

# Cover sheet for: LCG 2016/9A1- Addendum

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## Addendum

### Draft Law companion guideline

### Superannuation reform: transfer balance cap

This Addendum amends LCG 2016/D9 to finalise the ruling following the enactment of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*.

#### LCG 2016/9 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/D9'; substitute 'Law Companion Guideline LCG 2016/9'.

##### 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 amendments made by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* 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

Update the Table of contents in line with paragraph changes set out in this Addendum.

# LCG 2016/D9

## 5. Paragraph 1

Omit 'draft' from the paragraph heading.

## 6. Paragraph 2

Omit the paragraph; substitute:

2. If they commence a superannuation income stream, income earned on the ongoing investment of the capital (the superannuation interest) that supports the superannuation income stream is exempt from tax. This exemption applies to the superannuation income stream provider.

## 7. Paragraph 3

- (a) In the first sentence, omit '*Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* (the Bill)'; substitute '*Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (the Act)'.  
(b) In the second sentence, omit the word 'fund'; substitute 'income stream provider'.

## 8. Paragraph 4

- (a) Omit the word 'draft'.  
(b) Omit '2017-2018'; substitute '2017-18'.

## 9. Paragraph 5

Omit the paragraph; substitute:

5. It provides specific guidance on the following new concepts:
  - the general transfer balance cap, your transfer balance account, your transfer balance and your personal transfer balance cap (**your transfer balance cap**)
  - the consequences of your transfer balance exceeding your transfer balance cap, resulting in an 'excess transfer balance' including:
    - the excess transfer balance tax and how this is calculated
    - when the Commissioner will issue an excess transfer balance determination (**determination**), and
    - the effect of transfers and/or commutations on your transfer balance.

## 10. Paragraph 6

- (a) Omit the second sentence.  
(b) Insert footnote 1

<sup>1</sup> Refer to LCG 2016/ D10 *Superannuation reform: defined benefit income streams - non commutable, lifetime pensions and lifetime annuities* and LCG 2017/D1 *Superannuation reform: defined benefit*

*income streams - pensions or annuities paid from non-commutable, life expectancy or market-linked products for further guidance on these rules.*

### **11. Paragraph 7**

Omit ‘, as proposed to be amended by the Bill,’.

### **12. Paragraph 8**

- (a) Omit the word ‘Bill’; substitute ‘Act’.
- (b) Omit ‘the general transfer balance cap<sup>2</sup> and your transfer balance cap’; substitute transfer balance,<sup>3</sup> the general transfer balance cap<sup>4</sup> and a personal transfer balance cap<sup>5</sup>.
- (c) Omit footnotes 1 to 3; substitute footnotes 2 to 5:

<sup>2</sup> Section 294-15.

<sup>3</sup> Subsection 294-30(2).

<sup>4</sup> Subsection 294-35(3).

<sup>5</sup> Subsections 294-35(1) and (2).

### **13. Paragraph 9**

- (a) In the first sentence, omit the word ‘net’.
- (b) In the first sentence, after ‘transferred to’, insert ‘the’.
- (c) In the second sentence, omit the word ‘account’.

### **14. Paragraph 10**

Omit the paragraph.

### **15. Paragraph 11**

Omit the paragraph (including footnotes); substitute:

11. You commence to have a transfer balance account on the later of 1 July 2017 and the day you first start to be a retirement phase recipient of a superannuation income stream. If you are a retirement phase recipient of a superannuation income stream just before 1 July 2017 (at the end of 30 June 2017), your transfer balance account commences on 1 July 2017.<sup>6</sup>

11A. You are a retirement phase recipient of a superannuation income stream at a time if:

- (a) the superannuation income stream is in the retirement phase at that time,<sup>7</sup> and
- (b) a superannuation income stream benefit from the superannuation income stream is payable (that is, an entitlement to be paid commences) to you at that time<sup>8</sup> or, if the income stream is a deferred superannuation income stream, the benefit will become payable to you after that time.<sup>9</sup>

<sup>6</sup> Subsection 294-15(2).

<sup>7</sup> Paragraph 294-20(1)(a) and section 307-80.

<sup>8</sup> Paragraph 294-20(1)(b).

<sup>9</sup> Subsection 294-20(2).

## 16. Paragraph 12

Omit footnote 6; substitute footnote 10:

<sup>10</sup> Section 294-45. There are special rules that apply in the case where a superannuation income stream is payable to a dependent child beneficiary – see Subdivision 294-E.

## 17. Paragraph 13

Omit the paragraph (including footnotes); substitute:

13. Subject to paragraph 15 of this Guideline, a superannuation income stream is in the retirement phase when a superannuation income stream is currently payable.<sup>11</sup> If it is a deferred superannuation income stream<sup>12</sup>, that income stream is in the retirement phase when a person has met a relevant condition of release (retirement, terminal medical condition, permanent incapacity or attaining age 65).<sup>13</sup>

<sup>11</sup> Section 307-80.

<sup>12</sup> Subsection 995-1 – it has the meaning given by the *Superannuation Industry (Supervision) Regulations 1994*.

<sup>13</sup> Subsection 307-80(2).

## 18. Paragraph 15

(a) In the first sentence, omit 'an individual's'; substitute 'your'.

(b) Omit footnotes 13 and 14; substitute footnotes 14 and 15:

<sup>14</sup> Subsection 307-80(3).

<sup>15</sup> Schedule 8 of the Act removes the earnings tax exemption in respect of TRIS.

(c) In the second sentence, omit 'funds and life insurance companies'; substitute 'income stream providers'.

(d) After the paragraph, insert:

15A. The age pension (or other types of government assistance payments) and a pension received from a foreign superannuation fund are also not included in your transfer balance account because these pensions are not superannuation income streams.<sup>16</sup>

<sup>16</sup> See section 307-5 and section 307-10 meaning of 'superannuation benefit', section 307-70 meaning of 'superannuation income stream' and section 307-80 meaning of 'superannuation income stream in the retirement phase'.

### **General transfer balance cap and personal transfer balance cap**

15B. When you commence to have a transfer balance account, you will also commence to have a personal transfer balance cap. Your transfer balance cap limits the total amount of capital you can transfer to the retirement phase to support superannuation income streams.

## 19. Paragraph 16

(a) Omit the heading.

(b) Omit footnote 15; insert footnote 17:

<sup>17</sup> Subsection 294-35(1). The exception to this is child recipients of death benefit income streams, see Subdivision 294-E for those modified rules.

- (c) In the second sentence, omit 'will be subject to indexation'; substitute 'is subject to indexation in subsequent years'<sup>18</sup>.

<sup>18</sup> Subsection 294-35(3), section 960-265 and section 960-285.

## **20. Paragraph 17**

- (a) Omit footnote 16; substitute footnote 19:

<sup>19</sup> Subsection 294-40.

- (b) Omit the second sentence; substitute:

However, if your transfer balance has ever equalled or exceeded your transfer balance cap at the end of a day, you will permanently lose your entitlement to increase your transfer balance cap by indexation in future years.<sup>20</sup>

<sup>20</sup> Paragraph 294-40(1)(b) and the meaning of 'unused cap percentage' in subsection 294-40(2).

## **21. Paragraph 18**

Omit the paragraph (including footnote).

## **22. Paragraph 19**

Omit the paragraph, and heading.

## **23. Paragraph 20**

- (a) Insert the heading 'Transfer balance'.
- (b) Omit both instances of 'account'.
- (c) Omit footnote 19; substitute footnote 21:

<sup>21</sup> Subsection 294-30(2).

## **24. Paragraph 21**

- (a) Omit 'on a particular day'; substitute 'at the end of a particular day'.
- (b) Omit footnote 20; substitute footnote 22:

<sup>22</sup> Subsection 294-30(1).

## **25. Paragraph 22**

Omit the paragraph; substitute:

22. If you are receiving a superannuation income stream immediately before 1 July 2017 (end of 30 June 2017), your transfer balance account commences on 1 July 2017. Your transfer balance account is credited with the value of the superannuation interest that supports the superannuation income stream just before 1 July 2017 (end of 30 June 2017).<sup>23</sup>

<sup>23</sup> Item 1 in the table in subsection 294-25(1). Special rules apply if you are a reversionary beneficiary which may cause the credit to arise at a later point in time.

## 26. Paragraph 23

Omit the paragraph; substitute:

23. Where you have more than one superannuation income stream provider just before 1 July 2017 (end of 30 June 2017), your transfer balance will be the sum of the value of all of your superannuation interests supporting superannuation income streams just before 1 July 2017 (end of 30 June 2017).

## 27. Paragraph 24

Omit the paragraph; substitute:

24. Once a superannuation income stream has commenced and a credit arises in your transfer balance account, subsequent changes in the value of the supporting superannuation interest do not affect your transfer balance.

24A. That means a superannuation interest that supports a superannuation income stream that increases in value because of investment earnings<sup>24</sup> does not have its growth reflected in your transfer balance account. Similarly, a superannuation interest that supports a superannuation income stream that decreases in value because of investment losses<sup>25</sup> or a drawdown of superannuation income stream benefits does not have that reduction reflected in your transfer balance account.

24B. This is because investment earnings and losses in respect of the superannuation interest supporting your superannuation income stream and amounts paid to you to comply with the minimum drawdown requirements are not debit or credit events.

<sup>24</sup> Such as capital gains, interest and dividends.

<sup>25</sup> Such as capital losses.

## 28. Paragraph 25

Omit the paragraph; substitute:

25. Consequently, making a large pension drawdown does not reduce your transfer balance and would not bring you under your transfer balance cap. You must commute an amount of your superannuation income stream in order to reduce your transfer balance so that you no longer exceed your transfer balance cap. Commutations are discussed further in paragraph 41 of this Guideline.

## 29. Paragraph 27

- (a) In the second sentence, omit '\$1.15'; substitute '\$1.05'.
- (b) At the end of the paragraph, insert 'and his transfer balance remains \$1.1 million'.

## 30. Paragraph 28

Omit 'superfund'; substitute 'superannuation fund'.

**31. Paragraph 29**

Omit the paragraph; substitute:

29. *Darius' superannuation fund commutes pension A on 7 July 2020 to a superannuation lump sum of \$1 million on that day. Accordingly, a debit equal to this amount arises in his transfer balance account on this day.*

**32. Paragraph 30**

In the table:

- (a) Omit the heading 'Balance'; substitute 'Transfer balance'.
- (b) In the second row, omit '\$100,000'; substitute '\$1 million'.

**33. Paragraph 31**

After the paragraph, insert:

A credit may arise in your transfer balance account from:

- you becoming a retirement phase recipient of a superannuation income stream<sup>26</sup>
- notional earnings that accrue on excess transfer balance amounts.<sup>27</sup>

<sup>26</sup> Item 1 and item 2 in the table in subsection 294-25(1).

<sup>27</sup> Item 3 in the table in subsection 294-25(1).

**34. Paragraph 32**

Omit the paragraph, insert:

32. Section 294-25 refers to a 'reversionary beneficiary'. A reversionary beneficiary is the nominated dependant beneficiary of a superannuation income stream that automatically reverts to the nominated beneficiary on the death of the superannuation income stream recipient (**member**). In these cases, the superannuation income stream does not cease, as the reversionary beneficiary is immediately entitled to receive it.

32A. If the superannuation income stream provider has any discretion about which beneficiary becomes entitled to the superannuation income stream then it is not reversionary, and the beneficiary is not a reversionary beneficiary.<sup>28</sup>

<sup>28</sup> This is consistent with Taxation Ruling TR 2013/5 *Income tax: when a superannuation stream commences and ceases*.

**35. Paragraph 33**

Omit the paragraph; substitute:

33. The 'starting day' (for the purposes of the transfer balance account) for reversionary beneficiaries is the date of death of the original superannuation



member as this is the time the reversionary superannuation income stream becomes payable to them.

## 36. Paragraph 34

At the end of the paragraph, omit everything after 'a reversionary beneficiary'; substitute , the credit arises:

- (a) if the reversionary beneficiary is a retirement phase recipient of the superannuation income stream just before 1 July 2017 – on the later of 1 July 2017 or 12 months from when the superannuation income stream first became payable. The credit is equal to the value of the superannuation interest supporting that superannuation income stream just before 1 July 2017, or
- (b) if the reversionary beneficiary starts to be a retirement phase recipient on or after 1 July 2017 – 12 months from the starting day. The credit is equal to the value of the superannuation interest supporting that superannuation income stream on the starting day.

34A. See LCG 2017/D3 *Superannuation Reform: Transfer Balance Cap - Superannuation death benefits* for more detailed guidance on reversionary beneficiaries and death benefit income streams.

## 37. Paragraph 37

Omit 'purposes'; substitute 'purpose'.

## 38. Paragraph 38

In the second sentence, after 'starting day', insert 'being 1 August 2017'.

## 39. Paragraph 40

After the paragraph, insert:

A debit may arise in your transfer balance account from:

- a commutation of a superannuation income stream in the retirement phase<sup>29</sup>
- structured settlement contributions<sup>30</sup>
- an event that results in your superannuation interest being reduced (fraud or dishonesty; bankruptcy)<sup>31</sup>
- a payment split (divorce or relationship breakdown)<sup>32</sup>
- a superannuation income stream failing to comply with the pension or annuity standards under which it is provided<sup>33</sup>
- a superannuation income stream provider failing to comply with a commutation authority in respect of a particular superannuation income stream<sup>34</sup>
- a notice being issued under section 136-70 in Schedule 1 to the *Tax Administration Act 1953* (TAA) in relation to a non-commutable excess transfer balance.<sup>35</sup>

- <sup>29</sup> Item 1 in the table in subsection 294-80(1).  
<sup>30</sup> Item 2 in the table in subsection 297-80(1).  
<sup>31</sup> Item 3 in the table in subsection 294-80(1).  
<sup>32</sup> Item 4 in the table in subsection 294-80(1).  
<sup>33</sup> Item 5 in the table in subsection 294-80(1).  
<sup>34</sup> Item 6 in the table in subsection 294-80(1).  
<sup>35</sup> Item 7 in the table in subsection 294-80(1).

**40. Paragraph 41**

- (a) Omit 'lump sum'; substitute 'superannuation lump sum'.  
 (b) Omit footnote 23; substitute footnote 36:

<sup>36</sup> Refer to paragraph 110 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases*.

- (c) After the paragraph, insert

A commutation also occurs where a superannuation income stream provider converts superannuation income stream entitlements to a superannuation lump sum in compliance with a commutation authority issued under Subdivision 136-B of Schedule 1 to the TAA in respect of that superannuation income stream.

**41. Paragraph 42**

Omit the paragraph; substitute:

42. Where the superannuation income stream is commuted in full, the superannuation income stream ceases. Where the superannuation income stream is partially commuted<sup>37</sup>, the value of the superannuation interest supporting the superannuation income stream is reduced. The superannuation lump sum that arises from a commutation may be cashed out of the superannuation system or can be retained within the superannuation system subject to the cashing rules for superannuation death benefits.

<sup>37</sup> It is proposed that amendments will be made to the *Superannuation Industry (Supervision) Regulations 1994* and *Retirement Savings Accounts Regulations 1997* so that partial commutations will not count towards the minimum annual payment requirement for superannuation income streams: see paragraph 3.109 of the Explanatory Memorandum (EM) to the Bill.

**42. Paragraph 43**

Omit the paragraph; substitute:

43. When a superannuation income stream is fully or partially commuted, a debit arises<sup>38</sup> in your transfer balance account at the time you receive the superannuation lump sum, not at the time that you instruct your superannuation income stream provider to commute a superannuation income stream. For example, if you instruct your superannuation income stream provider to commute a superannuation income stream on 1 July 2017 and due to processing times the superannuation income stream provider commutes the superannuation income stream to a superannuation lump sum on 7 July 2017, the debit arises on 7 July 2017 and not on 1 July 2017.

<sup>38</sup> Per item 1 in the table in subsection 294-80(1).

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## 43. Paragraph 44

- (a) In the first sentence, before 'personal injury', insert 'a'.
- (b) Omit 'superannuation fund'; substitute ' complying superannuation plan'.
- (c) Omit footnote 26; substitute footnote 39:  
<sup>39</sup> Per item 2 in the table in subsection 294-80(1).
- (d) After sub paragraph (c), insert footnote 40:  
<sup>40</sup> Paragraph 292-95(1)(a), subsection 292-95(3) and (4).

## 44. Paragraph 45

Omit the paragraph (including footnotes); substitute:

- 45. In addition:
  - (a) for contributions made on or after 10 May 2006, the contribution must be covered by section 292-95, which includes requirements for the contribution to be made by a particular time<sup>41</sup> and for the superannuation provider to be notified,<sup>42</sup> or
  - (b) for contributions made before 10 May 2006, the contribution would have been covered by 292-95 if it had been in force at that time disregarding paragraphs 292-95(1)(b) and (d), which are in respect of timing and notification requirements.

<sup>41</sup> Paragraph 292-95(1)(b).

<sup>42</sup> Paragraph 292-95(1)(d).

## 45. Paragraph 46

- (a) Omit 'debit is the'; substitute 'transfer balance debit is equal to the'.
- (b) Omit the last sentence.

## 46. Paragraph 47

Omit 'due to the severity of her injuries'.

## 47. Paragraphs 48 to 51

Omit the paragraphs; substitute:

- 48. *Alice contributes the \$4 million into her superannuation fund, notifies her superannuation fund that this contribution is a structured settlement and commences a superannuation income stream with this amount.*
- 49. *Immediately before 1 July 2017 (end of 30 June 2017), the value of Alice's superannuation interest is now \$3.5 million due to investment returns and superannuation income stream payments made to her. Alice's transfer balance account commences on 1 July 2017 and a transfer balance credit of \$3.5 million arises on this day in respect of this superannuation income stream.*
- 50. *On 1 July 2017, a transfer balance debit of \$4 million also arises in Alice's transfer balance account in respect of the structured settlement contribution. Therefore, Alice's transfer balance is negative \$500,000 at the end of 1 July 2017.*

*Alice is entitled to start another superannuation income stream with a value up to \$2.1 million without exceeding her transfer balance cap (\$1.6 million).*

51. *Because her transfer balance is measured at the end of a day, Alice has never had an excess transfer balance (because the relevant credit and debit both arose on the same day, 1 July 2017) and is eligible to increase her transfer balance cap by indexation in future years.*

#### **48. Paragraph 54**

- (a) Omit 'that is in the retirement phase'.
- (b) After the first sentence, insert footnote 43.

<sup>43</sup> One of the consequences of this is that the income earned in respect of this superannuation interest is not exempt income under Subdivision 295-F.

#### **49. Paragraph 55**

- (a) In the second sentence, omit 'for'.
- (b) Omit footnote 27; substitute footnote 44:

<sup>44</sup> Item 6 in the table in subsection 294-80(1).

#### **50. Paragraph 56**

- (a) Omit footnote 28; substitute footnote 45:  
<sup>45</sup> Item 7 in the table in subsection 294-80(1).
- (b) In the second sentence, omit 'remaining account based'.
- (c) In the second sentence, omit 'to be commuted'; substitute '(other than capped defined benefit income streams) left.'

#### **51. Paragraph 57 and 58**

Omit the paragraphs (including footnotes); substitute:

57. Your superannuation income stream provider does not typically notify us of payment splits and events that result in a reduction in the superannuation interest supporting your superannuation income stream.<sup>46</sup> As such you, or your spouse in respect to payment splits, will need to notify us in the approved form if a payment split or reduction in the superannuation interest supporting your superannuation income stream occurs for a debit to arise in your transfer balance account.<sup>47</sup>

58. Often there is a delay between when the debit arises in your transfer balance account and when you notify us of the debit. In some cases, this delay may lead to a temporary breach of your transfer balance cap. However, once the Commissioner is notified, the debit is applied retrospectively to remedy the breach.

<sup>46</sup> These events include reductions to the value of a superannuation interest that support a superannuation income stream as a result of a conviction of an offence of fraud or dishonesty, or as a result of bankruptcy.

<sup>47</sup> Paragraph 294-85(1)(b).

## 52. Paragraph 59

After 'court order', omit the comma.

## 53. Paragraphs 60 to 62

Omit the paragraphs (including footnotes); substitute:

60. Different treatment arises for the purposes of your transfer balance account depending on whether, under the payment split, the non-member spouse is entitled to either a lump sum amount or a percentage of the member spouse's superannuation income stream benefits payable from the superannuation income stream.

60A. If the payment split is achieved by the member spouse fully or partially commuting a superannuation income stream that is in the retirement phase to pay the non-member spouse a lump sum amount, a debit will arise in the member spouse's transfer balance account.<sup>48</sup> If the non-member spouse chooses to use that lump sum amount to start a superannuation income stream, a transfer balance credit arises in their transfer balance account.<sup>49</sup> These transfer balance credits and debits will be reported to the Commissioner by superannuation income stream providers.

61. Where the split is achieved by dividing the superannuation income stream benefits payable from the superannuation income stream, a credit to the full value of the superannuation interest that supports the superannuation income stream (at the time of the payment split) arises in the transfer balance account of the non-member spouse.<sup>50</sup> In these circumstances the transfer balance credit that originally arose in the member spouse's transfer balance account in respect of the superannuation income stream is not altered.

61A. However, each spouse will receive a debit equal to the other spouse's respective proportional entitlement to the superannuation income stream benefits payable from the superannuation income stream.<sup>51</sup> The purpose of these debits is to proportionately reduce the credits that arose as a result of both the member spouse and the non-member spouse being a retirement phase recipient of the superannuation income stream as a result of the payment split.

61B. In this case, the payment split must apply to a superannuation interest that supports a superannuation income stream that is in the retirement phase and both spouses must be retirement phase recipients of that superannuation income stream as a result of the payment split.<sup>52</sup>

61C. The time at which these debits arise in the member spouse's and non-member spouse's transfer balance account is the later of:<sup>53</sup>

- (a) the operative time for the payment split, or
- (b) at the start of the day the member spouse or non-member spouse first starts to have a transfer balance account.

<sup>48</sup> Item 1 in the table in subsection 294-80(1).

<sup>49</sup> Item 1 and item 2 in the table in subsection 294-25(1).

<sup>50</sup> The credit arises under item 1 or 2 of the table in section 294-25 at the time you start to be a retirement phase recipient.

<sup>51</sup> Item 4 in the table in subsection 294-80(1).

<sup>52</sup> Section 294-90(2).

<sup>53</sup> Subsection 294-90(4).

#### **54. Paragraph 63**

Omit footnote 27; substitute footnote 54:

<sup>54</sup> Section 90MI of the *Family Law Act 1975*.

#### **55. Paragraph 64**

(a) Omit footnote 28; substitute footnote 55:

<sup>55</sup> Section 90MD of the *Family Law Act 1975*.

(b) Omit the second sentence.

#### **56. Paragraphs 65 – 69**

Omit the paragraphs; substitute

65. *Justin has a superannuation income stream that is in the retirement phase that pays \$4,000 per month. The superannuation interest that supports this income stream is valued at \$1.6 million just before 1 July 2017 (at the end of 30 June 2017). Therefore, on 1 July 2017, Justin commences to have a transfer balance account and his transfer balance is \$1.6 million which is equal to his transfer balance cap.*

66. *On 18 November 2017, Justin's wife Lizzy leaves him. The court orders that 60% of the superannuation income stream benefit payable under Justin's superannuation income stream should go to Lizzy. The date specified in the court order is 1 April 2018. Prior to this date, Lizzy did not have a transfer balance account.*

67. *On 1 April 2018, Lizzy becomes the retirement phase recipient of a superannuation income stream and commences to have a transfer balance account. On this day, the superannuation interest supporting the income stream is valued at \$1.61 million (this is not a breach of Justin's transfer balance cap as his transfer balance remains \$1.6 million).*

68. *Justin notifies the Commissioner of the payment split in the approved form.*

68A. *A transfer balance debit arises in Justin's transfer balance account on 1 April 2018 equal to 60% of the value of the superannuation interest that supports the superannuation income stream on 1 April 2018 (\$966,000).*

68B. *A transfer balance credit of \$1.61 million arises in Lizzy's transfer balance account on 1 April 2018. A transfer balance debit also arises in Lizzy's transfer balance account on 1 April 2018 equal to 40% of the value of the superannuation interest that supports the superannuation income stream on 1 April 2018 (\$644,000). Because her transfer balance is measured at the end of a day, Lizzy has never had an excess transfer balance and is eligible to increase her transfer balance cap by indexation in future years.*

68C. *Justin, however, is not eligible to increase his transfer balance cap by indexation in future years as his transfer balance was equal to his transfer balance cap in the past.*

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<b>Justin's transfer balance account</b>				
<b>Date</b>	<b>Description</b>	<b>Debit</b>	<b>Credit</b>	<b>Balance</b>
1 July 2017	Transfer balance account commences		\$1.6 million	\$1.6 million
1 April 2018	Payment split	\$966,000		\$634,000

<b>Lizzy's transfer balance account</b>				
<b>Date</b>	<b>Description</b>	<b>Debit</b>	<b>Credit</b>	<b>Balance</b>
1 April 2018	Transfer balance account commences	\$644,000	\$1.61 million	\$966,000

**57. Paragraph 70**

- (a) Before the word 'excess'; insert 'an'.
- (b) After the paragraph, insert footnote 56:

<sup>56</sup> Modified rules apply in determining excess transfer balance for individuals who are receiving capped defined benefit income streams and child recipients of death benefit income streams. Refer to LCG 2016/ D10 *Superannuation reform: defined benefit income streams - non commutable, lifetime pensions and lifetime annuities* and LCG 2017/D1 *Superannuation reform: defined benefit income streams - pensions or annuities paid from non-commutable, life expectancy or market-linked products* and Subdivision 294-E for further guidance on these rules.

**58. Paragraph 71**

Omit footnote 38; substitute footnote 57:

<sup>57</sup> Subsection 294-30(2).

**59. Paragraphs 72 and 73**

Omit the paragraphs (including footnote); substitute

72. However, the transitional provisions provide that you do not have an excess transfer balance in the transitional period from 1 July 2017 to 31 December 2017<sup>58</sup> if:

- the only transfer balance credits in your transfer balance account are from existing superannuation income streams at the end of 30 June 2017
- your transfer balance is in excess of your transfer balance cap (\$1.6 million) by an amount equal to or less than \$100,000, and
- your transfer balance is reduced to or below your transfer balance cap within the transitional period.<sup>59</sup>

<sup>58</sup> Section 294-30 of the *Income Tax (Transitional Provisions) Act 1997*.

<sup>59</sup> Note that the transfer balance account needs to be decreased by the excess amount during this period. A direction to your superannuation income stream provider to commute the excess within the 60 days to remove the amount is not sufficient.

**60. Paragraph 74**

- (a) Omit 'provision operates'; substitute 'provisions operate'.
- (b) Omit '6'; substitute 'six'.

**61. Paragraph 75**

Omit the paragraph.

**62. Paragraph 76 and 77**

Omit the paragraphs (including footnotes); substitute:

76. As discussed in paragraph 17 of this Guideline, even though your excess transfer balance is disregarded for the transitional period up to 31 December 2017, your transfer balance has still exceeded your transfer balance cap and you will not be entitled to increase your transfer balance cap as a result of proportional indexation.<sup>60</sup>

76A. If the value of all your superannuation interests supporting superannuation income stream/s is likely to exceed \$1.6 million as at 30 June 2017, you will need to closely monitor the balance of your superannuation interests that support superannuation income streams to ensure that you do not exceed your transfer balance cap initially and/or at the end of 31 December 2017. This may require you to reduce the value of your existing superannuation interests supporting superannuation income streams prior to 1 July 2017 to ensure you do not exceed your transfer balance cap. You will also need to reduce your transfer balance to below \$1.6 million by 31 December 2017 if you are subject to the transitional provision.

77. Though there are a number of ways a debit can arise in your transfer balance account, generally a superannuation income stream will need to be commuted in part or in full to reduce your transfer balance back to or below your transfer balance cap.

<sup>60</sup> Paragraph 294-40(1)(b).

**63. Paragraph 78**

Omit footnote 41; substitute footnote 61:

<sup>61</sup> Subsection 294-230(2).

**64. Paragraph 80**

Omit 'superannuation provider'; substitute 'superannuation income stream provider'.

**65. Paragraph 81**

Omit 'excess transfer earnings'; substitute 'excess transfer balance earnings that will be credited to your transfer balance account'.



## 66. Paragraph 82

Omit the paragraph; substitute:

82. Excess transfer balance earnings are calculated daily on your excess transfer balance and are credited daily to your transfer balance account until the Commissioner issues a determination or you no longer have excess transfer balance, whichever is earlier. Credits for excess transfer balance earnings increases your excess transfer balance.

82A. Though credits for excess transfer balance earnings cease to arise in your transfer balance account once the Commissioner has issued a determination, you will still be liable to excess transfer balance tax in respect of excess transfer balance earnings that accrue in relation to any excess transfer balance that you have after the determination has been issued.

82B. Excess transfer balance earnings only cease to accrue for the purpose of excess transfer balance tax once your transfer balance is at or below your transfer balance cap.

## 67. Paragraph 84

Omit 'reported to the ATO by superannuation funds, life insurance companies and debits notified by you'; substitute 'such as information reported to the Commissioner by superannuation income stream providers and transfer balance debits notified by you'.

## 68. Paragraph 85

Omit 'As there are'; substitute 'As there may be'.

## 69. Paragraph 86

Omit 'if the excess transfer balance is removed'; substitute 'if you reduce your transfer balance to or below your transfer balance cap'.

## 70. Paragraph 87

Omit the paragraph; substitute:

87. A determination stops credits for excess transfer balance earnings arising in your transfer balance account and increasing your excess transfer balance (from the date the determination is issued). However, if a credit arises in your transfer balance account after you receive a determination but before your transfer balance is reduced; excess transfer balance earnings will start to be credited to your transfer balance account again from the date of that second credit.

## 71. Paragraph 88

(a) Omit footnote 43; substitute footnote 62:

<sup>62</sup> Defined in subsection 136-10(3) of Schedule 1 to the TAA.

(b) In the first sentence, after 'balance including'; insert 'credits for'.

- (c) In the second sentence, omit 'amount that needs to be debited from'; substitute 'of the debit that needs to arise in'.

**72. Paragraph 89**

After the paragraph, insert 'An example of when this may occur is when a determination is issued and your transfer balance subsequently changes before a commutation authority is issued, such as if you start another pension.'

**73. Paragraph 90**

Omit the paragraph.

**74. Paragraph 91**

Omit the paragraph (including footnote); substitute:

90. Excess transfer balance earnings<sup>63</sup> continue to be calculated irrespective of the determination until your transfer balance is at or below your transfer balance cap. Excess transfer balance tax is imposed on the excess transfer balance earnings that accrue from the date you first start to have excess transfer balance until you no longer have excess transfer balance.

<sup>63</sup> Subsection 294-235(1).

**75. Paragraph 92**

Omit '*Taxation Administration Act 1953 (TAA)*'; substitute 'TAA'.

**76. Paragraph 93**

- (a) Omit footnote 45; substitute footnote 64:

<sup>64</sup> Paragraph 136-10(6)(b) of Schedule 1 to the TAA.

- (b) After the paragraph, insert

93A. This is intended to help you understand what steps the Commissioner will undertake to remove the crystallised reduction amount if you do not make a valid election or choose to reduce a superannuation income stream yourself.

**77. Paragraph 94**

Omit the paragraph (including footnotes); substitute:

94. To meet this requirement, the Commissioner will generally specify the superannuation income stream which caused the excess transfer balance. An example of when the Commissioner will specify a different superannuation income stream is if the superannuation income stream that caused the excess transfer balance is a capped defined benefit income stream.<sup>65</sup> The Commissioner is also unlikely to specify a superannuation income stream if the Commissioner is aware that the value of the superannuation interest<sup>66</sup> supporting that superannuation

income stream is likely to be less than the crystallised reduction amount (unless this is your only superannuation income stream).

<sup>65</sup> As defined in section 294-130.

<sup>66</sup> Based on information available to the Commissioner.

## 78. Paragraph 95

After the paragraph, insert:

However, if you wish for a different superannuation income stream to be commuted than that which is specified in a default commutation notice you may do so by directly asking the superannuation income stream provider to commute your chosen superannuation income stream or by making a valid election (explained in paragraph 96 to paragraph 102 of this Guideline).

## 79. Paragraph 96

- (a) After 'transfer balance determination', insert a comma.
- (b) Omit 'identify the superannuation'; substitute 'identify a different superannuation'.
- (c) Omit 'the amount to be'; substitute 'the amount by which you wish it to be'.

## 80. Paragraph 97

- (a) Omit 'excess transfer balance'.
- (b) After the paragraph, insert 'Where you make an election in accordance with this section the Commissioner can only issue a commutation authority consistent with your election after this period has ended.'

## 81. Paragraph 98

After the paragraph, insert:

98A. You should note that an extension of time to lodge an election with the Commissioner does not stop excess transfer balance earnings accruing for the purposes of excess transfer balance tax.

## 82. Paragraph 99

- (a) Omit 'If the total debit amounts'; substitute 'If the amounts specified'.
- (b) Omit footnote 47; substitute footnote 67:

<sup>67</sup> Subsection 136-55(3) of Schedule 1 to the TAA.

## 83. Paragraph 100

Omit the paragraph; substitute:

100. Once you receive a determination, you may choose to remove the crystallised reduction amount yourself by instructing your superannuation income stream provider/s to commute this amount, instead of making an election under

section 136-20 of Schedule 1 to the TAA. As excess transfer balance earnings continue to accrue for the purposes of excess transfer balance tax you may choose to approach your superannuation income stream provider directly to give effect to the commutation to lessen the time you have excess transfer balance. You may notify the Commissioner in the approved form of transfer balance debits that arise in the period between the date of the determination and when you make an election under section 136-20 of Schedule 1 to the TAA or the end of the period within which an election under section 136-20 of Schedule 1 to the TAA can be made.

**84. Paragraph 101**

Omit the paragraph.

**85. Paragraph 102**

Omit 'superannuation fund'; substitute 'superannuation income stream provider'.

**86. Paragraph 103**

(a) Omit footnote 48; substitute footnote 68:

<sup>68</sup> Subsection 136-55(4) of Schedule 1 to the TAA.

(b) After the paragraph, insert:

103A. For example, an election will not be valid if your only superannuation income stream is the one specified in the default commutation authority.<sup>69</sup>

<sup>69</sup> Paragraph 136-20(1)(b) of Schedule 1 to the TAA.

**87. Paragraph 104**

Omit footnote 49; substitute footnote 70:

<sup>70</sup> Subsection 136-55(1) of Schedule 1 to the TAA.

**88. Paragraph 107**

Omit the paragraph, substitute:

107. Where the initial commutation authorities fail to reduce your transfer balance to or below your transfer balance cap, the Commissioner is able to issue further commutation authorities to any of your superannuation income stream providers to ensure you no longer have excess transfer balance. These further commutation authorities do not need to be the ones specified in the default commutation notice or your election if you make one.

## **89. Paragraph 108**

Omit the paragraph and heading.

## **90. Legislative references**

Insert legislative references:

ITAA 1997  
ITAA 1997 292-95  
ITAA 1997 294-15  
ITAA 1997 294-15(2)  
ITAA 1997 294-20(1)(a)  
ITAA 1997 294-20(1)(b)  
ITAA 1997 294-20(2)  
ITAA 1997 294-25  
ITAA 1997 294-25(1)  
ITAA 1997 294-30(1)  
ITAA 1997 294-30(2)  
ITAA 1997 294-35(1)  
ITAA 1997 294-35(2)  
ITAA 1997 294-35(3)  
ITAA 1997 294-40  
ITAA 1997 294-40(1)(b)  
ITAA 1997 294-40(2)  
ITAA 1997 294-45  
ITAA 1997 294-50  
ITAA 1997 294-80  
ITAA 1997 294-80(1)  
ITAA 1997 294-85(1)(b)  
ITAA 1997 294-90(2)  
ITAA 1997 294-90(4)  
ITAA 1997 294-130  
ITAA 1997 294-230(2)  
ITAA 1997 294-235(1)  
ITAA 1997 307-80  
ITAA 1997 307-80(2)  
ITAA 1997 307-80(3)  
ITAA 1997 960-265  
ITAA 1997 960-285  
TAA 1953  
TAA 1953 Part IVC  
TAA 1953 136-10(3) Sch 1  
TAA 1953 136-10(6) Sch 1  
TAA 1953 136-20 Sch 1

TAA 1953 136-25 Sch 1  
TAA 1953 136-55(1) Sch 1  
TAA 1953 136-55(3) Sch 1  
TAA 1953 136-55(4) Sch 1  
Family Law Act 1975  
Family Law Act 1975 Part VIII B  
Family Law Act 1975 90MI  
Family Law Act 1975 90MD  
ITTPA 1997  
ITTPA 1997 294-30  
Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016

This Addendum applies on and from 10 March 2017.

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**Commissioner of Taxation**

10 March 2017

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