in the SMSF's financial accounts for the year ended 30 June 2017 by the due date of the SMSF's annual return for the year ended 30 June 2017.

21. The ATO will not review the commutation provided the commutation request specifies the superannuation income streams that will be subject to the agreement to commute and the order in which the superannuation income streams will be commuted in accordance with paragraph 9 of this Guideline.

Example 3

22. On 1 May 2017, Diptie has the following two superannuation interests supporting superannuation income streams in SMSF X:

- superannuation income stream A – valued at \$100,000, and
- superannuation income stream B – valued at \$1,200,000.

23. Diptie also has a superannuation interest supporting a superannuation income stream in large APRA fund Y valued at \$800,000 on 1 May 2017.

24. Diptie requests the trustee of SMSF X in writing to commute amounts on 30 June 2017 in excess of \$1.6 million based on the value of all of her superannuation interests supporting her superannuation income streams valued at 30 June 2017. This includes the value of her superannuation interest supporting her superannuation income stream in APRA Fund Y. The trustee of the SMSF X accepts the request which is documented.

25. *The amount of the commutation is worked out by the trustee of her SMSF and is reflected in the SMSF's financial accounts for the year ended 30 June 2017 by the due date of the SMSF's annual return for the year ended 30 June 2017. The amount of the commutation takes into account the value of Diptie's superannuation interest in APRA Fund Y.*

26. *The ATO will not review the commutation, provided that, in accordance with paragraph 9 of this Guideline:*

- *the commutation request specifies the superannuation income streams that will be subject to the commutation within SMSF X and the order in which the superannuation income streams will be commuted, and*
- *Diptie has not entered into a similar agreement with large APRA fund Y.*

27. *Diptie will need to advise the trustee of SMSF X of the value of her interest supporting her superannuation income stream in large APRA fund Y as at 30 June 2017 in order to calculate the amount to be commuted from the superannuation income stream(s) in SMSF X.*

Commissioner of Taxation

27 April 2017

References

ATOlaw topic(s)	Superannuation ~ Income tax - individuals (superannuation) ~ Other
Related Rulings/Determinations	TR 2013/5
BSL	SPR

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