

LCG 2016/12A1 - Addendum - Superannuation reform: total superannuation balance

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Addendum

Law Companion Guideline

Superannuation reform: total superannuation balance

This Addendum amends Law Companion Guideline LCG 2016/D12 to finalise the ruling.

LCG 2016/D12 is amended as follows:

1. Page status (all pages)

At the top of all pages, omit

Page status: **draft only – for comment**

Insert:

Page status: **legally binding**

2. First page header and all footers

Omit 'Draft Law Companion Guideline LCG 2016/D12'; substitute 'Law Companion Guideline LCG 2016/12'.

3. Preamble

Omit the preamble; substitute:

Relying on this Guideline

This Guideline is a public ruling for the purposes of the *Taxation Administration Act 1953*.

This Guideline describes how the Commissioner will apply the CGT relief reforms in Schedule 1, Part 3 of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016 (the Act) to entities that rely on it in good faith.

If you rely on this Guideline in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Guideline if it does not correctly state how a relevant provision applies to you.

4. Table of contents

Omit the table; substitute:

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What this Guideline is about

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5. Paragraph 1

- (a) In the heading, omit 'draft Guideline'; substitute 'Guideline'.
- (b) After the paragraph, insert:
 - 1A. All legislative references are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated.

6. Paragraphs 2, 4, 6, 16, 20 and 23

Omit all occurrences of the word 'draft'.

7. Paragraph 2

- (a) In the first dot point, insert new footnote 1 after the words 'contributions cap.'
- (b) Renumber existing footnote 1 to footnote 2.
- (c) In the second dot, point omit the words 'eligibility for the'.
- (d) Renumber footnote 2 to footnote 3.
- (e) Renumber footnote 3 to footnote 4.

- (f) Renumber footnote 4 to footnote 5.
- (g) Renumber footnote 5 to footnote 6.
- (h) In the fourth dot point
 - (i) After the words 'you will' insert 'not'.
 - (ii) In the first sub-dot point, omit 'do not exceed'; substitute 'exceeds'.
 - (iii) In the second sub-dot point, omit 'is less than'; substitute 'equals or exceeds'.

8. Paragraph 3

- (a) Omit the words 'funds with less than'; substitute 'funds with fewer than'.
- (b) Renumber footnote 6 to footnote 7.
- (c) In dot point two, omit the last sentence; substitute 'The member's total superannuation balance includes the member's superannuation interests in all funds. The superannuation income stream does not have to be from their SMSF/small APRA fund as it can be from another superannuation income stream provider, and'.

9. Paragraph 4

Omit the paragraph; substitute:

4. The eligibility requirements discussed in paragraphs 2 and 3 of this Guideline use the terms 'immediately before' (for example the non-concessional contributions cap) and 'just before' the start of the financial/income year (for example eligibility for unused concessional contributions cap carry forward) as the relevant time for calculating your total superannuation balance. The Commissioner's view is that both refer to the same point in time, which is at the end of 30 June of the previous financial/income year.

10. Paragraph 5

Omit the paragraph.

11. Paragraph 6

Omit the paragraph and footnotes; substitute:

6. Your total superannuation balance⁸ at a particular time, is the sum of:

- the **accumulation phase value**⁹ of your superannuation interests that are not in the retirement phase. This is explained further at paragraph 7 of this Guideline
- if you have a superannuation income stream in the retirement phase, **your transfer balance or your modified transfer balance** (but not

⁸ Section 307-230.

⁹ Paragraph 307-230(1)(a) and subsection 307-205(2).

less than nil).¹⁰ If you are the recipient of certain account-based superannuation income streams in the retirement phase¹¹ and/or have made any structured settlement contributions, your transfer balance is subject to modifications for the purpose of calculating your total superannuation balance. This is explained further at paragraph 14 of this Guideline, and

- the amount of any **roll-over superannuation benefit**¹² not already reflected in your accumulation phase value of your superannuation interests or your transfer balance. This is explained further at paragraph 26 of this Guideline,

reduced by the sum of any **structured settlement contributions**.¹³

12. Paragraph 7

Omit the heading; substitute '**Accumulation phase value – Step 1**'.

13. Paragraph 8

Omit the paragraph and footnotes; substitute:

8. A superannuation interest will be in retirement phase if it supports a superannuation income stream that is in the retirement phase at that time.¹⁴ This will be the case if the interest:

- supports a superannuation income stream where a superannuation income stream benefit is currently payable from it (subject to paragraph 8A of this Guideline)¹⁵ or
- if it is a deferred superannuation income stream¹⁶ that has not yet become payable but the member has met a relevant condition of release (such as retirement, terminal medical condition, permanent incapacity, or attaining age 65).¹⁷

8A. Certain superannuation income streams are excluded from the retirement phase by operation of the law, either because the law specifically excludes the superannuation income stream from being in the retirement phase or because the superannuation income stream fails to meet the definition of a superannuation income in the retirement phase.¹⁸ The following superannuation income streams are excluded from being in retirement phase and are therefore in accumulation phase:

¹⁰ Paragraph 307-230(1)(b).

¹¹ Subsection 307-230(4).

¹² Paragraph 307-230(1)(c). Subsection 995-1(1) provides that a 'roll-over superannuation benefit' has the meaning given by section 306-10.

¹³ Subsection 294-80(2).

¹⁴ Paragraph (b) of the defined term retirement phase in subsection 995-1(1).

¹⁵ Subsection 307-80(1).

¹⁶ Subsection 995-1. A 'deferred superannuation income stream' has the meaning given by the *Superannuation Industry (Supervision) Regulations 1994*.

¹⁷ Paragraph 307-80(2)(c).

¹⁸ Subsection 307-80(3) and (4).

- a deferred superannuation income stream that has not yet become payable and the member has not yet met a relevant condition of release is included in the accumulation phase value. For example if you purchase a deferred superannuation income stream before meeting a relevant condition of release it will form part of the accumulation phase value until you meet a relevant condition of release or it starts to become payable.
- transition to retirement income streams, transition to retirement income pensions, non-commutable allocated annuities and non-commutable allocated pensions¹⁹
- superannuation income streams that stop being in the retirement phase.²⁰

14. Paragraphs 9 to 11

Omit the paragraphs.

15. Paragraph 12

Renumber footnote 15 to footnote 21.

16. Paragraph 13

- (a) Omit the second sentence; substitute 'For example, when you initiate a transfer of funds to your superannuation provider on 29 June 2018 to make a contribution and this amount is received by your superannuation provider on 1 July 2018.'
- (b) Renumber footnote 16 to footnote 22.

17. Paragraph 14

- (a) Insert '– **Step 2**' after the heading.
- (b) Omit 'LCG 2016/D9'; substitute 'LCG 2016/9'.
- (c) Renumber footnote 17 to footnote 23.

18. Paragraph 15

Omit the paragraph and footnotes, substitute:

15. However, for the purpose of calculating your total superannuation balance, your transfer balance is modified if you have a prescribed account-based superannuation income stream in the retirement phase and/or you have made a structured settlement contribution to:

¹⁹ Subsection 307-80(3).

²⁰ See section 307-80. A superannuation income stream stops being in the retirement phase when a commutation authority is not complied with - subsection 307-80(4) or when a superannuation income stream ceases to be a superannuation income stream because it has failed to comply with the pension or annuity standards under which it is provided. See paragraphs 18 to 20 and paragraphs 96 to 102 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation stream commences and ceases*.

- disregard certain credits and debits that have arisen in your transfer balance account in respect of the account-based superannuation income streams; and
- reflect the current value of superannuation interests that support those prescribed account-based superannuation income streams in the retirement phase.²⁴

19. Paragraph 16

Omit 'paragraph 16 and 21 of this draft Guideline'; substitute 'paragraphs 17 to 22 of this Guideline'.

20. Paragraph 17

- Omit 'following account-based income streams'; substitute 'following prescribed account-based superannuation income streams'.
- Renumber footnote 20 to footnote 25.

21. Paragraph 18

Omit 'a superannuation interest that support an account-based income stream'; substitute 'these prescribed account-based superannuation income streams'.

22. Paragraph 19

Omit the paragraph and footnotes; substitute:

19. The following credits and debits that have arisen in your transfer balance account are disregarded:

Credits that have arisen from

- you becoming a retirement phase recipient of the prescribed account-based superannuation income stream.²⁶

Debits that have arisen from

- commutations of the prescribed account-based superannuation income stream in the retirement phase²⁷
- an event that results in the superannuation interest that supports the prescribed account-based superannuation income stream being reduced (fraud or dishonesty; bankruptcy)²⁸

²⁴ Subsection 307-230(4).

²⁶ Items 1 and 2 in the table in subsection 294-25(1).

²⁷ Item 1 in the table in subsection 294-80(1).

²⁸ Item 3 in the table in subsection 294-80(1).

- a payment split that applies to the prescribed account-based superannuation income stream (divorce or relationship breakdown)²⁹
- a superannuation income stream provider failing to comply with a commutation authority in respect of the prescribed account-based superannuation income stream³⁰
- a prescribed account-based superannuation income stream that fails to comply with the relevant pension or annuity standards.³¹

23. Paragraph 25

- After the first occurrence of 1 July 2017, insert '(transitional transfer balance)'.
- Omit 'Examples 6 and 7 of this draft Guideline'; substitute 'Examples 7 and 8 of this Guideline'.
- Renumber footnote 33 to footnote 38.

24. Paragraph 26

- After the heading, insert ' – **Step 3**'
- Renumber footnote 34 to 39.

25. Paragraph 27

In the last dot point, before 'not reflected', insert 'is'.

26. Paragraph 28

- Omit 'paragraph 2 of this draft Guideline'; substitute 'paragraphs 2 and 3 of this Guideline'.
- Omit 'Example 4 of this draft Guideline'; substitute 'Example 4 of this Guideline'.
- After the paragraph, insert:
28A. If you have not made a structured settlement contribution then your total superannuation balance is the sum of Steps 1, 2 and 3.⁴⁰

27. Paragraph 29

- After the heading, insert ' – **Step 4**'.
- Omit footnote 35; substitute:

⁴¹ Paragraph 307-230(2)(a) and sub-paragraph 307-230(2)(b)(ii).

²⁹ Item 4 in the table in subsection 294-80(1).

³⁰ Item 5 in the table in subsection 294-80(1).

³¹ Item 6 in the table in subsection 294-80(1).

⁴⁰ Subsection 307-230(1).

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28. Paragraph 33

(a) Omit:

33. *Shane's total superannuation balance at the end of 30 June 2018 is the sum of:*

Step 1 – Accumulation phase value = zero

Substitute:

33. *Shane's total superannuation balance at the end of 30 June 2018 is the sum of steps 1, 2 and 3 reduced by step 4.*

Step 1 – Accumulation phase value = \$0

(b) Omit:

Credits and debits to Shane's transfer balance account that are relevant to his defined benefit lifetime pension are not disregarded.

Modified transfer balance is \$1,000,000 – \$500,000 + \$400,000 = \$900,000.

Step 3 – Rollover superannuation benefits = zero

Step 4 – Structured settlement contributions = zero

Substitute:

The credit to Shane's transfer balance account relevant to his defined benefit lifetime pension is not disregarded.

Modified transfer balance is \$1,000,000 – \$500,000 + \$400,000 = \$900,000.

Step 3 – Rollover superannuation benefits = \$0

Step 4 – Structured settlement contributions = \$0

29. Paragraph 34

Omit '(Steps 1, 2, 3 and 4)'.

30. Paragraph 36

Omit the paragraph; substitute:

36. *On 1 March 2021 Kathleen partially commuted her annuity by \$100,000. The account balance of her annuity just prior to the partial commutation was \$500,000. She received the superannuation lump sum of \$100,000 which she took out of the superannuation system as a cash payment.*

31. Paragraph 39

(a) At the end of the first sentence, omit ':'; substitute 'steps 1, 2 and 3 reduced by step 4.'

(b) In Steps 3 and 4, omit 'zero'; substitute '\$0'.

32. Paragraph 40

Omit '(Steps 1, 2, 3 and 4)'.

33. Paragraph 42

Omit the paragraph; substitute:

42. *On 1 May 2018, having realised her mistake in starting an account-based pension that exceeded her transfer balance cap, Erin partially commutes the pension to remove the excess amount and as a result receives a superannuation lump sum of \$500,000 which is transferred to an accumulation phase interest in her superannuation fund.*

34. Paragraph 44

Omit the paragraph; substitute

44. *The amount that would be paid to Erin if she voluntarily ceased the account-based pension at the end of 30 June 2018 is \$1,460,000. The amount that would be paid to Erin if she voluntarily ceased her interest in the accumulation phase at the end of 30 June 2018 is \$500,000.*

35. Paragraph 45

- (a) At the end of the first sentence, omit ';; substitute' steps 1, 2 and 3 reduced by step 4.'
- (b) At Step 1, omit 'zero'; substitute '\$500,000'.
- (c) Omit:

*Modified transfer balance is: \$1,503,036 – \$2,000,000
+\$500,000+\$1,460,000 = \$1,463,036.*

Step 3 – Rollover superannuation benefits = zero

Step 4 – Structured settlement contributions = zero

Substitute:

Modified transfer balance is \$1,503,036 - \$2,000,000 + \$500,000 + \$1,460,000 = \$1,463,036.

Step 3 – Rollover superannuation benefits = \$0

Step 4 – Structured settlement contributions = \$0.

36. Paragraph 46

Omit '30 June 2022 is \$1,463,036 (Steps 1, 2, 3 and 4).'; substitute '30 June 2018 is \$1,463,036.'

37. Paragraphs 48 and 49

Omit the paragraphs; substitute:

48. *MaiLin's total superannuation balance at the end of 30 June 2019 is the sum of steps 1, 2 and 3 reduced by step 4.*

Step 1 – Accumulation phase value

MaiLin's roll-over superannuation benefit is not included in the accumulation phase value of her superannuation interests in Fund A or Fund B at the end of 30 June 2019.

Value of MaiLin's superannuation interest not in retirement phase = \$190,000.

Step 2 – Transfer balance = \$0

Step 3 – Rollover superannuation benefits

Roll-over superannuation benefit not reflected in accumulation phase value or transfer balance = \$10,000.

Step 4 – Structured settlement contributions = \$0

49. *MaiLin's total superannuation balance at the end of 30 June 2019 is \$200,000.*

38. Paragraph 50

Omit '*(\$200,000) in his superannuation fund which brings his superannuation balance to \$2,000,000*'; substitute '*of \$200,000 in his superannuation fund which brings the balance of that interest to \$2,000,000*'.

39. Paragraph 54

- (a) At the end of the first sentence, omit ':'; substitute 'steps 1, 2 and 3 reduced by step 4.'
- (b) At Step 2, omit 'zero'; substitute '\$0'.
- (c) Omit:

Transfer balance (modified for account-based pension) is \$0 -\$1,800,000 + \$1,650,000= -\$150,000.

Further modification of transfer balance for structured settlement

(d) Disregard debit arising from the structured settlement contribution

Modified transfer balance is -\$150,000+\$1,800,000 = \$1,650,000

Step 3 – Rollover superannuation benefits = zero

Substitute:

Transfer balance (modified for account-based pension) is \$0 - \$1,800,000 + \$1,650,000= -\$150,000.

Further modification of transfer balance for structured settlement

(d) Disregard debit arising from the structured settlement contribution

Modified transfer balance is -\$150,000 + \$1,800,000 = \$1,650,000

Step 3 – Rollover superannuation benefits = \$0

40. Paragraph 55

After the paragraph, omit '(Steps 1, 2, 3 and 4)'.

41. Paragraph 56

(a) Before the paragraph, insert:

Example 6: Structured settlement contribution split between account-based pension and lifetime pension

55A. *On 1 May 2018 Desi is awarded a structured settlement of \$1,200,000.*

55B. *On the same day she commences an account-based pension for \$200,000 and a lifetime pension for \$1,000,000.*

55C. *At the end of 30 June 2018, the amount that would be paid to Desi if she voluntarily ceased her account-based pension is \$195,000.*

55D. *Desi's total superannuation balance at the end of 30 June 2018 is the sum of steps 1, 2 and 3 reduced by step 4.*

Step 1 – Accumulation phase value = \$0

Step 2 – Modified transfer balance

Desi's transfer balance account at the end of 30 June 2018 is \$0.

| | | Credit | Debit | Balance |
|------------|-------------------------------------|-------------|-------------|-------------|
| 1 May 2018 | Account-based pension | \$200,000 | | \$200,000 |
| 1 May 2018 | Lifetime pension | \$1,000,000 | | \$1,200,000 |
| 1 May 2018 | Structured settlement contributions | | \$1,200,000 | \$0 |

- (a) *Disregard the amount of the credit that has arisen in respect of the account-based pension (\$200,000).*
- (b) *The debit arising from the structured settlement contribution is not disregarded.*
- (c) *Increase the balance by the amount that would become payable if the account-based pension voluntarily ceased at the end of 30 June 2018 (\$195,000).*

Transfer balance (modified for account-based pension) is \$0 - \$200,000 + \$195,000 = -\$5,000.

- (d) *Disregard debit arising from the structured settlement contribution*

Modified transfer balance is -\$5,000 + \$1,200,000 = \$1,195,000

Step 3 – Rollover superannuation benefits = \$0

Further modification of transfer balance for structured settlement

Reduced by Step 4 – Structured settlement contributions= \$1,200,000

55E. *Desi's total superannuation balance at the end of 30 June 2018 is -\$5,000.*

42. Paragraph 57

- (a) In the heading, omit 'Example 6'; substitute 'Example 7'.
- (b) At the end of the first sentence, insert 'steps 1, 2 and 3 reduced by step 4'.
- (c) At Step 1, omit 'zero'; substitute '\$0'.
- (d) At Step 2, before the second occurrence of 'transfer balance', insert 'transitional'.
- (e) Omit:
 - (b) *Increase the balance by the amount that would become payable if the account-based pension voluntarily ceased just after the start of 1 July 2017 (\$470,000).*

*Transitional modified transfer balance at 30 June 2017 =
\$470,000-\$470,000+\$470,000 = \$470,000*

Step 3 – Roll-over superannuation benefits = zero

Step 4 – Structured settlement contributions = zero

Substitute

(b) Increase the balance by the amount that would become payable if the account-based pension voluntarily ceased just after the start of 1 July 2017 (\$470,000).

*Transitional modified transfer balance at 30 June 2017 is \$470,000 -
\$470,000 + \$470,000 = \$470,000*

Step 3 – Roll-over superannuation benefits = \$0

Step 4 – Structured settlement contributions = \$0

43. Paragraph 58

Omit '30 June 2018 is \$470,000 (Steps 1, 2, 3 and 4).'; substitute '30 June 2017 is \$470,000'.

44. Paragraph 59

In the heading, omit 'Example 7'; substitute 'Example 8'.

45. Paragraph 62

Omit the paragraph and footnote; substitute

62. *Cameron's total superannuation balance at the end of 30 June 2017 is the sum of steps 1, 2 and 3 reduced by step 4.*

Step 1 – Accumulation phase value = \$0

Step 2 – Modified transfer balance

The earliest that Cameron can commence to have a transfer balance account is 1 July 2017.

The transitional arrangements apply so that his transitional transfer balance at the end of 30 June 2017 is equal to the sum of his transfer balance credits just after the start of 1 July 2017 less the debit for his payment split that arose on 1 July 2017.

Cameron's transitional transfer balance just after the start of 1 July 2017 is \$1,240,000.⁴²⁴²

| | | <i>Credit</i> | <i>Debit</i> | <i>Balance</i> |
|-------------|---|---------------|--------------|----------------|
| 1 July 2017 | <i>Defined benefit lifetime pension</i> | \$600,000 | | \$600,000 |
| 1 July 2017 | <i>Payment split</i> | | \$360,000 | \$240,000 |
| 1 July 2017 | <i>Account-based pension</i> | \$1,000,000 | | \$1,240,000 |

- (a) *Disregard the amount of the credit that has arisen in respect of the account-based pension just after the start of 1 July 2017 (\$1,000,000).*
- (b) *Increase the balance by the amount that would become payable if the account-based pension voluntarily ceased just after the start of 1 July 2017 (\$1,000,000).*

Transitional modified transfer balance at 30 June 2017 is \$1,240,000 - \$1,000,000 + \$1,000,000 = \$1,240,000

Step 3 – Rollover superannuation benefits = \$0

Step 4 – Structured settlement contributions = \$1,200,000

46. Paragraph 63

At the end of the first sentence, delete '(steps 1, 2 and 3 reduced by step 4)'.

47. Your comments

Omit the heading and paragraph.

48. References

- (a) Omit Legislative references; substitute:
 - ITAA 1997 290-230(4A)
 - ITAA 1997 291-20(3)(b)

⁴² Section 307-230 of the of the *IT(TP)A 1997* only applies to count certain credits and debits that arise on 1 July 2017 in the value of a person's transitional transfer balance on 30 June 2017. A debit for a structured settlement contribution is not a debit that is counted.

ITAA 1997 291-20(3)(c)
ITAA 1997 292-85(2)(a)
ITAA 1997 292-85(3)
ITAA 1997 292-85(4)
ITAA 1997 292-85(5)
ITAA 1997 292-85(6)
ITAA 1997 292-85(7)
ITAA 1997 294-25(1)
ITAA 1997 294-80(1)
ITAA 1997 294-80(2)
ITAA 1997 295-387
ITAA 1997 306-10
ITAA 1997 307-80(1)
ITAA 1997 307-80(2)(a)
ITAA 1997 307-80(3)
ITAA 1997 307-80(4)
ITAA 1997 307-205(2)
ITAA 1997 307-230
ITAA 1997 307-230(1)(b)
ITAA 1997 307-230(2)(a)
ITAA 1997 307-230(2)(b)
ITAA 1997 307-230(2)(b)(i)
ITAA 1997 307-230(3)
ITAA 1997 307-230(4)
ITAA 1997 995-1(1)
ITTPA 1997 307-230
TAA 1953 Sch 1 136-70

Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016

Superannuation (Government Co-contribution for Low Income Earners) Act 2003 6(1)(da)

Superannuation (Government Co-contribution for Low Income Earners) Act 2003 6(1)(db)

Superannuation Industry (Supervision) Regulations 1994

(b) Omit 'LCG 2016/D9' from Related Rulings/Determinations; substitute 'LCG 2016/9'.

This Addendum applies on and from 20 March 2017.

Commissioner of Taxation

20 March 2017

ATO references

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