LCG 2016/D9 - Superannuation reform: transfer balance cap

Australian Government
Australian Taxation Office

Draft Law Companion Guideline
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Superannuation reform: transfer balance cap

Relying on this draft Guideline

This draft Guideline describes how the Commissioner will apply the law in the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 when it comes into effect. If the Bill is enacted without amendment, this Guideline will be a public ruling when the Bill comes into effect 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 draft Guideline if it does not correctly state how a relevant provision applies to you.

Table of Contents	**Paragraph**

What this draft Guideline is about

1. When an individual accesses their superannuation (for example, because they have retired), they may take it in the form of a superannuation lump sum, a superannuation income stream (such as a pension), or a combination of the two.

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

3. The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* (the Bill) imposes a transfer balance cap from 1 July 2017 to limit the amount of capital individuals can transfer to the retirement phase to support superannuation income streams. This, in turn, limits the amount of superannuation fund earnings that are exempt from tax.

4. This draft Guideline provides guidance on how the transfer balance cap (set at $1.6 million for the 2017-2018 financial year) operates for account based superannuation income stream products.

5. It provides specific guidance on some new concepts:

- a transfer balance account, including the general transfer balance cap, and your personal transfer balance cap
- credits (increases) and debits (decreases) to your transfer balance account
- the consequences of your transfer balance account 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 determinations, and
  - the effect of transfers and/or commutations on your transfer balance account.

6. Special rules apply to capped defined benefit income streams. Further guidance is being prepared on these rules.

7. All legislative references are to the *Income Tax Assessment Act 1997,* as proposed to be amended by the Bill, unless otherwise stated.

Transfer balance account and transfer balance cap

8. The Bill introduces the concepts of a transfer balance account;[1] the general transfer balance cap[2] and your transfer balance cap.[3]

[1] Section 294-15.
[2] Section 294-35.

9. The purpose of your transfer balance account is to track the net amounts you have transferred to retirement phase. Your transfer balance account allows you to determine whether or not you have exceeded your transfer balance cap on any given day.

10. The ATO is able to provide individuals with information (including information reported to the ATO by superannuation funds and life insurance companies) that it holds at a time about their transfer balance account, which may include their personal transfer balance cap and their transfer balance at a particular time.

Transfer balance account

11. You commence to have a transfer balance account from the first time you are the retirement phase recipient of a superannuation income stream.[4] However, if that time is before 1 July 2017, then your transfer balance account commences on 1 July 2017.[5]

12. You continue to have a transfer balance account even if you subsequently cease to be a retirement phase recipient of a superannuation income steam. You only cease to have a transfer balance account when you die.[6]

13. 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[7], and
- (b) a superannuation income stream benefit from the superannuation income stream is payable to you at that time[8] or, if the income stream is a deferred superannuation income stream, the benefit will become payable to you after that time.[9]

14. A superannuation income stream is in the retirement phase when a superannuation income stream is currently payable.[10] If it is a deferred superannuation income stream[11], that income stream is in retirement phase when a person has met a relevant condition of release (retirement, terminal medical condition, permanent incapacity or attaining age 65).[12]

15. Transition to retirement income streams (TRIS) are not included in an individual's transfer balance account as they are not in the retirement phase.[13] From 1 July 2017, superannuation funds and life insurance companies will be taxed on earnings made from assets supporting a TRIS.[14]

General transfer balance cap and personal transfer balance cap

16. Your transfer balance cap will initially be equal to the general transfer balance cap for the financial year that you begin to have a transfer balance account.[15] The general transfer balance cap is $1.6 million for the 2017-18 financial year and will be subject to indexation.

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[3] Subsection 294-35(3).
[4] Subsection 294-15(1).
[5] Subsection 294-15(2).
[6] Section 294-45; There are special rules that apply in the case where a superannuation income stream is payable to a dependent child beneficiary.
[7] Paragraph 294-20(1)(a).
[8] Paragraph 294-20(1)(b).
[9] Subsection 294-20(2).
[10] Section 307-80.
[11] Has the meaning given by the *Superannuation Industry (Supervision) Regulations 1994.*
[12] Subsection 307-80 (2).
[13] Paragraph 307-80(3)(a).
[14] Schedule 8 of the Bill removes the earnings tax exemption in respect of TRIS.
[15] Subsection 294-35(1).

17. Your transfer balance cap is subject to proportional indexation[16] in line with increases in the general transfer balance cap if your transfer balance has never equalled or exceeded your transfer balance cap.[17]

18. Exceeding your transfer balance cap causes you to permanently lose your entitlement to increase your transfer balance cap by indexation in future years.[18]

Amounts credited and debited to your transfer balance account

19. Broadly, amounts transferred into the retirement phase are credited (an increase) to your transfer balance account and amounts commuted out of the retirement phase are debited (a decrease) to the account.

20. Your transfer balance at a time is the sum of your transfer balance account credits less the sum of your transfer balance account debits at that time.[19] Your transfer balance can be less than zero.

21. If your transfer balance exceeds your transfer balance cap on a particular day, you have an excess transfer balance.[20] The consequences of having an excess transfer balance are explained further in paragraph 78 of this draft Guideline.

22. If you are receiving a superannuation income stream immediately before 1 July 2017, your transfer balance account commences on 1 July 2017. Your transfer balance account is credited by the value of that superannuation interest just before 1 July 2017.[21] This value will be reported to you by your superannuation fund or life insurance company. Where you have more than one superannuation fund just before 1 July 2017, your transfer balance account will be the sum of the value of all of your superannuation interests just before 1 July 2017. You will need to add up the values reported to you by each fund to determine your transfer balance as at 1 July 2017.

23. Credits to your transfer balance account (other than excess transfer balance earnings) will be reported to the ATO by your super funds and life insurance companies, whereas some debits to your transfer balance account will require you to notify the Commissioner in the approved form in order for a debit to arise. Debits to your transfer balance account that require notification are discussed further in paragraph 57 of this draft Guideline.

When debits and credits do not arise in your transfer balance account

24. Investment earnings and losses on your superannuation interest and amounts paid to you to comply with the minimum drawdown requirements are not debit or credit events and therefore do not affect the balance of your transfer balance account.

25. Consequently, making a 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 pension in order to reduce the balance of your transfer balance account so that you no longer exceed your cap. Commutations are discussed further below in paragraph 41 of this draft Guideline.

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[16] Subsections 294-35(2).
[17] Paragraph 294-40(1)(b).
[18] Paragraph 294-40(1)(b).
[19] Subsection 294-30(2).
[20] Subsection 294-30(1).
[21] Item 1 in the table in subsection 294-25(1). Special rules apply if you are a reversionary beneficiary which may allow the credit to arise at a later point in time.

Example 1 – Transfer balance account credits and debits

26. *On 1 July 2018, 61 year old Darius commences an account-based pension (pension A) with a $1.1 million value. His transfer balance account commences on this date.*

27. *Investment returns and payments made to Darius to meet minimum drawdown requirements change the value of the superannuation interest supporting his pension. Because of this, the value of his superannuation interest at 1 July 2019 is $1.15 million. These changes, however, do not cause a credit or debit to arise in his transfer balance account.*

28. *On 1 July 2020, Darius decides that he is unhappy with the investment returns from his provider and instructs his superfund to fully commute his pension.*

29. *His superfund commutes pension A on 7 July 2020 and Darius receives a superannuation lump sum of $1 million on that day.*

30. *The following table details Darius's transfer balance account and the debits and credits arising from the above transactions.*

Transfer balance account				
Date	***Description***	***Debit***	***Credit***	***Balance***
1 July 2018	*Commence pension A*		*$1.1 million*	*$1.1 million*
7 July 2020	*Commutes pension A*	*$1 million*		*$100,000*

Credits that arise in your transfer balance account

31. Section 294-25 sets out when credits arise in your transfer balance account and the amount of the credit.

Credit amounts for reversionary beneficiary and death benefits

32. Section 294-25 refers to a 'reversionary beneficiary'. A reversionary beneficiary is the nominated beneficiary of a superannuation income stream that automatically reverts to the nominated beneficiary on the death of the original superannuation member. In these cases, the superannuation income stream does not cease, as the reversionary beneficiary is immediately entitled to receive it. If the fund's trustee has any discretion about which beneficiary becomes entitled to the superannuation income stream, the interest is not a reversionary interest, and the beneficiary is not a reversionary beneficiary.[22]

33. The 'starting day' for reversionary beneficiaries is the date of the death of the original superannuation member.

34. The credit that arises in the reversionary beneficiary's transfer balance account, however, is delayed to provide the beneficiary with time to arrange their affairs. For a reversionary beneficiary, the credit arises 12 months from the starting day, and the amount is equal to the value of the superannuation interest supporting that superannuation income stream on the starting day.

Example 2 – Reversionary beneficiary

35. *John has a reversionary pension worth $1 million at the time of his death on 1 August 2017.*

[22] This is consistent with Taxation Ruling TR 2013/5 *Income tax: when a superannuation stream commences and ceases*.

36. *Heather is John's wife and is the reversionary beneficiary of this pension.*

37. *As Heather is a reversionary beneficiary, the starting day for the purposes of section 294-25 is the date of John's death, 1 August 2017.*

38. *A credit arises in Heather's transfer balance account on 1 August 2018 (12 months from the starting date). The credit amount is $1 million, which is equal to the value of the superannuation interest on the starting day.*

39. Further guidance is being prepared on reversionary beneficiaries and death benefits.

Debits that arise in your transfer balance account

40. Section 294-80 sets out when debits arise in your transfer balance account, and the amount of the debit.

Commutation

41. A commutation of a superannuation income stream occurs where the member consciously and validly exercises their right to exchange some or all of their entitlement to receive future superannuation income stream benefits for an entitlement to be paid a lump sum.[23]

42. Where a member makes a full commutation, the super income stream ceases. Where the member makes a partial commutation[24], the value of the superannuation interest supporting the superannuation income stream is reduced. The lump sum that arises from a commutation may be cashed out of the superannuation system or can be retained within the fund subject to the cashing rules for superannuation death benefits.

43. When a superannuation income stream is fully or partially commuted, a debit arises[25] in your transfer balance account at the time you receive the superannuation lump sum and not at the time that you instruct your superannuation fund to commute a superannuation income stream. For example, if you instruct your superannuation fund to commute an income stream on 1 June 2017 and due to processing times the superannuation fund provider commutes the pension on 7 July 2017, the debit arises on 7 July 2017 and not 1 June 2017.

Structured settlements

44. Compensation or damages received for personal injury you have suffered that is contributed to a superannuation fund may result in a debit to your transfer balance account.[26] The contribution must arise from:

(a) the settlement of a personal injury claim that is based on the commission of a wrong, or a right created by statute, effected by a written settlement agreement between the parties

(b) settlement of a personal injury claim arising under an Australian workers compensation law, or

[23] Refer to paragraph 110 of TR 2013/5.

[24] 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.

[25] Per item 1 in the table in subsection 294-80(1).

[26] Per item 2 in the table in subsection 294-80(1).

(c) the order of a court made in respect of a claim that is based on the commission of a wrong, or a right created by statute (not including a court order approving or endorsing a settlement agreement as mentioned above).

45. In addition, for the debit to arise by the time the contribution is made to a superannuation plan, you or your legal personal representative must notify the superannuation provider that this contribution is a structured settlement or a court order for personal injury under section 292-95.

46. The debit is the amount of the contribution and arises at the later of when the contribution is made or when you first start to have a transfer balance account. To ensure that the information the ATO has on your transfer balance account accurately and quickly includes structured settlement contributions, you should notify the ATO of these contributions as soon as they are made.

Example 3 – Structured settlement

47. *Alice is seriously injured in a car accident. She undertakes legal proceedings against the driver and is awarded a court ordered structured settlement of $4 million due to the severity of her injuries on 1 July 2016.*

48. *Alice contributes the $4 million into her superannuation fund and commences a superannuation income stream with the amount, notifying the fund and Commissioner of this contribution.*

49. *As Alice is the retirement phase recipient of a superannuation income stream before 1 July 2017, her transfer balance account commences on 1 July 2017 and a credit arises in her transfer balance account equal to the value of the superannuation interest just before 1 July 2017. The value of her superannuation interest is now $3.5 million due to investment returns and payments made to her.*

50. *A credit of $3.5 million and a debit of $4 million arises in Alice's transfer balance account on 1 July 2017. Alice's transfer balance is negative $500,000 at the end of 1 July 2017. Alice is entitled to start another pension with a value up to $2.1 million without exceeding her transfer balance cap.*

51. *Alice also never had an excess transfer balance because the transfer balance is only measured at the end of a day. Similarly, Alice's transfer balance cap is subject to full indexation in the future as she has never had a transfer balance greater than nil at the end of a day.*

Superannuation income streams that fail to comply with the standards

52. In certain circumstances a superannuation income stream may cease to be a superannuation income stream because it has failed to comply with the rules or standards under which it is provided.

53. One of these circumstances is when the superannuation income stream provider fails to pay the minimum amount of superannuation income stream benefits required under the regulatory rules.

54. Where this occurs, the superannuation income stream provider is taken not to have been paying a superannuation income stream during the income year and the income stream ceases to be a superannuation income stream that is in the retirement phase. However, the credit that arose in the individual's transfer balance account remains due to the operation of section 294-50.

55. A debit arises in the individual's transfer balance account at the end of the superannuation income stream provider's income year.[27] The value of the debit is for the value of the superannuation interest that supports the income stream at the end of the superannuation income stream provider's income year.

A non-commutable excess transfer balance

56. A debit will arise in your transfer balance account when the Commissioner notifies you that you have a non-commutable excess transfer balance.[28] This situation may arise if you have an excess transfer balance and you have no remaining account-based superannuation income streams to be commuted. In this situation, a debit for the remaining excess transfer balance identified in the notice arises in your transfer balance account at the time the Commissioner issues the notice.

Debits that you must notify us about in the approved form

57. Your superannuation fund or insurer does not typically notify us of payment splits and events that result in a reduction in your transfer balance account.[29] If your transfer balance account is debited because of a payment split, the debit will not arise unless you notify us in the approved form.[30]

58. Often there is a delay between when the debit arises in your transfer balance account, and when you notify us. In some cases, this delay may lead to a temporary breach in your transfer balance cap, resulting in you becoming liable for excess transfer balance tax. However, once we have been notified, the debit is applied retrospectively to remedy the breach.

Payment splits: divorce or relationship breakdown

59. Following a divorce or other relationship breakdown, superannuation interests may be split as part of the division of property. Payment splits may come about from a court order, or a superannuation agreement between the parties (see Part VIIIB of the *Family Law Act 1975*).

60. Where under a payment split, the member spouse receives a superannuation lump sum because they commute part of their superannuation interest that is in the retirement phase, a debit will arise in their transfer balance account.[31] If the non-member spouse (who will receive the lump sum) chooses to use those funds to start a superannuation income stream, a credit will arise in their transfer balance account. These credits and debits are reported to the Commissioner.

61. Where the split is achieved by dividing the benefit of the superannuation interest, but the ownership interest of the superannuation interest remains with the member spouse, the Bill provides for a different treatment. In this case, the superannuation interest must support a superannuation income stream that is in the retirement phase and both spouses must be retirement phase recipients as a result of the payment split.[32] As both spouses are retirement phase recipients, a credit to the full value of the superannuation interest (at the time the respective debit arises) arises in the transfer balance account of

[27] Item 6 in the table in subsection 294-80(1).
[28] Item 7 in the table in subsection 294-80(1).
[29] 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.
[30] Paragraph 294-85(1)(b).
[31] Item 1 in the table in subsection 294-80(1).
[32] Section 294-90(2).

the non-member spouse.[33] A further credit does not arise in the member spouse's transfer balance account in addition to the credit at the time the superannuation income stream commenced (or 1 July 2017).

62. In addition to the credit, each spouse will receive a debit equal to the other spouse's respective proportion of the value of the superannuation interest at the time that the debit arises.[34] The purpose of this debit is to proportionately reduce the credit amount that arose as a result of the non-member spouse becoming a retirement phase recipient of a superannuation income stream as a result of the payment split.

63. The operative time for a payment split under a superannuation agreement[35] is the beginning of the fourth business day after the day on which a copy of that agreement, with the relevant accompanying documentation, is served on the trustee of the eligible superannuation plan.

64. The operative time for a payment split under a court order means the time specified in the order.[36] The debit arises for each spouse at the later of the operative time for the payment split or the start of the day they first started to have a transfer balance account.[37] In order for the debit to arise, the Commissioner must be notified in the approved form; however, only one spouse needs to notify the Commissioner of the payment split and it does not matter which spouse.

Example 4 – Payment splits

65. *Justin has a retirement income stream that pays $4,000 per month. The superannuation interest that supports this income stream is valued at $1.2 million just before 1 July 2017. Therefore, on 1 July 2017, the balance of Justin's transfer balance account is $1.2 million.*

66. *On 18 November 2017, his wife Lizzy leaves him. The court orders that 40% of Justin's monthly income stream should go to Lizzy. The date specified in the court order is 1 April 2018. Lizzy does not have a transfer balance account.*

67. *On 1 April 2018, Lizzy becomes the retirement phase recipient of a superannuation income stream, and she gets a transfer balance account. On this day, the superannuation interest supporting the income stream is valued at $1.8 million (this is not a breach of Justin's transfer balance cap because investment earnings do not cause credits to arise in the transfer balance account). This is the amount of the credit Lizzy receives in her transfer balance account. Justin already has a credit in his transfer balance account for the income stream (the value just before 1 July 2017).*

68. *At that time both Justin and Lizzy also receive a debit for the other spouse's proportion of the income stream (Justin notified the Commissioner in the approved form that a debit has arisen). Justin receives a debit of 40% of the value at the time ($720,000), and Lizzy receives a debit of 60% of the value at the time ($1.08 million). This ensures that the balance of their transfer balance accounts reflect only their respective proportion of the value of the interest supporting the income stream.*

69. *It also ensures that the total of both transfer balance account balances equal the initial value of the superannuation interest and does not reflect changes due to investment earnings or monthly income stream payments.*

[33] 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.
[34] Item 3 in the table in subsection 294-80(1).
[35] Section 90MI of the *Family Law Act 1975*.
[36] Section 90MD of the *Family Law Act 1975*.
[37] Item 4 in the table in subsection 294-80(1).

Justin's transfer balance account				
Date	***Description***	***Debit***	***Credit***	***Balance***
1 July 2017	*Transfer balance account commences*		*$1.2 million*	*$1.2 million*
1 April 2018	*Payment split*	*$720,000*		*$480,000*

Lizzy's transfer balance account				
Date	***Description***	***Debit***	***Credit***	***Balance***
1 April 2018	*Transfer balance account commences*	*$1.08 million*	*$1.8 million*	*$720,000*

Excess transfer balance

70. If the balance of your transfer balance account exceeds your transfer balance cap at the end of a particular day, you have breached your transfer balance cap and you have excess transfer balance.

71. Your transfer balance at a time is the sum of the credits in your transfer balance account less the sum of your debits.[38]

72. However, the transitional provisions provide that you do not have excess transfer balance in the transitional period from 1 July 2017 to 31 December 2017[39] if:

- the only credits in your transfer balance account are from existing superannuation streams at the end of 30 June 2017, and
- 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 below your transfer balance cap within the 6 months.[40]

73. 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 below your transfer balance cap.

74. The transitional provision operates only to disregard your excess transfer balance for this 6 month period so that you do not have any excess transfer balance earnings and you are not liable for excess transfer balance tax.

75. If the value of your superannuation interests are likely to exceed $1.7 million as at 30 June 2017, you will need to closely monitor the balance of your superannuation funds to ensure that you do not exceed the transfer balance cap initially and / or at the end of the transitional period. This may require you to reduce the value of your existing superannuation streams prior to 1 July 2017 to ensure you do not exceed the transfer balance cap. You will also need to reduce your transfer balance account to $1.6 million by 31 December 2017.

76. As discussed in paragraph 18 of this draft Guideline, proportional indexation of an individual's transfer balance account is not available where the individual's transfer balance account has ever exceeded their transfer balance cap.[41]

[38] Subsection 294-30(2).
[39] Section 294-30 of the *Income Tax(Transitional Provisions) Act 1997*.
[40] 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.

77. Even though your excess transfer balance is disregarded for the transitional period up to 31 December 2017, as your transfer balance account has still exceeded your transfer balance cap, you will not be entitled to increase your transfer balance cap as a result of proportional indexation.

Excess transfer balance tax

78. You are liable to pay excess transfer balance tax if you have an excess transfer balance period. An excess transfer balance period is a continuous period of one or more days where you have an excess transfer balance at the end of the day.[42]

79. This amount is calculated at the end of your excess transfer balance period and an assessment will be issued to you for that period.

80. You may rectify your excess transfer balance at any time yourself by instructing your superannuation provider to commute a superannuation income stream in part or in full.

81. In determining the amount to commute, you should take into account your original excess transfer balance, excess transfer earnings and the time required for your superannuation provider to action a commutation.

82. Excess transfer balance earnings are calculated daily on your excess transfer balance and are credited to your transfer balance account until the Commissioner issues a determination. This increases your excess transfer balance on a daily basis.

Excess transfer balance determinations

83. If you have excess transfer balance at the end of a day, the Commissioner will generally issue you with an excess transfer balance determination.

84. The Commissioner will issue determinations based on information that we hold about your transfer balance account (reported to the ATO by superannuation funds, life insurance companies and debits notified by you).

85. As there are delays in the reporting of information to the Commissioner, the determination may not be issued by the Commissioner until many months after you first have an excess transfer balance.

86. An example of when the Commissioner may not issue an excess transfer balance determination is if the excess transfer balance is removed before a determination is issued.

87. This determination stops excess transfer balance earnings from the date of the determination crediting your transfer balance account and increasing your excess transfer balance. However, if a credit arises in your transfer balance account after you receive a determination but before the excess is removed, excess transfer balance earnings will start to credit your transfer balance account again from the date of that credit.

88. The excess transfer balance determination will state your 'crystallised reduction amount'[43], which is your excess transfer balance including excess transfer balance earnings to the date of the determination. This is the amount that needs to be debited from your transfer balance account so that you are not in breach of your transfer balance cap.

89. The Commissioner may amend or revoke an excess transfer balance determination at any time before a commutation authority is issued.

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[41] Paragraph 294-40(1)(b).
[42] Subsection 294-230(2).
[43] Defined in subsection 136-10(3) in Schedule 1 to the *Taxation Administration Act 1953.*

90. This may occur in instances when a determination is issued and your transfer balance subsequently changes before a commutation authority is issued such as if you start another pension or remove the excess.

91. Excess transfer balance earnings[44] continue to be calculated for excess transfer balance tax purposes irrespective of the determination until the excess transfer balance is removed. Excess transfer balance tax is imposed on the earnings from the date of the breach until the date the excess transfer balance is removed.

Default commutation notice

92. The excess transfer balance determination must also include a default commutation notice stating that, if you do not make an election under section 136-20 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) within the period specified in that section, the Commissioner will issue one or more commutation authorities.

93. As part of the default commutation notice, the Commissioner is required to specify which superannuation income stream provider/s the Commissioner will issue a commutation authority to and the superannuation income stream/s that the provider needs to commute in full or in part.[45]

94. To meet this requirement, the Commissioner will generally specify the superannuation income stream which caused the excess transfer balance, except in situations where this superannuation income stream is a capped defined benefit income stream[46] and subject to commutation restrictions. If you do not make a valid election the Commissioner will issue a commutation authority to your superannuation income stream provider to commute this superannuation income stream. If the amount commuted from that superannuation income stream is less than the amount specified in the commutation authority, the Commissioner will then issue further commutation authorities to remove the excess transfer balance.

95. You may object to a determination under Part IVC of the TAA as a determination is a taxation decision for Part IVC purposes. However, the default commutation notice that accompanies the determination is not part of the taxation decision, and does not carry any objection rights.

Valid election

96. When you have been issued with an excess transfer balance determination you may make an election under section 136-20 of Schedule 1 to the TAA to identify the superannuation income stream/s to be commuted and the amount to be commuted. Once a valid election is made, it is irrevocable and the Commissioner will issue a commutation authority consistent with your election.

97. This election must be in the approved form and given to the Commissioner within 60 days of the excess transfer balance determination issue date or a further period allowed by the Commissioner.

98. In granting a further period for making an election, the Commissioner will take into account your circumstances and the requested extension period. An example of when the Commissioner may grant an extension is if you requested a three week extension because you were sick or were waiting on information from your superannuation provider.

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[44] Subsection 294-235(1).
[45] Paragraph 136-10(6)(b) of Schedule 1 to the TAA.
[46] As defined in section 294-130.

99. If the total debit amounts in your election are less than the commutable amount, the Commissioner will issue commutation authorities to one or more superannuation providers specified in the default commutation notice to remove the difference.[47]

100. Once you receive a determination, you may choose to remove the crystallised reduction amount yourself by instructing your superannuation provider/s to commute this amount, instead of making an election under section 136-20 of Schedule 1 to the TAA.

101. There may be a timing difference between when a debit arises in your transfer balance account and when the debit is reported to the ATO. For example, if you commute a superannuation income stream 50 days after receiving a determination, the ATO may not receive information on this debit within 60 days of the determination and the Commissioner may issue a commutation authority. To ensure that the information that the ATO has on your transfer balance account includes these debits, you should notify the ATO as soon as possible of debits arising in your transfer balance account after receiving a determination.

102. As explained in paragraph 43 of this draft Guideline, a reduction in your transfer balance account arises at the time you receive the superannuation lump sum and not at the time you instruct your superannuation fund to commute a superannuation income stream.

No valid election

103. Where no valid election is made, the Commissioner must issue a commutation authority in accordance with the default commutation notice if there is a commutable amount.[48]

Commutation authorities

104. Once an excess transfer balance determination is issued and is not revoked, the Commissioner must issue commutation authorities to one or more superannuation income stream providers if there is a commutable amount.[49]

105. There is a commutable amount if the crystallised reduction amount reduced by the total of any transfer balance debits notified to the Commissioner under section 136-25 of Schedule 1 to the TAA is greater than nil.

106. The Commissioner will issue commutation authorities with the objective of ensuring that transfer balance debits after the determination date equal the crystallised reduction amount.

107. These further commutation authorities can be issued to any superannuation income stream provider to remove this amount. They do not need to be specified in the default commutation notice or your election if you make one.

Commissioner of Taxation
24 November 2016

[47] Subsection 136-55(3) of Schedule 1 to the TAA.
[48] Subsection 136-55(4) of Schedule 1 to the TAA.
[49] Subsection 136-55(1) of Schedule 1 to the TAA.

Your comments

108. You are invited to comment on this draft Law Companion Guideline. Please forward your comments to the contact officer by the due date. In particular, we welcome comments on further interpretative issues that have not yet been raised in this draft Guideline.

Due date:	**8 December 2016**
Contact officer:	**Grahame Hager**
Email address:	**superconsultation@ato.gov.au**
Telephone:	**(02) 9374 8762**

References

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