



Self Managed Superannuation Funds Determination

Self Managed Superannuation Funds: does a payment made as a result of a commutation of an account based pension that is a transition to retirement income stream count towards the minimum and maximum annual payment amounts set out in the SIS Regulations for such a pension?

Preamble

This publication represents the Commissioner's view about the way in which provisions of the *Superannuation Industry (Supervision) Act 1993*, or regulations under that Act, apply to superannuation funds that the Commissioner regulates: principally self managed superannuation funds.

Self Managed Superannuation Funds Determinations (whether draft or final) are not legally binding on the Commissioner. However, if the Commissioner later takes the view that the law applies less favourably to you than this determination indicates, the fact that you acted in accordance with this determination would be a relevant factor in your favour in the Commissioner's exercise of any discretion as to what action to take in response to a breach of that law. The Commissioner may, having regard to all the circumstances, decide that it is appropriate to take no action in response to the breach.

Ruling

1. A payment made as a result of a partial commutation of an account based pension¹ that is a transition to retirement income stream² counts towards the minimum annual amount required to be paid from the pension account under paragraph 1.06(9A)(a) of the SIS Regulations ('the minimum annual amount'), unless the payment is rolled over within the superannuation system on or after 6 June 2009. Such a payment that was rolled over within the superannuation system before 6 June 2009 counts towards the minimum annual amount.

¹ In this Determination an 'account based pension' is a pension that is described in paragraph 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994* ('SIS Regulations') which satisfies subregulation 1.06(1) of the SIS Regulations.

² In this Determination a 'transition to retirement income stream' is a pension that satisfies paragraph (b) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations.

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2. A payment made as a result of a partial commutation of an account based pension that is a transition to retirement income stream does not count towards the maximum annual amount allowed to be paid from the pension account under subparagraph (b)(ii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations ('the maximum annual amount') where the payment was made on or after 16 February 2008. However, such a payment made before 16 February 2008 does count towards the maximum annual amount.

3. A payment made as a result of a full commutation of an account based pension that is a transition to retirement income stream cannot count towards the minimum annual amount or the maximum annual amount as that pension ceases before the payment is made.

Funds to which this Determination applies

4. This Determination applies to Self Managed Superannuation Funds³ (SMSFs) and former SMSFs.⁴ References in the Determination to SMSFs include former SMSFs unless otherwise indicated.

Date of effect

5. This Determination applies from 1 July 2007. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination.

Commissioner of Taxation

19 November 2014

³ As defined in section 17A of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993).

⁴ A former SMSF is a fund that has ceased being a SMSF and has not appointed a registrable superannuation entity (RSE) licensee as trustee: see subsection 10(4) of the SISA 1993.

Appendix 1

① This Appendix is provided as information to help you understand how the Commissioner's view has been reached.

Example

6. Sheldon, who is not and never was a temporary resident⁵, has satisfied condition of release item 110 (attaining preservation age) in Schedule 1 to the SIS Regulations and is receiving an account based pension that is a transition to retirement income stream from an SMSF of which he is a member. The income stream commenced in the 2010-11 financial year.

7. On 1 July 2013, the account balance of Sheldon's transition to retirement income stream was \$300,000. The minimum annual amount required to be paid from the pension account under paragraph 1.06(9A)(a) of, and Schedule 7 to, the SIS Regulations to Sheldon (who is under 65 years) for the 2013-14 financial year was \$12,000.

8. On 1 May 2014 Sheldon requested, in accordance with the governing rules of the fund, to partially commute his account based pension to the extent of \$20,000 and have paid to him the \$20,000 as a result. Sheldon had not then satisfied another condition of release and had not then received any payments from the transition to retirement income stream in the 2013-14 financial year.

9. The partial commutation was not for one of the purposes mentioned in subparagraph 6.01AB(1)(b)(iii) or paragraph 6.01AB(2)(b), (c) or (d) of the SIS Regulations,⁶ but the \$20,000 was permitted to be paid to Sheldon as an unrestricted non-preserved benefit because the amount of Sheldon's unrestricted non-preserved benefits when the commutation took effect was \$25,000.⁷

10. The \$20,000 partial commutation payment was paid accordingly to Sheldon on 3 May 2014 as an unrestricted non-preserved benefit.

11. The partial commutation payment counted towards the minimum annual amount required to be paid from the pension account under paragraph 1.06(9A)(a) of the SIS Regulations. As \$20,000 exceeded the minimum annual amount for the income stream for the 2013-14 financial year, the trustee did not need to pay any further amount to Sheldon for the income stream in that year.

12. Subsequently in the 2013-14 financial year, Sheldon advised the trustee that he still wished to be paid \$15,000 as an income payment from the income stream before 30 June 2014. That payment was made on 3 June 2014.

⁵ As defined in subregulation 6.01(2) of the SIS Regulations. A person, who is or was a temporary resident, to whom regulation 6.01B of the SIS Regulations applies, cannot satisfy the condition of release in item 110 in Schedule 1 to the SIS Regulations unless they satisfied that condition of release before 1 April 2009: see regulation 6.01B.

⁶ Those purposes are listed in paragraph 20 of this Determination.

⁷ See subparagraph (b)(iii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations and paragraphs 6.01AB(1)(b)(i) and 6.01AB(2)(a) of the SIS Regulations.

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13. *As the partial commutation payment occurred after 15 February 2008, the \$20,000 payment does not count towards the maximum annual amount allowed to be paid from the pension account under subparagraph (b)(ii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations. Even though a total of \$35,000 was paid to Sheldon in the 2013-14 financial year, the trustee did not exceed the maximum annual amount for the income stream for that year of \$30,000 (being 10% of \$300,000).*

Appendix 2 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached.*

Background

14. Self Managed Superannuation Funds Determination SMSFD 2013/2, which is about whether a payment made as a result of a commutation of an account based pension counts toward the minimum annual amount, does not apply to transition to retirement income streams. This Determination provides the Commissioner's views on that issue for an account based pension that is a transition to retirement income stream. This Determination also provides the Commissioner's views on whether a payment made as a result of a commutation of an account based pension that is a transition to retirement income stream counts towards the maximum annual amount. There can be significant regulatory and income tax implications for a member of an SMSF and the SMSF itself if the minimum or maximum annual payment requirements are breached. These implications should be considered particularly prior to commuting a transition to retirement income stream. Further information in relation to transition to retirement income streams can be found on ato.gov.au.⁸

Explanation

15. One of the forms in which benefits may be cashed under the condition of release ('Attaining preservation age') in item 110 of Schedule 1 to the SIS Regulations is a 'transition to retirement income stream', which is defined in subregulation 6.01(2) of the SIS Regulations. This determination relates to an account based pension that satisfies paragraph (b) of that definition.

16. Subparagraph (b)(i) of that definition requires the pension to be one that is described in paragraph 1.06(9A)(a) of the SIS Regulations and also requires the rules of the superannuation fund from which the pension is provided to meet the standards of subregulation 1.06(9A) of the SIS Regulations.

17. Paragraph 1.06(9A)(a) of the SIS Regulations, which describes an account based pension, requires the total of payments from the pension account in a financial year (including under a payment split⁹ but excluding amounts rolled over within the superannuation system¹⁰) to meet a minimum amount as calculated under clause 1 of Schedule 7 to the SIS Regulations.

18. Subparagraph (b)(ii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations requires the total payments from the pension account in a financial year (excluding payments by way of commutation¹¹ but including payments under a payment split) not to exceed 10% of the pension account balance unless the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'.

⁸ Search for 'QC42388'

⁹ Under Part VIIIB of the *Family Law Act 1975*: see the definition of 'payment split' in subregulation 1.03(1) of the SIS Regulations.

¹⁰ The exclusion of amounts rolled over was introduced with effect from 6 June 2009.

¹¹ The exclusion of payments by way of commutation was introduced with effect from 16 February 2008.

Permitted commutations

19. Subparagraph (b)(iii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations requires the pension to comply with the requirements of paragraph (b) of the definition of 'non-commutable allocated pension'¹², as if it were such a pension.

20. Assuming that a particular account based pension that is a transition to retirement income stream can be commuted under the rules of the particular SMSF from which the pension is being received by a member of that SMSF and that the member has not, before the commutation, satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil', the payment made as a result of a commutation of such a pension cannot be cashed unless the purpose of the commutation is to:

- cash an unrestricted non-preserved benefit
- pay a superannuation contributions surcharge
- give effect to an entitlement of a non-member spouse under a payment split
- pay an amount to give effect to a release authority under various provisions in respect of excess contributions or (from 17 December 2013) tax payable under Division 293 of the *Income Tax Assessment Act 1997*, or
- satisfy an obligation to pay an amount to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.¹³

Partial commutation

21. Consistent with the views set out in Taxation Ruling TR 2013/5¹⁴, a member partially commutes their account based pension that is a transition to retirement income stream if they consciously and validly exercise their right to exchange something less than their full entitlement to receive future payments under the pension for an entitlement to be paid a lump sum. As there is a continuing obligation to pay the pension, a partial commutation of an account based pension that is a transition to retirement income stream does not result in the cessation of the pension.

22. As the account based pension that is a transition to retirement income stream does not cease as a result of a partial commutation of that pension, and the requirement in paragraph 1.06(9A)(a) of the SIS Regulations does not exclude payments made from the pension account as a result of a partial commutation, such a payment¹⁵ counts towards the minimum annual amount required to be paid from the pension account under that paragraph, unless the payment is rolled over within the superannuation system on or after 6 June 2009.

¹² Prior to 17 December 2013 that definition was found in subregulation 6.01(2) of the SIS Regulations. With effect from that date it was moved to regulation 6.01AB of the SIS Regulations.

¹³ See the current and former definition of 'non-commutable allocated pension'.

¹⁴ See paragraphs 27, 103 to 114, and 119 of that Taxation Ruling.

¹⁵ Whether in cash or *in specie*.

23. As the requirement in subparagraph (b)(ii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations excludes payments by way of commutation, a payment made as a result of a partial commutation of an account based pension that is a transition to retirement income stream does not count towards the maximum annual amount allowed to be paid from the pension account under that subparagraph, unless the payment was made before 16 February 2008.

Full commutation

24. Consistent with the views set out in Taxation Ruling TR 2013/5¹⁶, a full commutation of an account based pension that is a transition to retirement income stream takes effect as soon as the trustee's liability to pay periodic pension payments to a member is substituted in full with a liability to pay the member a lump sum instead. The account based pension that is a transition to retirement income stream therefore ceases at this time.

25. As the payment of the full commutation lump sum is made after the cessation of the account based pension that is a transition to retirement income stream, it cannot count towards the minimum annual amount required to be paid from the pension account under paragraph 1.06(9A)(a) of the SIS Regulations or the maximum annual amount allowed to be paid from the pension account under subparagraph (b)(ii) of the definition of 'transition to retirement income stream' in subregulation 6.01(2) of the SIS Regulations.

¹⁶ See paragraphs 23 to 25 and 103 to 117 of that Taxation Ruling.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2013/5; SMSFD 2013/2

Subject references:

- account based pension
- full commutation
- maximum annual payment
- minimum annual payment
- partial commutation
- self managed superannuation funds
- transition to retirement income stream

Legislative references:

- SISA 1993 10(4)
- SISA 1993 17A

- SISR 1994 1.03(1)
- SISR 1994 1.06(1)
- SISR 1994 1.06(9A)
- SISR 1994 1.06(9A)(a)
- SISR 1994 6.01(2)
- SISR 1994 6.01AB
- SISR 1994 6.01AB(1)(b)(i)
- SISR 1994 6.01AB(1)(b)(iii)
- SISR 1994 6.01AB(2)(a)
- SISR 1994 6.01AB(2)(b)
- SISR 1994 6.01AB(2)(c)
- SISR 1994 6.01AB(2)(d)
- SISR 1994 6.01B
- SISR 1994 Sch 1 Item 110
- SISR 1994 Sch 7 Clause 1
- ITAA 1997 Div 293
- Family Law Act 1975 Pt VIIIB
- Superannuation (Unclaimed Money and Lost Members) Act 1999 20F(1)

ATO references

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