

# ***LCR 2016/12A5 - Addendum - Superannuation reform: total superannuation balance***

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## Addendum

### Law Companion Ruling

#### Superannuation reform: total superannuation balance

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends LCR 2016/12 to refer to certain circumstances where the outstanding balance of a limited recourse borrowing arrangement is included when working out an individual members' total superannuation balance as set out in paragraph 307-230(1)(d) and section 307-231 of *Income Tax Assessment Act 1997*. These amendments were introduced under the *Treasury Laws Amendment (2018 Superannuation Measures No. 1) Act 2019*. This Addendum also amends LCR 2016/12 to reflect changes in the rules that determine when a transition to retirement income stream is in retirement phase introduced under the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019*.

#### LCR 2016/12 is amended as follows:

##### 1. Preamble

Omit the preamble; substitute:

###### **ⓘ Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

##### 2. Table of contents

Omit the 'Table of contents'; substitute:

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**3. Paragraph 2**

After '30 June 2017'; insert footnote A1:

<sup>A1</sup> The fourth component of a total superannuation balance (in relation to limited recourse borrowing arrangements) will apply to contracts entered into on or after 1 July 2018. Refer to paragraphs 28AA to 28A of this Ruling.

**4. Paragraph 6**

(a) Omit the paragraph (excluding footnotes 8 to 13); substitute:

6. Your total superannuation balance<sup>8</sup> at a particular time, is the sum of:
- the **accumulation phase value**<sup>9</sup> of your superannuation interests that are not in the retirement phase. This is explained further at paragraphs 7 to 13 of this Ruling
  - if you have a superannuation income stream in the retirement phase, **your transfer balance or your modified transfer balance** (but not less than nil).<sup>10</sup> If you are the recipient of certain account-based superannuation income streams in the retirement phase<sup>11</sup> 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 paragraphs 14 to 25 of this Ruling

- the amount of any **roll-over superannuation benefit**<sup>12</sup> not already reflected in your accumulation phase value of your superannuation interests or your transfer balance. This is explained further at paragraphs 26 to 28 of this Ruling, and
- in certain circumstances, the outstanding balance of any limited recourse borrowing arrangement (**LRBA amounts**) you have in an SMSF (or another regulated superannuation fund with less than five members).<sup>12A</sup> This is explained further at paragraphs 28AA to 28A of this Ruling,

reduced by the sum of any **structured settlement contributions**.<sup>13</sup>

- (b) In the fourth dot point, after 'less than five members.'; insert new footnote 12A:

<sup>12A</sup> Paragraph 307-230(1)(d) and section 307-231.

## 5. Paragraph 8

- (a) Omit the last dot point (excluding footnote 17); substitute:

- if it is a transition to retirement income stream, transition to retirement income pension, non-commutable allocated annuity or a non-commutable allocated pension (collectively known as TRIS), when the person receiving the TRIS:
  - is 65 years old or older
  - has met a relevant condition of release with a nil cashing restriction (retirement, terminal medical condition, permanent incapacity) and they have notified the superannuation provider for the TRIS of that fact<sup>17</sup>, or
  - is a reversionary beneficiary.<sup>17A</sup>

- (b) At the end of the last dot point, insert new footnote 17A:

<sup>17A</sup> Paragraph 307-80(3)(aa).

## 6. Paragraph 8A

In the second dot point, omit 'member', insert 'person to whom the benefit is payable is not a reversionary beneficiary, and:'.

## 7. Paragraph 28A

- (a) Omit 'Steps 1, 2 and 3'; substitute 'Steps 1, 2, 3 and 4'.

- (b) Before the paragraph, insert new paragraphs 28AA to 28AF (including heading):

### **LRBA amounts – Step 4**

28AA. The fourth component, if applicable, is the outstanding balance of a limited recourse borrowing arrangement (LRBA) which is covered by the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (SISA)<sup>39A</sup>, subject to the further conditions as outlined in paragraphs 28AB to 28AD of this Ruling.

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28AB. This component applies in respect of an LRBA which was entered into on or after 1 July 2018 by the trustee of an SMSF (or another regulated superannuation fund with less than five members).<sup>39B</sup>

28AC. Where an LRBA, which is covered by subsection 67A(1) of the SISA, was entered into before 1 July 2018 and is refinanced on or after 1 July 2018, the refinanced LRBA is treated as being entered into before 1 July 2018 for the purpose of working out an individual's total superannuation balance if:

- the refinanced LRBA is secured by the same assets as the original LRBA, and
- the amount borrowed under the refinanced LRBA at the time it is entered into is equal to or less than the outstanding balance of the borrowing under the original LRBA just before the refinancing.<sup>39C</sup>

28AD. This component applies to you if:

- you have satisfied a relevant condition of release (at any point in time) with a nil cashing restriction (retirement, terminal medical condition, permanent incapacity, attaining age 65)<sup>39D</sup>, or
- your superannuation interests are supported by assets which are subject to an LRBA where the lender is an associate of the superannuation provider.<sup>39E</sup>

28AE. The amount of this component is equal to the proportion of the outstanding balance of the LRBA which relates to your share of the total superannuation interests that are supported by the asset which is subject to the LRBA.<sup>39F</sup>

28AF. It should be noted that Part IVA of the ITAA 1936 may apply where a scheme is entered into to manipulate the allocation of assets that are subject to LRBAs against particular superannuation interests at a particular time.<sup>39G</sup> Part IVA applies to a scheme if a tax benefit has been obtained in connection with the scheme and the main purpose of a person who participated in the scheme, or a part of it, was to enable a taxpayer to obtain that tax benefit.

(c) In paragraph 28AA, after '(SISA)', insert new footnote 39A:

<sup>39A</sup> Paragraph 307-230(1)(d) and section 307-231.

(d) At the end of paragraph 28AB, insert new footnote 39B:

<sup>39B</sup> Subsection 307-231(4).

(e) At the end of paragraph 28AC, insert new footnote 39C:

<sup>39C</sup> Section 307-231 of the *Income Tax (Transitional Provisions) Act 1997*.

(f) In paragraph 28D, at the end of the first dot point, insert new footnote 39D:

<sup>39D</sup> Subparagraph 307-231(1)(e)(i) and paragraph 307-80(2)(c).

(g) In paragraph 28AD, at the end of the second dot point, insert new footnote 39E:

<sup>39E</sup> Subparagraph 307-231(1)(e)(ii) of the ITAA 1997 and subsection 318(3) of the *Income Tax Assessment Act 1936* (ITAA 1936).

(h) At the end of paragraph 28AE, insert new footnote 39F:

<sup>39F</sup> Subsection 307-231(3).

- (i) In paragraph 28AF, at the end of the first sentence, insert new footnote 39G:  
<sup>39G</sup> See paragraph 4.24 of the Explanatory Memorandum to the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018.

**8. Paragraph 29**

Omit the heading; substitute:

***Reduce by structured settlement contributions – Step 5***

**9. Paragraph 31**

Omit the heading; substitute:

***Examples***

*Example 1: Account-based pension and defined benefit lifetime pension*

**10. Paragraph 33**

- (a) Omit the first sentence; substitute:

*Shane's total superannuation balance at the end of 30 June 2018 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$0**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$0**

**11. Paragraph 39**

- (a) Omit the first sentence; substitute:

*Kathleen's total superannuation balance at the end of 30 June 2022 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$0**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$0**

**12. Paragraph 45**

- (a) Omit the first sentence; substitute:

*Erin's total superannuation balance at the end of 30 June 2018 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$0**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$0**

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## 13. Paragraph 48

- (a) Omit the first sentence; substitute:

*MaiLin's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 - Structured settlement contributions = \$0**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$0**

## 14. Paragraph 49

- (a) After the paragraph, insert:

*Example 4A: LRBA amount – condition of release with nil cashing restriction*

49A. *Harry and Beth are members of their SMSF, the H&B Superannuation Fund. Harry is aged 65 years and Beth is aged 60 years. They have not commenced any superannuation income streams from their SMSF. Neither Harry nor Beth holds an interest in any other superannuation fund.*

49B. *As at 28 June 2019, Harry's balance in the SMSF is \$600,000 and Beth's balance is \$400,000. These balances are held in cash.*

49C. *On 29 June 2019, the SMSF enters into an LRBA covered by subsection 67A(1) of the SISA with a commercial lender to borrow \$1,000,000. It uses the \$1,000,000 it borrows together with \$500,000 that it held in cash to purchase a commercial property for \$1,500,000.*

49D. *Of the \$500,000 cash used to purchase the commercial property, 60% (\$300,000) was supporting Harry's superannuation interest and the other 40% (\$200,000) was supporting Beth's superannuation interest. These percentages also reflect the extent to which the commercial property supports Harry and Beth's superannuation interests.*

49E. *At the end of 30 June 2019, the SMSF has total assets of \$2,000,000 made up of the market value of the commercial property of \$1,500,000 and \$500,000 in cash. The SMSF also has a liability of \$1,000,000.*

49F. *Harry's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

**Step 1 – Accumulation phase value**

*Value of Harry's superannuation interest that is not in retirement phase is \$600,000 (made up of \$300,000 cash and \$300,000, being 60% of the net value of the property)*

**Step 2 – Transfer balance = \$0**

**Step 3 – Rollover superannuation benefits = \$0**

**Step 4 – LRBA amounts = \$600,000**

*As Harry is aged 65 years, he has met a relevant condition of release with a nil cashing restriction.<sup>41A</sup> His total superannuation balance will include an LRBA amount. The value of Harry's LRBA amount is \$600,000 which is 60% of the value of the outstanding balance of the LRBA of \$1,000,000.*

**Step 5 – Structured settlement contributions = \$0**

49G. *Harry's total superannuation balance at the end of 30 June 2019 is \$1,200,000.*

49H. *Beth's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

**Step 1 – Accumulation phase value**

*Value of Beth's superannuation interest that is not in retirement phase is \$400,000 (made up of \$200,000 cash and \$200,000, being 40% of net value of property)*

**Step 2 – Transfer balance = \$0****Step 3 – Rollover superannuation benefits = \$0****Step 4 – LRBA amounts = \$0**

*There is no LRBA amount to be included as Beth does not satisfy a relevant condition of release with a nil cashing restriction, nor is the lender an associate of the superannuation fund.*

**Step 5 – Structured settlement contributions = \$0**

49I. *Beth's total superannuation balance at the end of 30 June 2019 is \$400,000.*

**Example 4B: LRBA amount – lender is an associate of the superannuation fund**

49J. *Matt and Jodie are the trustees and members of their SMSF, the M&J Superannuation Fund. Both members hold superannuation interests in the accumulation phase supported by cash assets. Neither Matt nor Jodie holds an interest in any other superannuation fund.*

49K. *Matt and Jodie, as trustees, wish to diversify the fund's assets in accordance with the fund's investment strategy, and decide to purchase a parcel of listed shares with a market value of \$500,000. On 1 August 2018, the SMSF enters into an LRBA covered by subsection 67A(1) of the SISA with Matt to borrow \$250,000, under a 7-year loan term at 7.8% per annum with monthly repayments. It uses the \$250,000 it borrows together with \$250,000 it held in cash to purchase the listed shares for \$500,000.*

49L. *At the time just prior to the fund entering into the LRBA, the value of Matt's superannuation interest in the fund was \$450,000 and the value of Jodie's superannuation interest was \$150,000.*

49M. *Of the cash used, 75% (\$187,500) was supporting Matt's superannuation interest and 25% (\$62,500) was supporting Jodie's interest. These percentages also reflect the extent to which the listed shares support Matt and Jodie's superannuation interests.*

49N. *At the end of 30 June 2019, the SMSF has total assets of \$875,000 made up of the market value of the listed shares of \$520,000 and \$355,000 in cash. The SMSF also has a liability in respect of the LRBA of \$207,408.*

49O. *Matt is an associate of the SMSF.<sup>41B</sup>*

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49P. *Matt's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

**Step 1 – Accumulation phase value**

*Value of Matt's superannuation interest that is not in retirement phase is \$500,694 (made up of \$266,250, being 75% of the cash and \$234,444, being 75% of the net value of listed shares).*

**Step 2 – Transfer balance = \$0**

**Step 3 – Rollover superannuation benefits = \$0**

**Step 4 – LRBA amounts = \$155,556**

*As the LRBA lender is an associate of the SMSF, Matt's total superannuation balance will include an LRBA amount. The value of Matt's LRBA amount is \$155,556, which is 75% of the outstanding balance of the LRBA of \$207,408.*

**Step 5 – Structured settlement contributions = \$0**

49Q. *Matt's total superannuation balance at the end of 30 June 2019 is \$656,250.*

49R. *Jodie's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

**Step 1 – Accumulation phase value**

*Value of Jodie's superannuation interest that is not in retirement phase is \$166,898 (made up of \$88,750, being 25% of the cash and \$78,148, being 25% of the net value of listed shares).*

**Step 2 – Transfer balance = \$0**

**Step 3 – Rollover superannuation benefits = \$0**

**Step 4 – LRBA amounts = \$51,852**

*As the LRBA lender is an associate of the SMSF, Jodie's total superannuation balance will include an LRBA amount. The value of Jodie's LRBA amount is \$51,852 which is 25% of the outstanding balance of the LRBA of \$207,408.*

**Step 5 – Structured settlement contributions = \$0.**

49S. *Jodie's total superannuation balance at the end of 30 June 2019 is \$218,750.*

(b) In paragraph 49F, in Step 4 after 'nil cashing restriction', insert new footnote 41A:

<sup>41A</sup> Subparagraph 307-231(1)(e)(i) and subparagraph 307-80(2)(c)(iv).

(c) At the end of paragraph 49O, insert new footnote 41B:

<sup>41B</sup> Paragraph 318(3)(a) of the ITAA 1936.

**15. Paragraph 54**

- (a) Omit the first sentence; substitute:

*Jack's total superannuation balance at the end of 30 June 2019 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$1,800,000**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$1,800,000**

**16. Paragraph 55D**

- (a) Omit first sentence; substitute:

*Desi's total superannuation balance at the end of 30 June 2018 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit:

*Further modification of transfer balance for structured settlement*

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

Substitute:

**Step 4 – LRBA amounts = \$0**

*Further modification of transfer balance for structured settlement*

**Step 5 – Structured settlement contributions = \$1,200,000**

**17. Paragraph 57**

- (a) Omit the first sentence; substitute:

*Tatsuya's total superannuation balance at the end of 30 June 2017 is the sum of Steps 1, 2, 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$0**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$0**

**18. Paragraph 62**

- (a) Omit the first sentence; substitute:

*Cameron's total superannuation balance at the end of 30 June 2017 is the sum of Steps 1, 2 3 and 4 reduced by Step 5.*

- (b) Omit '**Step 4 – Structured settlement contributions = \$1,200,000**'; substitute:

**Step 4 – LRBA amounts = \$0**

**Step 5 – Structured settlement contributions = \$1,200,000**

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This Addendum applies on and from:

- 1 July 2018, in respect of updates to reflect the relevant amendments introduced by the *Treasury Laws Amendment (2018 Superannuation Measures No. 1) Act 2019*, and
- 1 April 2019, in respect of updates to reflect the relevant amendments introduced by the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019*.

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**Commissioner of Taxation**

18 December 2019

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ATO references

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