



Explanatory Statement

Reporting of event based transfer balance account information in accordance with the *Taxation Administration Act 1953*

General outline of instrument

1. This instrument is made under Section 390-5 and Section 390-20 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).
2. This instrument sets out the way in which superannuation providers in relation to superannuation plans, and life insurance companies in respect of certain life insurance policies, are required to report transactions to enable the ATO to:
 - (a) determine if an individual has exceeded their transfer balance cap and take appropriate action,
 - (b) determine an individual's total superannuation balance, and
 - (c) determine uncapped notional taxed contributions.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (LA).
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument will commence on the day after it is registered on the Federal Register of Legislation and will apply from 1 October 2017.

What is this instrument about

6. The principal purpose of the instrument is to set out the timeframe under which the Transfer Balance Account Report (TBAR) is to be provided to report transaction data relating to members of superannuation funds and life insurance companies. While the instrument establishes the due date for lodgement of the TBAR, the date can be deferred by the exercise of the Commissioner of Taxation's (the Commissioner) discretion under section 388-55 of Schedule 1 to the TAA 1953.

What is the effect of this instrument

7. The effect of this instrument is that superannuation providers and life insurance companies have obligations to lodge the TBAR by specified dates and penalties may be applied for failure to lodge on time in the approved form.

8. The TBAR is required to be lodged no later than 10 business days after the end of the month, or such later date as the Commissioner may allow, in which the relevant reporting event occurred.
9. Following consultation with industry, the Commissioner intends to provide some administrative concessions for self-managed superannuation funds (SMSFs) to support their transition to event based transfer balance cap reporting which will be announced and communicated separately. The Commissioner intends to provide an administrative concession for all other providers to allow them to lodge their first TBAR no later than 14 December 2017.
10. If required, accumulation phase values, retirement phase values and uncapped notional taxed contributions must be reported annually on a TBAR at a date advised by the Commissioner, which will not be earlier than 10 business days after the end of the month in which the reporting event occurred.
11. This instrument does not change the reporting requirements detailed in the separate legislative instrument - F2014L00691 – *'Lodgment of statements by superannuation providers in relation to superannuation plans (other than self managed super funds) for each financial year ended 30 June in accordance with the Taxation Administration Act 1953'* (registered on 10 June 2014). F2014L00691 requires the lodgment of MCS by superannuation providers under section 390-5 of Schedule 1 to the TAA 1953.

Compliance cost impact

12. Compliance Cost Impact: Minor – there will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Background

13. Since June 2001 the Commissioner has published requirements for lodgment of returns and statements in accordance with relevant legislation. Since July 2007 these requirements have applied to the MCS. Since July 2013 the obligation to provide an MCS has been expanded to include all individuals with a superannuation interest.
14. This legislative instrument is being made to address the additional reporting of transactions that is required under the super reform measures that commenced on 1 July 2017.
15. From 1 July 2017 the total amount of super that can be transferred into tax free retirement phase accounts is capped at \$1.6 million (which is subject to proportional indexation). Further, an individual's total superannuation balance may limit their ability to make certain contributions and eligibility for various entitlements.
16. All members who commence to be the retirement phase recipient of a superannuation income stream will commence to have a transfer balance account from that day or 1 July if they were the retirement phase recipient of a superannuation income stream just before 1 July 2017. The purpose of the transfer balance account is to track the amounts that members have transferred to the retirement phase.
17. If a member exceeds their personal transfer balance cap, there will be consequences for both the member and the fund or life insurance company (for

example the member will be liable for excess transfer balance tax; the fund may be issued with a commutation authority to remove the excess).

18. The introduction of the transfer balance cap means that transactions associated with retirement phase accounts need to be reported by superannuation funds and relevant life insurance companies. This will enable the ATO to administer the rules associated with the measure.
19. Reporters will need to commence the collection of data as outlined in this document from 1 July 2017. The legislation stipulates that reporters must provide data relating to transactions associated with the payment of retirement phase income streams to the ATO in the approved form. The TBAR is the approved form and reporting will commence from 1 October 2017 and will be required on a monthly basis, within ten working days of the end of each month.
20. Superannuation providers and life insurance companies are required to report:
 - a) superannuation income streams in existence just before 1 July 2017;
 - b) superannuation income streams that commence or begin to be in the retirement phase on or after 1 July 2017;
 - c) limited recourse borrowing arrangement payments;
 - d) commutations;
 - e) compliance with a commutation authority issued by the Commissioner;
 - f) personal injury (structured settlement) contributions;
 - g) superannuation income streams that stop being in the retirement phase; and
 - h) any other relevant transactionsthat result in a credit or debit in an individual's transfer balance account as outlined in the approved form.
21. Superannuation providers and life insurance companies are also required to report:
 - a) accumulation phase values;
 - b) retirement phase values;
 - c) uncapped notional taxed contributionsin certain circumstances as advised by the Commissioner.

Consultation

22. The reporting timeframes in this instrument were developed in consultation with key industry stakeholders. Consultation on the timing and overall framework of the TBAR reporting included workshops with Industry in February and March 2017, ongoing consultation through ATO SMSF and APRA fund Super New Measures consultation forums between February 2017 and June 2017, and sporadic workshops collaboratively developing the form and guidance for industry.
23. Additionally a document was published on the ATO's software developer's website.
24. The ATO considered all issues in preparing the final legislative instrument. The majority of consultation feedback sought clarification about the relevant timeframes in specific circumstances and the ATO provided clarification on these points.

Legislative references:

Taxation Administration Act 1953

Legislation Act 2003

Income Tax Assessment Act 1997

Human Rights (Parliamentary Scrutiny) Act 2011

Acts Interpretation Act 1901

F2014L00691 – ‘Lodgment of statements by superannuation providers in relation to superannuation plans (other than self managed super funds) for each financial year ended 30 June in accordance with the Taxation Administration Act 1953’

Statement of compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This instrument sets out the way in which superannuation providers in relation to superannuation plans, and life insurance companies in respect of certain life insurance policies, are required to report transactions to enable the ATO to:

- a) determine if an individual has exceeded their transfer balance cap and take appropriate action,
- b) determine an individual's total superannuation balance, and
- c) determine uncapped notional taxed contributions.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it simply provides guidance for superannuation providers and life insurance companies on their obligations to report transactions, and the date by which they must do so.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.