LCR 2016/9A5 - Addendum - Superannuation reform: transfer balance cap

This cover sheet is provided for information only. It does not form part of *LCR 2016/9A5 - Addendum - Superannuation reform: transfer balance cap*

View the consolidated version for this notice.

Addendum

Law Companion Ruling

Superannuation reform: transfer balance cap

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Ruling LCR 2016/9 to:

- further explain proportional indexation of the transfer balance cap and superannuation income streams subject to a commutation authority
- clarify how the general principles apply in the context of successor fund transfers, and
- reflect the increase in the maximum allowable members made under the *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021*.

LCR 2016/9 is amended as follows:

1. Preamble

Omit the preamble; substitute:

Relying on this Ruling

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

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

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.

2. Table of Contents

Omit the Table of Contents; substitute:

Table of Contents **Paragraph**

3. Paragraph 1

Omit ‘two’; substitute ‘2’.

4. Paragraph 5

(a) Omit 'following new concepts'; substitute 'following concepts'.

(b) Omit 'transfers and/or commutations on your transfer balance'; substitute 'transfers, commutations, or both, on your transfer balance'.

5. Paragraph 6

In footnote 1, after 'Refer to', insert 'Law Companion Rulings'.

6. Paragraph 7

(a) After 'All legislative references', insert 'in this Ruling'.

(b) After the paragraph, insert new paragraph 7A, including heading:

Date of effect

7A. This Ruling applies both before and after the date of issue, subject to the commencement and application of each Act to which it refers.

7. Paragraph 8

Omit 'balance account,[2] transfer balance,[3]'; substitute 'balance account[2], transfer balance[3],'.

8. Paragraph 11A

Omit 'at that time,[7]'; substitute 'at that time[7],'.

9. Paragraph 13

(a) After the paragraph, insert new paragraph 13A:

13A. A superannuation income stream is not in the retirement phase if:

- it is the subject of a commutation authority issued by the Commissioner[13A]
- the superannuation stream provider is required to pay a superannuation lump sum but fails to do so within 60 days after the commutation authority is issued[13B], and
- the income year is the income year in which that 60 days has elapsed (or a later income year).[13C]

(b) In new paragraph 13A, after 'Commissioner' insert new footnote 13A:

[13A] See Subdivision 136-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and paragraph 307-80(4)(a).

(c) In new paragraph 13A, after 'authority is issued' insert new footnote 13B:

[13B] See section 136-80 of Schedule 1 to the TAA and paragraph 307-80(4)(b).

(d) In new paragraph 13A, after 'later income year).' insert new footnote 13C:

[13C] Paragraph 307-80(4)(c).

10. Paragraph 15

Omit 'A transition to retirement'; substitute 'Further, a transition to retirement'.

11. Paragraph 17

(a) After the paragraph, insert new paragraphs 17A to 17O, including headings:

17A. Your personal transfer balance cap will be proportionally indexed based on the highest balance of your transfer balance account. The amount by which your personal transfer balance cap is increased is worked out by multiplying your 'unused cap percentage' by the 'indexation increase' of the general transfer balance cap.[20A]

17B. Where the:

(a) indexation increase – means the amount by which the general transfer balance cap for the financial year increased as a result of indexation, and

(b) unused cap percentage is worked out by[20B]

(i) identifying the highest transfer balance in your transfer balance account at the end of any day up to the end of the previous financial year

(ii) identifying the day on which the transfer balance account had that transfer balance at the end of the day, or, if your transfer balance account had that transfer balance at the end of more than one day, the earliest of those days

(iii) expressing the highest transfer balance outlined in subparagraph (i) as a percentage of the transfer balance cap (rounded down to the nearest whole number) on the day identified in subparagraph (ii), and

(iv) subtracting the result from 100%.

17C. However, if the highest transfer balance in your transfer balance account at the end of any day up to the end of the previous financial year is less than nil, then the unused cap percentage is taken to be 100%.[20C]

Example A1 – Personal transfer balance cap proportional indexation

17D. *Ryuk commences a superannuation income stream on 1 March 2018 valued at $1.4 million. His transfer balance account commences on this date and is credited with $1.4 million.*

17E. *Ryuk's personal transfer balance cap is equal to the general transfer balance cap for the financial year in which the account commenced, which is $1.6 million. Ryuk has a transfer balance of $1.4 million and available cap space of $200,000. No further credit or debit events occur in Ryuk's transfer balance account at this time.*

17F. *On 1 July 2021, the general transfer balance cap is increased as a result of indexation by $100,000 to $1.7 million. Ryuk's personal transfer balance cap is indexed proportionally, based on his remaining cap space.*

17G. *Ryuk's personal transfer balance cap is calculated as follows:*

- *unused cap percentage: \$1.4 million (highest balance) ÷ \$1.6 million = 0.875*
- *expressed as a percentage and rounded down = 87%*
- *subtract 87% from 100% = 13%*
- *transfer balance increase: \$100,000 × 13% = \$13,000.*

17H. *On 1 July 2021, Ryuk's personal transfer balance cap is indexed to \$1.613 million. Ryuk has available cap space of \$213,000, being the difference between Ryuk's indexed personal transfer balance cap of \$1.613 million and his transfer balance of \$1.4 million.*

17I. *On 31 December 2022, Ryuk commenced another superannuation income stream. The value of the superannuation interest that supports this new income stream is \$125,000. Ryuk's transfer balance account is credited with \$125,000, taking his transfer balance to \$1.525 million.*

17J. *On 1 July 2023, the general transfer balance cap is increased again due to indexation, this time by \$200,000 to \$1.9 million. Ryuk's personal transfer balance cap is indexed proportionally, based on his remaining cap space.*

17K. *Ryuk's personal transfer balance cap is now calculated as follows:*

- *unused cap percentage: \$1.525 million (highest balance) ÷ \$1.613 million = 0.945*
- *expressed as a percentage and rounded down = 94%*
- *subtract 94% from 100% = 6%*
- *transfer balance increase: \$200,000 × 6% = \$12,000.*

17L. *On 1 July 2023, Ryuk's personal transfer balance cap is indexed by a further \$12,000 to \$1.625 million (\$1.613 million + \$12,000 = \$1.625 million). Ryuk now has available cap space of \$100,000, being the difference between Ryuk's further indexed personal transfer balance cap of \$1.625 million and his transfer balance of \$1.525 million.*

Example A2 – Personal transfer balance cap not entitled to indexation

17M. *Using Example A1 of this Ruling, except Ryuk's superannuation income stream is instead valued at \$1.6 million, Ryuk's transfer balance account commences on 1 March 2018 and is credited with \$1.6 million.*

17N. *Ryuk's personal transfer balance cap is equal to the general transfer balance cap for the financial year in which the account commenced, which is \$1.6 million.*

17O. *On 1 July 2021, although the general transfer balance cap is increased to \$1.7 million, Ryuk's personal transfer balance cap will remain at \$1.6 million. He is not entitled to indexation on 1 July 2021 (or any future indexation of the general transfer balance cap) because his transfer balance equalled his personal transfer balance cap.*

(b) In new paragraph 17A, after 'general transfer balance cap.' insert new footnote 20A:

[20A] See subsection 294-40(2).

(c) In new paragraph 17B, after 'unused cap percentage is worked out by', insert new footnote 20B:

[20B] See subsection 294-40(2).

(d) In new paragraph 17C, after 'taken to be 100%.', insert new footnote 20C:

[20C] Subsection 294-40(3).

12. Paragraph 30

Omit the wording of the paragraph, including the table; substitute:

Figure 1 of this Ruling details Darius's transfer balance account and the debits and credits arising from the transactions detailed in paragraphs 26 to 29 of this Ruling.

Figure 1: Darius' transfer balance account

Date	Description	Debit	Credit	Transfer balance
1 July 2018	Commence pension A		$1.1 million	$1.1 million
7 July 2020	Commutes pension A	$1 million		$0.1 million

13. Paragraph 30A

(a) Omit '*commenced*'; substitute '*commences*'.

(b) After '*On 1 July 2017*', insert a comma.

14. Paragraph 30C

After '*superannuation income streams in the retirement phase*', insert a comma.

15. Paragraph 31

Omit the wording of footnote 27A; substitute:

[27A] Item 4 of the table in subsection 294-25(1) and section 294-55.

16. Paragraph 32A

After 'entitled to the superannuation income stream', insert a comma.

17. Paragraph 34A

Omit ‘LCR 2017/3 *Superannuation reform: Superannuation death benefits and the transfer balance cap*’; substitute ‘Law Companion Ruling LCR 2017/3 *Superannuation reform: Superannuation death benefits and the transfer balance cap*’.

18. Paragraph 39A

Omit ‘less than 5 members’; substitute ‘less than 7 members’.

19. Paragraph 39B

Omit ‘the refinanced LRBA is secured by the same asset/s as the original LRBA; and’; substitute ‘the refinanced LRBA is secured by the same assets as the original LRBA, and’.

20. Paragraph 39E

Omit ‘See examples’; substitute ‘See Examples’.

21. Paragraph 39J

Omit the wording of the paragraph; substitute:

> *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:*
>
> $$\frac{\$400{,}000}{(\$400{,}000 + \$600{,}000)} \times \$10{,}000 = \$4{,}000$$
>
> *Madhu’s transfer balance credit:*
>
> $$\frac{\$600{,}000}{(\$400{,}000 + \$600{,}000)} \times \$10{,}000 = \$6{,}000$$

22. Paragraph 39K

Omit ‘*to example 2A, on 1 April 2019*’; substitute ‘*to Example 2A of this Ruling, on 1 April 2019,*’.

23. Paragraph 39N

Omit the wording of the paragraph; substitute:

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:

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

24. Paragraph 40

(a) Omit the wording of the paragraph; substitute:

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

- a commutation of a superannuation income stream in the retirement phase[29]
- structured settlement contributions[30]
- an event that results in your superannuation interest being reduced (fraud or dishonesty, bankruptcy)[31]
- a payment split (divorce or relationship breakdown)[32]
- [Omitted.]
- a superannuation income stream provider failing to comply with a commutation authority in respect of a particular superannuation income stream of which you were a retirement phase recipient[34]
- a superannuation income stream of which you were a retirement phase recipient stops being a superannuation income stream that is in the retirement phase at a time, but items 1 and 5 of the table in subsection 294-80(1) do not apply[34A] (for example, where the superannuation income stream ceases due to a successor fund transfer occurring or fails to comply with the pension or annuity standard under which it is provided)
- a notice being issued under section 136-70 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) in relation to a non-commutable excess transfer balance[35]
- other circumstances as provided for by the regulations.[35A]

(b) Omit footnote 33.

(c) Omit the wording of footnote 34; substitute:

[34] Item 5 in the table in subsection 294-80(1).

(d) After 'subsection 294-80(1) do not apply', insert new footnote 34A:

[34A] Item 6 in the table in subsection 294-80(1).

(e) Omit the wording of footnote 35A; substitute:

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

25. Paragraph 41

(a) Omit 'A commutation also occurs'; substitute 'A commutation will have occurred'.

(b) Omit the wording of footnote 36; substitute:

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

26. Paragraph 42

Omit the wording of footnote 37; substitute:

[37] Amendments were made to regulations 1.05, 1.06, 1.07A, 1.07C and 1.07D of the *Superannuation Industry (Supervision) Regulations 1994* and regulations 1.07, 1.08 and 1.08A of the *Retirement Savings Accounts Regulations 1997* by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* so that partial commutations will not count towards the minimum annual payment requirement for superannuation income streams.

27. Paragraph 43

Omit 'and due to processing times'; substitute 'and, due to processing times,'.

28. Paragraph 44

Omit 'as mentioned above'; substitute 'as mentioned in subparagraphs (a) and (b)'.

29. Paragraph 45

Omit 'to be notified,[42]'; substitute 'to be notified[42],'.

30. Paragraph 46A and 96

Omit 'income stream/s'; substitute 'income stream or streams'.

31. Paragraph 47

Omit '*court ordered structured*'; substitute '*court-ordered structured*'.

32. Paragraph 51A

After '*Example 3*', insert '*of this Ruling,*'.

33. Paragraph 51G

After 'In some circumstances', insert a comma.

34. Paragraph 51H

Omit the wording of footnote 42D; substitute:

> [42D] Paragraphs 18 to 20 of TR 2013/5.

35. Paragraph 52

Omit 'a superannuation income stream'; substitute 'an income stream'.

36. Paragraph 55

Omit the wording of the paragraph; substitute:

> A debit arises in the individual's transfer balance account at the time the 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 income stream stops being a superannuation income stream. No further transfer balance debit will arise if that income stream subsequently ceases (for example, by commutation), as it has already ceased to be a superannuation income stream that is in the retirement phase. If a new superannuation income stream is commenced to replace the superannuation income stream that failed to meet the standards it will give rise to a credit in the recipient's transfer balance account.

37. Paragraph 55A and 55G

Omit '*commenced*'; substitute '*commences*'.

38. Paragraph 55E and 55J

Omit '*mean*'; substitute '*means*'.

39. Paragraph 55K

(a) After the paragraph, insert new paragraphs 55L to 55R, including headings:

> ***Successor fund transfers***
>
> 55L. A successor fund transfer will occur where a fund trustee chooses to transfer members to a new (successor) fund. It can occur without the members' consent but requires the member to have equivalent rights in the new superannuation interest with the successor fund as they had in the original superannuation fund.[44B]
>
> 55M. Where a successor fund transfer occurs it will impact the transfer balance account for any member who was receiving a superannuation income stream from an interest in the transferring fund.

55N. After the transfer, the trustee of the original fund will no longer have any liability to pay superannuation income stream benefits to the transferring members, and any superannuation income streams that were being paid to transferred members will cease.[44C] A debit will arise in the recipient's transfer balance account at the time the income stream ceases, equal to the value of the superannuation interest that supported the income stream just before it ceased.[44D]

55O. If the trustee of the successor fund is required to pay a superannuation income stream to a transferred member, it will be a new superannuation income stream.[44E] Generally, a credit will arise in the recipient's transfer balance account at the time it starts, equal to the value of the superannuation income interest that supports it at that time.[44F]

Example 3D – Successor fund transfer – cessation of a superannuation income stream

55P. *Twice Super and Mika Super funds have agreed to enter a successor fund transfer under which the benefits of members of Twice Super will be transferred to Mika Super.*

55Q. *A Deed is prepared by the parties setting out the obligations of both parties under the successor fund transfer. This includes Mika Super providing equivalent superannuation income streams (in the form of account-based pensions) to those currently payable to members of Twice Super. The Deed specifies the transfer will occur on 1 August 2023.*

55R. *On 1 August 2023:*

- *the assets supporting superannuation income streams payable to the members of Twice Super, and corresponding obligations, are transferred to Mika Super*
- *the superannuation income streams cease for income tax purposes for each of the members of Twice Super*
- *a debit arises in the transfer balance account for each member who was receiving a retirement phase superannuation income stream from Twice Super, equal to the value of the superannuation interest that supported it*
- *the transfer results in an involuntary roll-over superannuation benefit to Mika Super in respect of each member*
- *a new superannuation income stream commences from Mika Super for each member who had received a superannuation income stream from Twice Super, and*
- *if the new superannuation income stream in Mika Super is in retirement phase, a credit arises in the new member's transfer balance account, equal to the value of the superannuation income interest that supported the income stream.*

(b) In new paragraph 55L, after 'original superannuation fund.' insert new footnote 44B:

[44B] 'Successor fund' is defined in subsection 995-1(1). See also section 306-12 for involuntary roll-over superannuation benefits.

(c) In new paragraph 55N, after 'transferred members will cease.' insert new footnote 44C:

[44C] See paragraphs 28A to 28C of TR 2013/5.

(d) In new paragraph 55N, after 'income stream just before it ceased.' insert new footnote 44D:

[44D] Item 6 in the table in subsection 294-80(1).

(e) In new paragraph 55O, after 'new superannuation income stream.' insert new footnote 44E:

[44E] See paragraph 120E of TR 2013/5.

(f) In new paragraph 55O, after 'income interest that supports it at that time.' insert new footnote 44F:

[44F] Item 2 in the table in subsection 294-25(1). However, for capped defined benefit income streams, the value of the credit for the new superannuation income stream is equal to the value of the debit that arose when the superannuation income stream in the original fund ceased – see subsection 294-25.03(2) of the *Income Tax Assessment (1997 Act) Regulations 2021*.

40. Paragraph 61B

Omit the wording of footnote 52; substitute:

[52] Subsection 294-90(2).

41. Paragraph 61C

Omit 'is the later of:[53]'; substitute 'is the later of[53]:'.

42. Paragraph 68C

Omit the wording of the paragraph, including the tables; substitute:

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.

Figure 2: Justin's transfer balance account

Date	Description	Debit	Credit	Balance
1 July 2017	Transfer balance account commences		$1.6 million	$1.6 million
1 April 2018	Payment split	$966,000		$634,000

Figure 3: Lizzy's transfer balance account

Date	Description	Debit	Credit	Balance
1 April 2018	Transfer balance account commences	$644,000	$1.61 million	$966,000

43. Paragraph 70

Omit the wording of footnote 56; 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 LCR 2016/10 and LCR 2017/1 for further guidance on these rules.

44. Paragraph 72

Omit 'balance cap ($1.6 million)'; substitute 'balance cap (the relevant transfer balance cap for the transitional period was $1.6 million)'.

45. Paragraph 74

Omit 'six month'; substitute '6-month'.

46. Paragraph 76A

(a) Omit 'income stream/s'; substitute 'income stream or streams'.

(b) Omit 'initially and/or at the end of 31 December 2017'; substitute 'initially, at the end of 31 December 2017, or both'.

47. Paragraph 93

(a) Omit 'stream provider/s'; substitute 'stream provider or providers'.

(b) Omit 'income stream/s'; substitute 'income stream or streams'.

48. Paragraph 97

After 'in accordance with this section', insert a comma.

49. Paragraph 98

Omit 'three week', insert '3-week'.

50. Paragraph 100

(a) Omit 'stream provider/s'; substitute 'stream provider or providers'.

(b) After 'excess transfer balance tax', insert a comma.

This Addendum applies from both before and after its date of issue, subject to the commencement and application of each Act to which it refers.

Commissioner of Taxation
15 July 2026

ATO references

NO:	1-18WZAZI2
ISSN:	2209-1300
BSL:	SEO

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).