

SMSF Newsletter – issues that may impact you this financial year

The transitional capital gains tax (CGT) relief election

This is only relevant to SMSFs that had one or more Member in Pension phase, including Transition to Retirement Income Streams (TRIS) as at 30 June 2017 so if all Members in your Fund were in accumulation phase this issue does not concern you.

The transitional capital gains tax (CGT) relief election associated with the 2017 super reform measures is a generous concession offered to super fund trustees. It protects assets which have appreciated in value prior to 1 July 2017 in the tax-exempt pension/retirement phase from retrospective CGT and removed the incentive for trustees to sell down and repurchase assets prior to 1 July 2017. The legislation provides transitional CGT relief for assets owned by the fund on 9 November 2016 (being the date the legislation entered Parliament).

Although simple in concept, the operation of the CGT relief is very complex in practical application. The complexity exists due to the number of variables which may influence the decision to reset an asset's cost base. CGT relief is not automatic – the trustee of a super fund must choose for the relief to apply for a CGT asset in the approved form.

The transitional CGT relief effectively allows a superannuation fund to reset the cost base of an eligible asset to its market value on a particular date. For SMSFs using the (more common) proportionate method, the relevant date for the cost base reset is 30 June 2017. Where the segregated method was used, the date the asset ceased to be a segregated current pension asset is the relevant date.

Macquarie says that “As a general rule, trustees of segregated funds should consider resetting the cost base of eligible assets with unrealised capital gains (unless the asset will be sold within 12 months), but not resetting the cost base for assets with unrealised capital losses”. However, many SMSFs use the proportionate method to calculate the fund's exempt current pension income (ECPI) and that creates more complex decisions.

I strongly recommend that you speak with your SMSF fund administrator, accountant or adviser to help determine what is the best course of action for you. A decision is needed when you submit your Fund's 2016-17 return to the ATO.

New Superannuation Terminology you need to know

The 2017 super reforms brought in several new rules and concepts. Two of the most important, briefly explained below, are:

1. Total Superannuation Balance (TSB)
2. Transfer Balance Account Report (TBAR)

Total Superannuation Balance (TSB) – an important new rule

The Federal Government was keen to reduce the cost to the Budget of the tax concessions available through the Superannuation system so as well as reducing the concessional contribution cap to \$25,000pa and the non-concessional contribution cap to \$100,000pa, it introduced, effective from 1 July 2017, a limit on the amount that any individual could have in a tax free retirement phase income stream (pension account) to \$1.6 million.

While the maximum balance at commencement of a retirement phase income stream (a tax-free pension) account is now \$1.6 million, an individual is permitted to have more than \$1.6m in the superannuation system. Any amount can be held in a (taxable) accumulation account, but new rules around the TSB make it much more difficult for individuals to build up large balances.

Many superannuation obligations and rights depend on a Member's TSB, the total amount a person has in all Australian superannuation funds, not just their SMSF, including amounts in both accumulation phase and pension phase. Some examples are:

- Eligibility to utilise the five years carry forward of unused concessional contributions cap, effective from 1 July 2018. Only if an individual's total superannuation balance just before the start of the relevant financial year is less than **\$500,000**, may they be able to access an increased concessional contributions cap where they have not fully utilised their CC cap (currently \$25,000 pa) for one or more of the previous 5 years. This is most likely to be relevant to people who have been out of the workforce for several years or have a lump sum they would like to get into Super.
- Individuals under age 65 who are considering triggering a bring forward of their NCCs should check that they satisfy the new TSB eligibility criteria. If an individual wishes to trigger a 'bring forward' period of 3 years, starting from FY2018, the individual's TSB must be below \$1,400,000. If the individual's TSB at the test time exceeds \$1,400,000 but remains below \$1,500,000, the individual will only be able to trigger a 'bring forward' period of two years. Thus, their non-concessional contribution would be limited to \$200,000. If the individual's TSB at the test time exceeds \$1,500,000, the individual will not be able to use the bring forward provisions and their non-concessional contribution would be limited to the annual cap of \$100,000.
- Anyone with a Total Superannuation Balance of more than \$1.6 million as at 30 June 2017 cannot make any non-concessional contributions this financial year, that is, they have a non-concessional contributions cap of \$0. Each individual's TSB will be measured as at 30 June annually to determine their eligibility to make any non-concessional contributions.
- It is worth noting for small businesses that a Member with a TSB of \$1.6 million or more is allowed to make small business capital gains tax (SBCGT) contributions provided the relevant criteria in the Tax Act are satisfied. SBCGT contributions are capped by the CGT cap amount, which is \$1,445,000 for the 2018 financial year.

Transfer Balance Account Report (TBAR) – quarterly event-based reporting to the ATO

All SMSFs will need to lodge a Transfer Balance Account Report (TBAR) form, after signing by the Member/Trustee, from July 2018 onwards. The form should only include the balance of the SMSF retirement phase (tax exempt) income streams i.e. this does not include a TRIS pension unless it has nil cashing restrictions. For SMSF Members who have another retirement phase income stream (pension) with an APRA regulated fund, like Colonial FirstChoice or BT Wrap, the ATO will pick that up separately as APRA funds report to the ATO electronically monthly. Currently the TBAR form can only be submitted in paper form but it will go electronic eventually.

TBAR reporting will be required within 28 days of the end of the quarter if there is any TBAR event, such as starting or stopping a pension, commencing from the quarter beginning 1 July 2018. Penalties may be applied for late reporting.

However, for Funds where all Members have net balances (i.e. after deducting any LRBA loans) of less than \$1 million, the reporting won't be required until the Fund lodges its annual return. It has been estimated that around 85% of SMSFs will be exempt from quarterly reporting because of this ATO reporting concession.

Pension Payments must be made before 30 June

All SMSFs that have a Member in Pension mode must remember to make the annual minimum pension payment before 30 June or, because of the non-payment of the minimum pension during the year, any pension, including a TRIS pension, would be deemed to have been automatically commuted back into an accumulation account. This can have serious tax consequences and there are other adverse implications if some pension payments have been made but they total less than the statutory minimum.

The minimum pension payment depends on the Member's age but will be at least 4% of the 30 June 2017 pension account balance for the individual Member; more than 4% if the Member was 65 or older as at 1 July 2017.

Remember to Update the ATO & ASIC if your Fund changes

Trustees of SMSFs should remember that they are required to update the ATO within 28 days if there is a change in:

- trustees
- directors of the corporate trustee
- members
- contact details (contact person, phone, email address and fax numbers)
- address (postal, registered or address for service of fund notices)
- fund status.

For further details refer to the ATO website.

<https://www.ato.gov.au/super/self-managed-super-funds/administering-and-reporting/notify-us-of-changes/>

If you have a corporate trustee and there are any changes you should notify ASIC. For further details refer to the ASIC website.

<http://asic.gov.au/for-business/changes-to-your-company/>