LCG 2016/9A2 - Addendum - Superannuation reform: transfer balance cap

Addendum

Law Companion Guideline

Superannuation reform: transfer balance cap

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Guideline LCG 2016/9 to reflect amendments to the law made by the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017.*

LCG 2016/9 is amended as follows:

1. Page status (all pages)

At the top of all pages, omit

Page status: **legally binding**

insert:

Page status: **legally binding (excluding statements about excess transfer balance tax)**

2. Preamble

Omit the preamble; substitute:

Relying on this Guideline

This Guideline is a public ruling for the purposes of the *Taxation Administration Act 1953* except to the extent the Guideline considers excess transfer balance tax.

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. To the extent that it is a public ruling, 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.

Statements about excess transfer balance tax are not legally binding on the Commissioner. However, if you act in accordance with the view expressed in good faith, the Commissioner will endeavour to stand by these statements in applying the law.

3. Table of contents

Insert:

4. Footnote 1

Omit footnote; substitute:

> [1] Refer to LCG 2016/10 *Superannuation reform: capped defined benefit income streams - non commutable, lifetime pensions and lifetime annuities* and LCG 2017/1 *Superannuation reform: capped defined benefit income streams - pensions or annuities paid from non-commutable, life expectancy or market-linked products* for further guidance on these rules.

5. Paragraph 13

Omit first sentence (excluding footnote 11); substitute:

> Subject to paragraph 15 of this Guideline, a superannuation income stream is in the retirement phase when a superannuation income stream benefit is currently payable.[11]

6. Paragragh 15

Omit paragraph (excluding footnote 14); substitute:

> 15 A transition to retirement income stream (TRIS) is not in the retirement phase unless a superannuation income stream benefit is currently payable from it and the recipient (including a reversionary beneficiary in the case of death of a member):
>
> - is 65 years old or older, or
> - 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.[14]
>
> 15AA. From 1 July 2017, superannuation income stream providers will be taxed on earnings made from assets supporting a TRIS that is not in the retirement phase.
>
> 15AB. For the purposes of this Guideline, the reference to a superannuation income stream will always be to a superannuation income stream in the retirement phase unless otherwise stated.

7. Paragraph 23

Omit 'provider'.

8. Paragraph 30

After table; insert:

Example 1A – TRIS in the retirement phase on 1 July 2017

30A. *Robert commenced a TRIS in 2008 when he was 58. On 1 July 2017 Robert still receives superannuation income stream benefits from the TRIS and the value of the superannuation interest supporting the TRIS just before 1 July 2017 is $900,000. Robert has no other superannuation interests.*

30B. *As Robert was over 65 on 1 July 2017, the TRIS is in the retirement phase and Robert is a retirement phase recipient. Robert commences to have a transfer balance account on 1 July 2017 and a credit of $900,000 arises in the transfer balance account on 1 July 2017.*

Example 1B – TRIS in the retirement phase after 1 July 2017

30C. *Raj commences a TRIS on 1 July 2018 at age 57 with $1.2 million. The TRIS is not in the retirement phase at that time as Raj does not meet a relevant condition of release with a nil cashing restriction. As Raj has no superannuation income streams in the retirement phase he is not a retirement phase recipient and does not have a transfer balance account.*

30D. *Raj retires on 30 June 2019, meeting a relevant condition of release, and notifies the superannuation provider that pays the TRIS of his retirement on 15 July 2019. The TRIS is in the retirement phase on 15 July 2019 (the time of notifying the superannuation provider of his retirement) and Raj commences to have a transfer balance account on 15 July 2019. The credit that arises in his transfer balance account is equal to the value of the superannuation interest supporting the TRIS on 15 July 2019.*

9. Paragraph 31

After the last dot point; insert (including footnotes 27A, 27B, 27C):

- certain payments made in respect of particular limited recourse borrowing arrangements[27A]
- other circumstances as provided for by the regulations.[27B]

31A. The regulations may provide that certain credits do not apply to a specified class of superannuation income streams.[27C]

[27A] Item 4 of the table in subsection 294-25(1) and subsection 294-55.
[27B] Item 5 of the table in subsection 294-25(1).
[27C] Subsection 294-25(3).

10. Paragraph 34A

Omit paragraph; substitute:

34A. See LCG 2017/3 *Superannuation reform: Superannuation death benefits and the transfer balance cap* for more detailed guidance on reversionary beneficiaries and death benefit income streams.

11. Paragraph 39

After the paragraph; insert (including footnotes 28A, 28B, 28C):

Credit amounts for payments under certain limited recourse borrowing arrangements

39A. A credit will arise in your transfer balance account in relation to a payment made by a superannuation provider under a limited recourse borrowing arrangement (LRBA) that was entered into on or after 1 July 2017 where:

- the payment results in an increase in the value of your superannuation interest that supports your superannuation income stream that is in the retirement phase, and
- your superannuation interest is in a self-managed superannuation fund (or another complying superannuation fund with less than 5 members).[28A]

39B. Where an LRBA that is covered by subsection 67A(1) of the *Superannuation Industry Supervision Act 1993* was entered into before 1 July 2017 and is refinanced on or after 1 July 2017, the refinanced LRBA is treated as being entered into before 1 July 2017 for the purpose of working out whether you have a credit if:

- the refinanced LRBA is secured by the same asset/s 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. [28B]

39C. An increase in the value of your superannuation interest supporting your superannuation income stream in the retirement phase will occur where a payment in respect of the LRBA is made fully, or partially, from assets that are supporting superannuation interests that are not in the retirement phase. For example, this may occur where the assets of the superannuation fund are allocated to specific superannuation interests that are supporting superannuation income streams.

[28A] Item 4 of the table in subsection 294-25(1) and section 294-55.
[28B] Section 294-55 of the *Income Tax (Transitional Provisions) Act 1997.*

39D. The credit arises at the time of the payment and is equal to the amount of the increase in the value of your superannuation interest supporting your superannuation income stream. [28C] For the purposes of calculating the amount of the credit, you are not required to separately determine the market value of your superannuation interest as the increase in value is determined by reference to the repayment amount.

39E. If you are the only member of the superannuation fund, the increase in value of the superannuation interest is the repayment amount and thus the credit that arises is equal to the repayment amount. Where the increase in the value affects more than one member's interest in the retirement phase, it is necessary to apportion the credit across the different members' interests on a fair and reasonable basis. Whether the apportionment methodology is on a fair and reasonable basis will depend on the facts and circumstances of each case. One example of a methodology that the Commissioner considers is fair and reasonable is where the proportions are based on the value of the members' superannuation interests that are in the retirement phase as at 30 June of the immediate prior financial year provided that there have been no significant changes in value between that date and determining the amount of applicable credit. See examples 2A and 2B of this Guideline which provide a method of apportioning the credit for account-based retirement phase interests.

39F. As explained in paragraphs 24 to 24B of this Guideline, increases in the value of your superannuation interest from other factors other than a payment in respect of an LRBA (such as capital appreciation) will not increase your transfer balance.

Example 2A – LRBA – apportionment of credit

39G. *Ram and Madhu are the only members of an SMSF which has allocated specific assets to support the superannuation income streams payable by the SMSF. They both have account-based pensions and accumulation interests.*

39H. *On 30 June 2018, Ram's retirement phase interest is valued at $400,000 and Madhu's retirement phase interest is valued at $600,000.*

39I. *The SMSF entered into an LRBA on 1 August 2018 to acquire an asset that solely supports the account-based pensions of both Ram and Madhu. The fund makes a monthly repayment of $10,000 from accumulation interests of both Ram and Madhu towards the borrowing under the LRBA on 1 September 2018. There have been no significant changes in value of the superannuation interest in the retirement phase prior to the repayment.*

39J. *The transfer balance credits that arise in Ram and Madhu's transfer balance account on 1 September 2018, is apportioned in a fair and reasonable manner in accordance with the proportion of their retirement phase interests in the SMSF. This is calculated as follows:*

Ram's transfer balance credit:

$$\frac{\$400{,}000}{(\$400{,}000 + \$600{,}000)} \quad X \quad \$10{,}000 \quad = \quad \$4{,}000$$

[28C] Item 4 of the table in subsection 294-25(1) and section 294-55.

Madhu's transfer balance credit:

$$\frac{\$600{,}000}{(\$400{,}000 + \$600{,}000)} \times \$10{,}000 = \$6{,}000$$

Example 2B – Apportionment of credit – payment after partial commutation

39K. *Further to example 2A, on 1 April 2019 Ram commutes $200,000 of his retirement phase income stream out of superannuation.*

39L. *The SMSF makes a monthly repayment on 1 April 2019, of $10,000 from accumulation interests of both Ram and Madhu, towards the borrowing under the LRBA.*

39M. *The commutation that Ram made on 1 April 2019 of $200,000 means that the value of his interest in the retirement phase is significantly different to the value of his interest in the retirement phase as at 30 June 2018. For the purposes of the apportionment methodology, it would be reasonable to adjust the 30 June 2018 value of Ram's superannuation interest in the retirement phase ($400,000) by $200,000.*

39N. *The transfer balance credit that arises in Ram and Madhu's transfer balance accounts are calculated as follows:*

Ram's transfer balance credit:

$$\frac{(\$400{,}000 - \$200{,}000)}{((\$400{,}000 - \$200{,}000) + \$600{,}000)} \times \$10{,}000 = \$2{,}500$$

Madhu's transfer balance credit:

$$\frac{\$600{,}000}{((\$400{,}000 - \$200{,}000) + \$600{,}000)} \times \$10{,}000 = \$7{,}500$$

39O. *The apportionment of the credit has been made in a fair and reasonable manner in accordance with the proportion of retirement phase interests Ram and Madhu hold in the SMSF.*

12. Paragraph 40

After the last dot point; insert (including footnotes 35A, 35B):

- other circumstances as provided for by the regulations.[35A]

40A. The regulations may provide that certain debits do not apply to a specified class of superannuation income streams.[35B]

[35A] Item 8 of the table in subsection 294-80(1).
[35B] Subsection 294-80(3).

13. Paragraph 46

After paragraph; insert:

Alternative debit amount for structured settlement contributions made before 1 July 2017

46A. If a debit arises in your transfer balance account on 1 July 2017 in respect of a structured settlement contribution that meets the requirements described in paragraphs 44 and 45 of this Guideline, the amount of the debit is the greater of:

- the amount of the contribution, or
- the sum of the credits that arise in your transfer balance account in respect of superannuation income stream/s you receive just before 1 July 2017.

14. Paragraph 51

After paragraph; insert (including footnotes 42A, 42B, 42C, 42D):

Example 3A – Alternative debit amount

51A. *Continuing with the facts in Example 3 except that immediately before 1 July 2017 (end of 30 June 2017) the value of Alice's superannuation interest is $4.5 million instead of $3.5 million.*

51B. *Alice's transfer balance account commences on 1 July 2017 and a transfer balance credit of $4.5 million arises on this day in respect of this superannuation income stream.*

51C. *On 1 July 2017, a transfer balance debit also arises in Alice's transfer balance account in respect of the structured settlement contribution. As the sum of the transfer balance credits ($4.5 million) that arise in her transfer balance account on the 1 July 2017 in respect of superannuation income streams that Alice is receiving before 1 July 2017 is greater than her structured settlement contribution ($4 million), the debit that arises on 1 July 2017 is $4.5 million. Therefore, Alice's transfer balance account on 1 July 2017 will be nil.*

51D. *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.*

Assumptions for transfer balance account and transfer balance

51E. *Section 294-50 provides certain assumptions that are made in determining whether you have a transfer balance account and in working out the transfer balance of your transfer balance account.*

51F. *In working out if you have a superannuation income stream at a particular time you have regard to the facts and circumstances that exist at that time and assume the requirements under taxation laws and the rules and standards under which the benefit is paid are met where those requirements are a condition for there to be a superannuation income stream at that time.*[42A] *The assumptions apply at a time when it is not possible to determine if a requirement is met based on the facts and circumstances at that time.*[42B]

51G. *In some circumstances a failure to comply with a requirement in the taxation laws or the rules and standards under which a superannuation income stream is paid during an income year results in the superannuation income stream ceasing at the commencement of the income year. The assumptions ensure that a failure to comply with a requirement in the taxation laws or the rules and standards do not affect the existence of the transfer balance account or a debit or credit that arises in that account before the failure to comply with the requirement occurred.*

51H. *The assumptions*[42C] *only apply for the purposes of the transfer balance account. They do not apply for other purposes such as determining when a superannuation income stream ceases for the purposes of calculating a fund's exempt current pension income.*[42D]

15. Paragraph 54

(a) In the second sentence after 'of'; insert 'the assumptions in'.

(b) After the last sentence; insert 'See paragraphs 51E to 51H of this Guideline for further information about the assumptions in section 294-50.'

16. Paragraph 55

Omit paragraph (excluding footnote 44); insert:

55. A debit arises in the individual's transfer balance account at the time the superannuation income stream stops being a superannuation income stream in the retirement phase.[44] The value of the debit is the value of the superannuation interest that supports the income stream just before the time the superannuation income stream stops being a superannuation income stream.

Example 3B – Failure to make minimum payment in income year

55A. *Neesh commenced an account-based pension on 1 July 2017.*

55B. *The superannuation interest supporting the superannuation income stream is valued at $1.1 million.*

[42A] Paragraph 294-50(2)(b)
[42B] Subparagraph 294-50(2)(b)(iii)
[42C] Section 294-50.
[42D] Paragraphs 18-20 of TR 2013/5 *Income tax: when a superannuation income stream commences and ceases.*

55C. *Neesh commences to have a transfer balance account on 1 July 2017 and receives a credit of $1.1 million to her transfer balance account on that day.*

55D. *The fund fails to make the minimum payment amount for the superannuation income stream for the 2017-18 income year. The consequence of this is that Neesh is taken not to have commenced a superannuation income stream on 1 July 2017. However, the assumptions ensure that Neesh continues to have a transfer balance account and the credit of $1.1 million that arose on 1 July 2017 remains*.

55E. *For the purposes of working out Neesh's transfer balance, the application of the assumptions in section 294-50 mean that the superannuation income stream stops being a superannuation income stream at the end of 30 June 2018 and a debit arises in Neesh's transfer balance account on that date. The debit amount is the value of the superannuation interest that supported the superannuation income stream just before it ceased to be a superannuation income stream in the retirement phase.*

55F. *The assumptions in section 294-50 only apply for the purposes of the transfer balance account. They do not apply for other purposes such as determining when a superannuation income stream ceases for the purposes of calculating a fund's exempt current pension income.*

Example 3C – Failure to make minimum payment before commutation

55G. *Sho commenced an account-based pension on 1 July 2018. The superannuation interest supporting the income stream is valued at $1 million*.

55H. *Sho commences to have a transfer balance account on 1 July 2018 and receives a credit of $1 million to his transfer balance account on that day.*

55I. *Sho fully commutes his income stream on 1 March 2019, but the fund did not meet the pro-rated minimum payment requirement for the 2018-19 income year prior to commutation. The consequence of this is that Sho is taken not to have commenced a superannuation income stream on 1 July 2018. However, the assumptions set out in section 294-50 ensure that Sho continues to have a transfer balance account and the credit of $1 million that arose on 1 July 2018.*

55J. For the purposes of working out Sho's transfer balance, the application of the assumptions in section 294-50 mean that the superannuation income stream stops being a superannuation income stream immediately before Sho commuted the superannuation income stream on 1 March 2019. A debit arises in Sho's transfer balance account on 1 March 2019. The debit amount is the value of the superannuation interest that supported the superannuation income stream just before it ceased to be a superannuation income stream in the retirement phase.[44A]

55K. A separate debit does not arise for the commutation on 1 March 2019.This is because the assumptions in section 294-50 cease to apply when the commutation occurs.

[44A] Section 294-50.

17. Paragraph 72

In the first dot point; omit 'are from existing superannuation income streams at the end of 30 June 2017'; substitute 'in that period arises under item 1 of the table in subsection 294-25(1) (where a transfer balance credit arises where you are a retirement phase recipient of a superannuation stream just before 1 July 2017)'.

18. Footnote 56

Omit footnote; substitute

> [56] 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 2016/10 *Superannuation reform: capped defined benefit income streams - non commutable, lifetime pensions and lifetime annuities* and LCG 2017/1 *Superannuation reform: capped 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.

19. Paragraph 95

Omit '(explained in paragraph 96 to paragraph 102 of this Guideline)'; substitute: '(explained in paragraphs 96 to 102 of this Guideline)'.

20. Legislative references

Insert:

> Treasury Laws Amendment (2017 Measures No. 2) Act 2017

This Addendum applies on and from 20 December 2017.

Commissioner of Taxation
20 December 2017

ATO references

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