A DISCUSSION

OF

THE 2017 CHANGES TO SUPERANNUATION

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1. INTRODUCTION - SCOPE OF PAPER

This paper examines the recently-legislated superannuation changes (originally announced in the 2016 Federal Budget), known as the 'Fair and Sustainable Superannuation Reform Package[1]. It is reported to be a package of some of the most significant changes to superannuation in decades.

Some of the more significant changes in the reform package are:

- Introduction of a cap on superannuation income streams
- CGT treatment of assets supporting superannuation income streams
- Removal of tax exemption for transition-to-retirement income streams (TRISs)
- Reduction in concessional and non-concessional contributions caps
- Introduction of concessional contributions catch-up
- Amendments to superannuation contributions (eg Low Income Super Contribution and Spouse Contributions)
- Increase tax on concessional super contributions for high income earners
- Expansion of tax-deductibility of super contributions
- Removal of anti-detriment provisions

In this paper, we will examine some of the changes to the most common superannuation funds and pensions, and the issues that need to be considered by 30 June 2017[2].

In particular, the issues examined in this paper are:

- How does the transfer balance account (TBA) work?
- How do debits and credits arise in your transfer balance account?
- What is the effect of a commutation on your TBA?
- What is the effect on your TBA if your superannuation income stream fails to comply?
- How is a temporary breach of the TBC different to a normal breach?
- What is an "excess transfer balance" (ETB)?
- What are the transitional provisions in relation to an "excess transfer balance" (ETB)?
- How is excess transfer balance tax (ETBT) calculated?
- How are excess transfer balance determinations issued?
- What is a default commutation notice?
- Can you elect which income stream is to be commuted?
- What is a commutation authority?
- What are the changes to Concessional and Non-concessional Contributions?
- How do the Carry Forward Provisions work?

References are to the Income Tax Assessment Act 1997 unless stated to the contrary.

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[1] I have assumed for the purposes of this paper that you have a working knowledge of superannuation and the CGT implications of the new rules.

[2] The new measures in relation to Defined Benefits Funds are the subject of a separate paper.

DEFINITIONS AND ACRONYMS

Crystalllised Reduction Amount (CRA): your ETB including credits for ETB to the date of the determination. This is the amount of the debit that needs to arise in your TBA so that you are not in breach of your TBC.

Excess transfer balance (ETB): you have an excess transfer balance if the balance of your transfer balance account exceeds your transfer balance cap.

Personal transfer balance (PTB): Your Personal Transfer Balance is the sum of your transfer balance credits less the sum of your transfer balance debits. Your PTB can be less than zero.

Personal transfer balance cap (PTBC): your PTBC limits the total amount of capital you can transfer to the retirement phase to support superannuation income streams. Your PTBC will initially be equal to the general transfer balance cap (GTBC) for the financial year that you begin to have a transfer balance account and is indexed proportionally with increases in the GTBC. However, if your PTBC has ever equalled or exceeded your transfer balance cap, you will permanently lose your entitlement to increase your transfer balance cap by indexation in future years.

Transfer balance account (TBA): Your transfer balance account is the total of the amounts you have transferred to the retirement phase.

Transfer balance cap (TBC): The amount of superannuation capital (accumulation) that an individual can transfer to the retirement phase to support superannuation income streams.

Transition to retirement income stream (TRIS):

NEW SUPERANNUATION INCOME STREAM RULES

1. What is the purpose of the new Rules? The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (the Act) 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 income stream provider earnings that are exempt from tax.

2. What about defined benefit income streams? Special rules apply to capped defined benefit income streams. Refer to LCG 2016/D10 Superannuation reform: defined benefit income streams - non commutable, lifetime pensions and lifetime annuities and LCG 2017/D1 Superannuation reform: defined benefit income streams - pensions or annuities paid from non-commutable, life expectancy or market-linked products for further guidance on these rules.

3. How does the transfer balance account work?

(i) You commence to have a **transfer balance account** on the later of 1 July 2017 and the day you first start to be a retirement phase recipient of a superannuation income stream (Super RPR). If you are a retirement phase recipient of a superannuation income stream just before 1 July 2017 (at the end of 30 June 2017), your **transfer balance account** commences on 1 July 2017.

(ii) You are a <u>retirement phase recipient of a superannuation income stream</u> at a time if:

> (a) the superannuation income stream is in the retirement phase at that time, and
>
> (b) a superannuation income stream benefit from the superannuation income stream is payable (that is, an entitlement to be paid commences) to you at that time or, if the income stream is a deferred superannuation income stream, the benefit will become payable to you after that time.

(iii) You continue to have a **transfer balance account** even if you subsequently cease to be a retirement phase recipient of a superannuation income stream. You only cease to have a transfer balance account when you die.

(iv) A deferred superannuation income stream is in the retirement phase when a person has met a relevant condition of release (retirement, terminal medical condition, permanent incapacity or attaining age 65).

(v) Transition to retirement income streams (TRIS) are not included in your **transfer balance account** as they are not in the retirement phase. From 1 July 2017, superannuation income stream providers will be taxed on earnings made from assets supporting a TRIS.

(vi) The age pension (or other types of government assistance payments) and a pension received from a foreign superannuation fund are also not included in your transfer balance account because these pensions are not superannuation income streams.

4. What is the general transfer balance cap (GTBC) and personal transfer balance cap (PTBC)?

(i) When you commence a **transfer balance account**, it will be subject to your **personal transfer balance cap** which limits the <u>**total amount**</u> of capital you can transfer to the retirement phase to support superannuation income streams.

(ii) Your PTBC will initially be equal to the GTBC for the financial year that you begin to have a transfer balance account.

(iii) The GTBC is $1.6 million for the 2017-18 financial year.

(iv) The GTBC is subject to indexation in subsequent years.

(vi) Your PTBC is subject to proportional indexation in line with increases in the GTBC. However, if your PTBC has ever equalled or exceeded your **transfer balance cap**, you will permanently lose your entitlement to increase your **transfer balance cap** by indexation in future years.

5. How does the Personal Transfer Balance (PTB) work?

(i) Your PTB at a time is the sum of your transfer balance credits less the sum of your transfer balance debits at that time. Your PTB can be less than zero.

(ii) If your PTB exceeds your PTBC, you have an **excess transfer balance**. The consequences of having an **excess transfer balance** are explained further in the section on Excess Transfer Balance.

(iii) If you are receiving a superannuation income stream immediately before 1 July 2017 (end of 30 June 2017), your PTB account commences on 1 July 2017. Your PTB account is credited with the value of the superannuation interest that supports the superannuation income stream just before 1 July 2017 (end of 30 June 2017).

(iv) Where you have more than one superannuation income stream provider just before 1 July 2017 (end of 30 June 2017), your PTB will be the sum of the value of all of your superannuation interests supporting superannuation income streams just before 1 July 2017 (end of 30 June 2017).

6. How do debits and credits arise in your transfer balance account?

(i) When a superannuation income stream commences, a credit arises in your TBA.

(ii) Also, a credit may arise in your transfer balance account from notional earnings that accrue on excess TBA.

(iii) Subsequent changes in the value of the TBA do not affect your transfer balance. Thus, if a superannuation interest that supports a superannuation income stream increases in value because of investment earnings, the growth does not affect the value of your TBA. Similarly, decreases in value because of investment losses or a drawdown of superannuation income stream benefits does not reduce the value of your TBA.

(iv) In other words, investment earnings and losses in respect of the superannuation interest supporting your superannuation income stream (your TBA) and amounts paid to you to comply with the minimum drawdown requirements are not debit or credit events.

(v) Consequently, making a large pension drawdown does not reduce your PTB and would not bring you under your PTBC.

(vi) In order to reduce your (PTB) so that you no longer exceed your (PTBC), you can commute an amount of your superannuation income stream. Commutations are discussed below.

Transfer balance account credits and debits

CREDITS	DEBITS
Value as at 30 June 2017 of existing superannuation income streams.	Commutations (partial or full) from a superannuation income stream: • Back to accumulation phase • To pay as a lump sum • To transfer funds to a new superannuation income stream
Value of a new superannuation income stream from 1 July 2017, including death benefit superannuation income stream.	Personal injury contributions
Reversionary superannuation income streams after 12 months from the date of death, valued at the date of death.	Family Law superannuation income stream splits.
Notional earnings on excess transfer balance amounts, credited daily.	Superannuation income stream losses due to fraud or dishonesty, leading to a conviction.
	Out of character superannuation contributions (ie intended to defeat creditors) clawed back by Trustee in Bankruptcy from a superannuation income stream.
	Superannuation income stream that fails to comply (eg minimum payment not made)
	Commutation authority

Example - Transfer balance account credits and debits

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

(ii) Investment returns and payments made to Alan 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 $1.05 million. These changes, however, do not cause a credit or debit to arise in his **transfer balance account** and his transfer balance remains $1.1 million.

(iii) On 1 July 2020, Alan decides that he is unhappy with the investment returns from his provider and instructs his superannuation fund to fully commute his pension.

(iv) Alan's superannuation fund commutes pension A on 7 July 2020 to a superannuation lump sum of $1 million on that day. Accordingly, a debit equal to this amount arises in his **transfer balance account** on this day.

(v) The following table details Alan's **transfer balance account** and the debits and credits arising from the above transactions.

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**

7. How do credits arise in relation to reversionary beneficiary and death benefits?

(i) A reversionary beneficiary is the nominated dependant beneficiary of a superannuation income stream that automatically reverts to the nominated beneficiary on the death of the superannuation income stream recipient (member). In these cases, the superannuation income stream does not cease, as the reversionary beneficiary is immediately entitled to receive it.

(ii) If the superannuation income stream provider has any discretion about which beneficiary becomes entitled to the superannuation income stream then it is not reversionary, and the beneficiary is not a reversionary beneficiary.

(iii) The reversionary beneficiary's TBA 'starting day' is the date of death of the original superannuation member as this is the time the reversionary superannuation income stream becomes payable to them.

(iv) The credit that arises in the reversionary beneficiary's TBA, however, is delayed to provide the beneficiary with time to arrange their affairs. For a reversionary beneficiary, the credit arises:

> (a) if the reversionary beneficiary is a retirement phase recipient of the superannuation income stream just before 1 July 2017 - on the later of 1 July 2017 or 12 months from when the superannuation income stream first became payable. The credit is equal to the value of the superannuation interest supporting that superannuation income stream just before 1 July 2017, or
>
> (b) if the reversionary beneficiary starts to be a retirement phase recipient on or after 1 July 2017 - 12 months from the starting day. The credit is equal to the value of the superannuation interest supporting that superannuation income stream on the starting day.

(v) See LCG 2017/D3 *Superannuation Reform: Transfer Balance Cap - Superannuation death benefits* for more detailed guidance on reversionary beneficiaries and death benefit income streams.

Example - Reversionary beneficiary

(i) Facts:

- John has a reversionary pension worth $1 million at the time of his death on 1 August 2017.
- Heather is John's wife and is the reversionary beneficiary of this pension.
- As Heather is a reversionary beneficiary, the starting day for the purpose of section 294-25 is the date of John's death, 1 August 2017.

(ii) Result: 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 being 1 August 2017.

8. How may debits arise in your TBA?

(i) A debit may arise in your TBA from:

- a commutation of a superannuation income stream in the retirement phase
- structured settlement contributions (ie personal injury payment)
- an event that results in your superannuation interest being reduced (fraud or dishonesty; bankruptcy)
- a payment split (divorce or relationship breakdown)
- a superannuation income stream failing to comply with the pension or annuity standards under which it is provided
- a superannuation income stream provider failing to comply with a commutation authority in respect of a particular superannuation income stream
- a notice being issued under section 136-70 in Schedule 1 to the *Tax Administration Act 1953* (TAA) in relation to a non-commutable excess transfer balance.

9. Debits due to a Commutation

(i) 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 superannuation lump sum.

(ii) A commutation also occurs where a superannuation income stream provider converts superannuation income stream entitlements to a superannuation lump sum in compliance with a commutation authority issued under Subdivision 136-B of Schedule 1 to the TAA in respect of that superannuation income stream.

(iii) Where the superannuation income stream is commuted in full, the superannuation income stream ceases. Where the superannuation income stream is partially commuted, the value of the superannuation interest supporting the superannuation income stream is reduced. The superannuation lump sum that arises from a commutation may be cashed out of the superannuation system or can be retained within the superannuation system subject to the cashing rules for superannuation death benefits.

(iv) When a superannuation income stream is fully or partially commuted, a debit arises in your TBA at the time you receive the superannuation lump sum, not at the time that you instruct your superannuation income stream provider to commute a superannuation income stream. For example, if you instruct your superannuation income stream provider to commute a superannuation income stream on 1 July 2017 and due to processing times the superannuation income stream provider commutes the superannuation income stream to a superannuation lump sum on 7 July 2017, the debit arises on 7 July 2017 and not on 1 July 2017.

10. Debits due to structured settlements

(i) Compensation or damages received for a personal injury you have suffered that is contributed to a complying superannuation plan may result in a debit to your **transfer balance account**. 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 Worker's Compensation law, or
>
> (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).

(ii) If contributions were made on or after 10 May 2006, the contribution must be covered by section 292-95, which includes requirements for the contribution to be made by a particular time and for the superannuation provider to be notified, or

(iii) If contributions were made before 10 May 2006, the contribution would have been covered by 292-95 if it had been in force at that time disregarding paragraphs 292-95(1)(b) and (d), which are in respect of timing and notification requirements.

(iv) The transfer balance debit is equal to 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.

Example - Structured settlement

(i) Facts:

Ellen 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 on 1 July 2016.

Ellen contributes the $4 million into her superannuation fund, notifies her superannuation fund that this contribution is a structured settlement and commences a superannuation income stream with this amount.

(ii) Result:

Immediately before 1 July 2017 (end of 30 June 2017), the value of Ellen's superannuation interest is now $3.5 million due to investment returns and superannuation income stream payments made to her. Ellen's transfer balance account commences on 1 July 2017 and a transfer balance credit of $3.5 million arises on this day in respect of this superannuation income stream.

On 1 July 2017, a transfer balance debit of $4 million also arises in Ellen's transfer balance account in respect of the structured settlement contribution. Therefore, Ellen's transfer balance is negative $500,000 at the end of 1 July 2017. Ellen is entitled to start another superannuation income stream with a value up to $2.1 million without exceeding her transfer balance cap ($1.6 million).

Because her transfer balance is measured at the end of a day, Ellen 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.

11. Debits that arise when superannuation income streams fail to comply

(i) In the event a superannuation income stream provider fails to pay the prescribed minimum amount of superannuation income stream benefits:

- the income stream ceases to be a superannuation income stream.
- the superannuation income stream provider is taken not to have been paying a superannuation income stream during the income year.
- the credit that arose in the individual's **transfer balance account** remains.
- a debit arises in the individual's **transfer balance account** at the end of the superannuation income stream provider's income year. The value of the debit is the value of the superannuation interest that supports the income stream at the end of the superannuation income stream provider's income year.

12. What is a non-commutable excess transfer balance?

(i) A non-commutable ETB can arise where you have an **excess transfer balance** and you have no superannuation income streams (other than capped defined benefit income streams) left.

(ii) Thus, 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.

13. Debits due to payment splits (divorce or relationship breakdown)

(i) Following a divorce or other relationship breakdown, superannuation interests may be split as part of the division of property and may come about from a court order or a superannuation agreement between the parties.

(ii) Different treatment arises for the purposes of your transfer balance account depending on whether, under the payment split, the non-member spouse is entitled to either a lump sum amount or a percentage of the member spouse's superannuation income stream benefits payable from the superannuation income stream.

13a. If payment is a lump sum

(i) If the lump sum payment is made by commuting (partially or fully) a superannuation income stream that is in the retirement phase, a debit will arise in the member's TBA. If the non-member spouse chooses to use that lump sum amount to start a superannuation income stream, a transfer balance credit arises in their TBA.

13b. If payment is a proportion of an income stream

(i) If the payment is a proportion of a superannuation income stream, a credit to the full value of the superannuation interest that supports the superannuation income stream (at the time of the payment split) arises in the TBA of the non-member spouse. In these circumstances the transfer balance credit that originally arose in the member spouse's **transfer balance account** in respect of the superannuation income stream is not altered.

(ii) However, each spouse will receive a debit equal to the other spouse's respective proportional entitlement (ie their superannuation income stream benefits). The purpose of these debits is to proportionately reduce the credits that arose as a result of both the member spouse and the non-member spouse being a retirement phase recipient of the superannuation income stream as a result of the payment split.

(iii) The payment split must apply to a superannuation interest that supports a superannuation income stream that is in the retirement phase and both spouses are considered to be retirement phase recipients of that superannuation income stream.

(iv) The time at which these debits arise in the member spouse's and non-member spouse's **transfer balance account** is the later of:

> (a) at the start of the day the member spouse or non-member spouse first starts to have a **transfer balance account**, or
>
> (b) the operative time for the payment split.

The operative time for a payment split under a superannuation agreement 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.

The operative time for a payment split under a court order means the time specified in the order.

3.13c If a temporary breach of the TBC occurs

(i) You (or your spouse) needs to notify the ATO of any payment splits and events that result in a reduction in the superannuation interest supporting your superannuation income stream in order for a debit to arise in your transfer balance account.

(ii) A temporary breach of your TBC may occur if there is a delay between when the debit arises in your TBA and when you notify us of the debit. However, once the ATO is notified, the debit is applied retrospectively to remedy the breach.

Example - Payment splits

(i) Facts:

Brad has a superannuation income stream that is in the retirement phase that pays $4,000 per month. The superannuation interest that supports this income stream is valued at $1.6 million just before 1 July 2017 (at the end of 30 June 2017). Therefore, on 1 July 2017, Brad commences to have a **transfer balance account** and his transfer balance is $1.6 million which is equal to his transfer balance cap.

On 18 November 2017, Brad’s wife, Angelina, leaves him. The court orders that 60% of the superannuation income stream benefit payable under Brad's superannuation income stream should go to Angelina. The date specified in the court order is 1 April 2018. Prior to this date, Angelina did not have a **transfer balance account**.

(ii) Result:

On 1 April 2018, Angelina becomes the retirement phase recipient of a superannuation income stream and commences to have a **transfer balance account**. On this day, the superannuation interest supporting the income stream is valued at $1.61 million (this is not a breach of Brad's transfer balance cap as his transfer balance remains $1.6 million).

Brad notifies the Commissioner of the payment split in the approved form.

A transfer balance debit arises in Brad's **transfer balance account** on 1 April 2018 equal to 60% of the value of the superannuation interest that supports the superannuation income stream on 1 April 2018 ($966,000).

A transfer balance credit of $1.61 million arises in Angelina's **transfer balance account** on 1 April 2018. A transfer balance debit also arises in Angelina's **transfer balance account** on 1 April 2018 equal to 40% of the value of the superannuation interest that supports the superannuation income stream on 1 April 2018 ($644,000). Because her transfer balance is measured at the end of a day, Angelina has never had an **excess transfer balance** and is eligible to increase her **transfer balance cap** by indexation in future years.

Brad, 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.

Brad'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*

Angelina's transfer balance account

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

14. What is an "excess transfer balance" (ETB)?

(i) If the balance of your **transfer balance account** exceeds your transfer balance cap, you have breached your transfer balance cap and you have an excess transfer balance.

(ii) Your transfer balance at a time is the sum of the credits in your **transfer balance account** less the sum of your debits.

15. What are the transitional provisions in relation to an "excess transfer balance" (ETB)?

(i) The transitional provisions provide that you do not have an **excess transfer balance** in the transitional period from 1 July 2017 to 31 December 2017 if:

- the only transfer balance credits in your **transfer balance account** are from existing superannuation income streams at the end of 30 June 2017
- 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 to or below your transfer balance cap within the transitional period.

(ii) The transitional provisions operate only to disregard your **excess transfer balance** for this six month period so that you do not have any excess transfer balance earnings and you are not liable for excess transfer balance tax.

(iii) **Important note:** Although your **excess transfer balance** is disregarded for the transitional period up to 31 December 2017, your transfer balance has still exceeded your transfer balance cap and you will not be entitled to increase your transfer balance cap as a result of proportional indexation.

(iv) If the value of all your superannuation interests supporting superannuation income stream/s is likely to exceed $1.6 million as at 30 June 2017, you will need to closely monitor the balance of your superannuation interests that support superannuation income streams to ensure that you do not exceed your **transfer balance cap** initially and/or at the end of 31 December 2017. This may require you to reduce the value of your existing superannuation interests supporting superannuation income streams prior to 1 July 2017 to ensure you do not exceed your **transfer balance cap**.

(v) If you are subject to the transitional provisions, you will also need to reduce your transfer balance to below $1.6 million by 31 December 2017.

(vi) Unless a debit arises in your TBA by another method, your superannuation income stream will need to be commuted in part or in full to reduce your transfer balance back to or below your TBC.

16. Excess transfer balance tax (ETBT)

(i) You are liable to pay **excess transfer balance** tax if you have an **excess transfer balance** for a continuous period of one or more days.

(ii) This amount is calculated at the end of a continuous period where you have an **excess transfer balance**.

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

(iv) In determining the amount to commute, you should take into account:

- your original **excess transfer balance**,
- excess transfer balance earnings that will be credited to your **transfer balance account**, and
- the time required for your superannuation provider to action a commutation.

(v) Excess transfer balance earnings are calculated daily on your **excess transfer balance** and are credited daily to your **transfer balance account** until the Commissioner issues a determination or you no longer have **excess transfer balance**, whichever is earlier. Credits for excess transfer balance earnings increases your **excess transfer balance**.

(vi) Although credits for excess transfer balance earnings cease to arise in your **transfer balance account** once the Commissioner has issued a determination, you will still be liable to excess transfer balance tax in respect of excess transfer balance earnings that accrue in relation to any **excess transfer balance** that you have after the determination has been issued[3].

(vii) Excess transfer balance earnings only cease to accrue for the purpose of excess transfer balance tax once your transfer balance is at or below your **transfer balance cap**.

17. How are excess transfer balance determinations issued?

(i) If you have an **excess transfer balance**, the Commissioner will generally issue you with an ETB determination.

(ii) The Commissioner will issue determinations based on information that the ATO has about your TBA (eg information reported by superannuation income stream providers and transfer balance debits notified by you).

(iii) As there may be delays in the reporting of information to the Commissioner, the determination may not be issued until many months after you have an ETB.

(iv) A determination stops credits for ETB earnings arising in your TBA and increasing your ETB from the date the determination is issued.

(v) However, if a credit arises in your TBA after you receive a determination but before your PTB is reduced, ETB earnings will start to be credited again to your TBA from *that* date.

(vi) The ETB determination will state your *'crystallised reduction amount'* (CRA), which is your ETB including credits for ETB to the date of the determination. This is the amount of the debit that needs to arise in your TBA so that you are not in breach of your TBC.

(vii) The Commissioner may amend or revoke an ETB determination at any time before a commutation authority is issued. For example, if a determination is issued and you start another pension (and thereby change your transfer balance) before a commutation authority is issued.

(viii) ETB earnings continue to be calculated irrespective of the determination until your transfer balance is at or below your TBC. ETB tax is imposed on the ETB earnings that accrue from the date you start to have an ETB until you no longer have an ETB.

[3] **Note:** you are liable for the tax on the increase on the ETB even though your ETB has been determined. This is likely to keep the excess tax payer in the system for longer.

18. What is a default commutation notice (DCN)?

(i) The ETB determination must also include a default commutation notice (DCN) stating that, if you do not make an election within the specified period, the Commissioner will issue one or more commutation authorities.

(ii) The Commissioner will specify in the DCN which superannuation income stream provider/s will be issued a commutation authority and which superannuation income stream/s that the provider needs to commute in full or in part.

(iii) This is to notify you what steps the Commissioner will undertake to remove the crystallised reduction amount, if you do not make a valid election or choose to reduce a superannuation income stream yourself.

(iv) The Commissioner will generally specify the income stream which caused the ETB, however the Commissioner may specify a different income stream if, for example, it was a capped defined benefit income stream that caused the ETB. The Commissioner is also unlikely to specify a superannuation income stream if the value of the superannuation interest supporting that superannuation income stream is less than the crystallised reduction amount (unless this is your only superannuation income stream).

(v) You may object to a determination according to the normal rules (Part IVC of the TAA). However, the DCN is not part of the taxation decision, and does not carry any objection rights.

(vi) If you wish for a different superannuation income stream to be commuted than that which is specified in a (DCN), you may do so by directly asking the superannuation income stream provider to commute your chosen superannuation income stream or by making a valid election.

19. Can you elect which income stream is to be commuted?

(i) When you have been issued with an ETB determination, you may make an election to identify a different superannuation income stream/s to be commuted and the amount by which you wish it to be commuted (section 136-20 of Schedule 1 to the TAA). Once a valid election is made, it is irrevocable and the Commissioner will issue a commutation authority consistent with your election.

(ii) This election must be in the approved form and given to the Commissioner within 60 days of the determination issue date or a further period allowed by the Commissioner. Where you make a valid election, the Commissioner can only issue a commutation authority consistent with your election after this period has ended.

(iii) 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.

(iv) You should note that an extension of time to lodge an election with the Commissioner does not stop ETB earnings accruing for the purposes of ETB tax.

(v) If the amounts specified 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.

(vi) Once you receive a determination, you may choose to remove the CRA by instructing your superannuation income stream provider/s to commute this amount, instead of making an election. As excess transfer balance earnings continue to accrue for the purposes of excess transfer balance tax you may choose to approach your superannuation income stream provider directly to give effect to the commutation to lessen the time you have ETB.

(vii) Please note that a reduction in your TBA arises at the time you receive the superannuation lump sum and not at the time you instruct your superannuation income stream provider to commute a superannuation income stream.

20. What is a commutation authority?

(i) Once an ETB 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.

(ii) There is a commutable amount if the CRA reduced by the total of any transfer balance debits is greater than nil.

(iii) The Commissioner will issue **commutation authorities** with the objective of ensuring that transfer balance debits after the determination date equal the CRA.

(iv) Where the initial commutation authorities fail to reduce your PTB to or below your TBC, the Commissioner is able to issue further commutation authorities to any of your superannuation income stream providers to ensure you no longer have ETB. These further commutation authorities do not need to be the ones specified in the DCN or your election if you make one.

21. What if no valid election is made?

(i) Where no valid election is made, the Commissioner must issue a commutation authority in accordance with the DCN if there is a commutable amount. For example, an election will not be valid if your only superannuation income stream is the one specified in the default commutation authority.

Example - Transfer Balance Account Transactions:

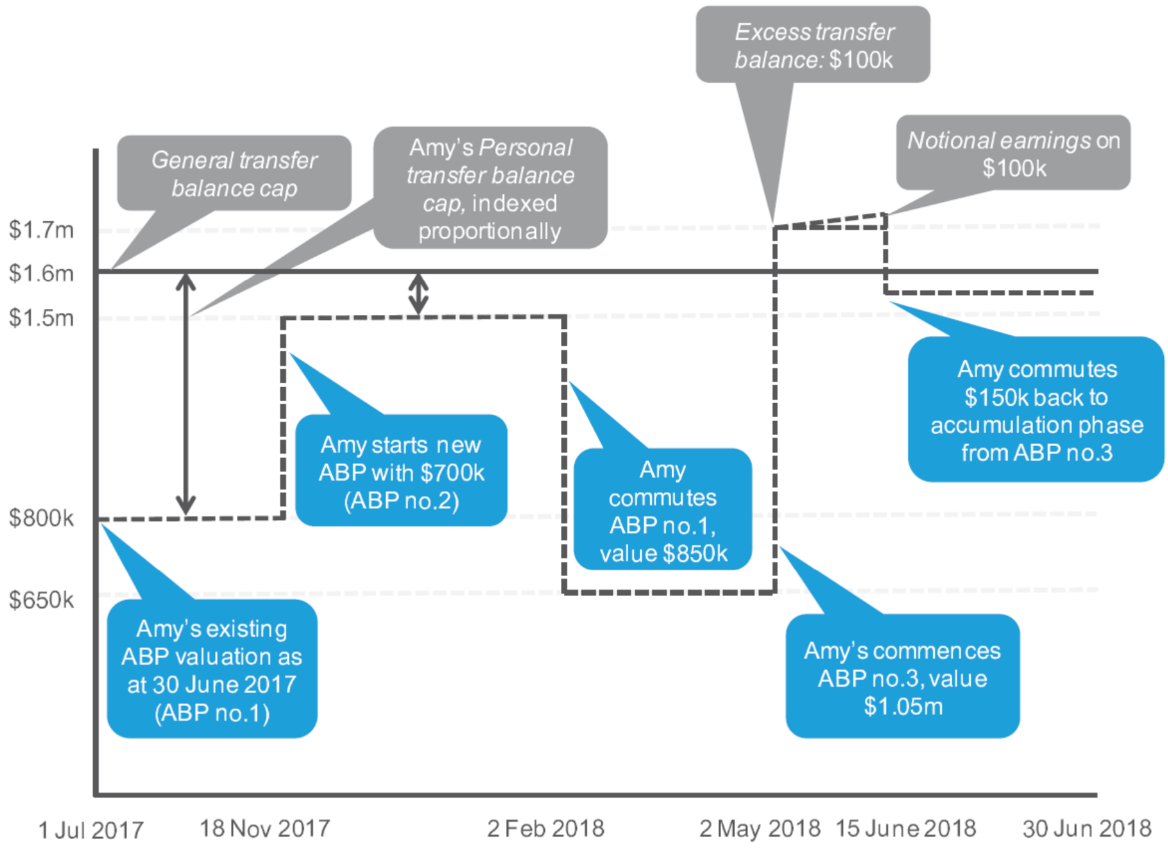
On 30 June 2017, Amy has an existing account-based pension (ABP #1) with a balance of $800,000.

On 18 November 2017, Amy commences ABP #2 with $700,000.

On 2 February 2018, Amy fully commutes ABP #1 that now has a commutation value of $850,000.

On 2 May 2018, Amy commences ABP #3 with $850,000 plus another $200,000 of superannuation accumulation funds – therefore, total purchase price of $1.05 million

On 15 June 2018, Amy commutes $150,000 from ABP #3 back to accumulation phase



Amy's **transfer balance account** is opened on 1 July 2017 with an initial balance of $800,000 relating to ABP #1. The **transfer balance account** increases to $1.5mil on 18 November 2017 with the commencement of ABP #2.

The commutation of ABP #1 on 2 February 2018 causes a debit of $850,000 to Amy's TBA. On 2 May 2018, Amy commences ABP #3 with a total of $1.05mil (the commuted proceeds of $850,000 plus another $200,000 in her superannuation accumulation account). This causes Amy's TBA to exceed her PTBC of $950,000 by $100,000. Notional earnings start to accrue and are credited to Amy's TBA on a daily basis until the excess is rectified or the Commissioner issues a determination.

Amy realises her mistake and chooses to self-rectify by commuting $150,000 from ABP #3 on 15 June 2018. If the applicable GIC rate is 8.76% per annum (daily rate = 0.024%), notional earnings will be $1,061.47 and Amy will be issued with a tax assessment for $159.22, based on this being a first-time breach and a breach in FY2018 which attracts a tax at 15% (tax at 15% will be levied on first time breaches in later years).

NEW SUPERANNUATION CONTRIBUTION RULES

1. What changes to Concessional Contributions?

Concessional contributions caps for the current financial year are as follows:

Age	Cap
Everyone regardless of age	$25,000

Increases in this cap will incur in line with changes in AWOTE but will only be increased in $2,500 increments.

2. Maximum Contributions Base for Superannuation Guarantee purposes

If the maximum contributions base for super guarantee purposes should ever exceed the concessional contributions cap, the maximum contributions base will be taken to be the concessional contributions cap. Therefore, employers, in meeting their super guarantee obligations will not cause their employees to breach the cap.

3. The Work test

It was originally proposed in the 2016/17 Federal Government Budget to remove the work test for individuals aged between 65 and 75. Subsequently, the Government announced that the work test would be retained. Therefore, the requirement for the work test to be met in order that a fund can accept contributions for individuals in this age bracket will remain.

4. The 10% rule

From 1 July, 2017, the "10% rule" is to be removed and everyone, regardless of their work situation will be entitled to claim a tax deduction for superannuation contributions (subject to any other rules that may prevent them from doing so).

However, the new legislation does not allow a tax deduction to be claimed for personal contributions to certain super funds including defined benefit contributions to Commonwealth public sector schemes and contributions not included in the income of the super fund.

5. Division 293 Tax

Division 293 tax is an additional 15% contributions tax imposed on high income earners.

The tax is imposed on concessional contributions (but not excess contributions above the concessional contributions cap) for individuals where their adjusted income exceeds $300,000 ($250,000 from 1 July, 2017).

Adjusted income includes taxable income, reportable fringe benefits, reportable superannuation contributions, total net financial investments and net rental property losses. Where the sum of these exceeds the threshold, Division 293 is imposed on ***that part of taxable contributions that exceed the threshold*****.**

6. Carry forward provisions for unused concessional contributions

From 1 July 2018, unused contribution caps can be carried forward over rolling five-year periods, to enable individuals to catch-up on contributions at another time. This carry forward is only available to those with superannuation balances of less than $500,000 as at 30 June in the year prior to making catch up contributions.

An unused concessional contributions cap is the difference between the concessional contributions caps for a given year and the actual concessional contribution made for that year. Only unused contribution cap amounts from the 2018/19 financial year can be carried forward.

For example, if in the 2018/19 financial year, a person made concessional contributions of $10,000, they would be able to carry forward $15,000 to the next year, which would enable them to make $40,000 in the following year. If in the 2019/20, they made only another $10,000 worth of concessional contributions, they would be able to carry forward an additional $15,000 so that in 2020/21 they would have the ability to contribute $55,000. If unused amounts are not used in the next five years, they will expire and will no longer be available.

Carry Forward Provisions example:

Year:	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Concessional contribution cap	$25,000	$25,000	$25,000	$25,000	$25,000	$25,000
Concessional contributions	$10,000	$10,000	$10,000	$10,000	$10,000	$40,000
Cumulative available unused cap	$15,000	$30,000	$45,000	$60,000	$75,000	$60,000

7. Non-concessional Contributions

A significant change to the eligibility to make non-concessional contributions is that from 1 July 2017 those with total superannuation balances over $1.6 million will not be able to make non-concessional superannuation contributions at all[4]. The test for this $1.6 million threshold is at 30 June of the prior financial year. Therefore, even if an individual is ineligible to make non-concessional contributions in a given year, if their balance at 30 June in a subsequent year falls below this threshold, they may become eligible again to make these contributions.

Non-concessional contributions made where the individual's total super balance exceeds the $1.6 million threshold will be treated under the existing excess non-concessional contributions provisions.

The initial Budget proposal of a lifetime cap of $500,000 did not proceed. Instead, there was put in place a reduction in the non-concessional contributions cap to four times the concessional contributions cap ($100,000 per annum for the 2017/18 year), with limitations placed on who could make these type of contributions as well as changes to the bring forward provisions.

[4] Under current rules which apply for the 2016/17 financial year, there is no reference to a person's superannuation balance that affects their ability to make non-concessional contributions.

As the concessional contributions cap is to be indexed in $2,500 increments in line with AWOTE, so too will the non-concessional contributions cap. However, as the non-concessional contributions cap is four times the concessional cap, it will increase in $10,000 increments.

Non-Concessional Contributions Cap from 1 July 2017

Age	Cap	Bring Forward Provisions
Up to age 65 and if total superannuation balances <$1.6mil	$100,000	Up to $300,000 over two years or three years based on total superannuation balances (see table below)
Age 65 and over and passes work test and if total superannuation balances <$1.6mil	$100,000	

It is important to note that only those with total superannuation balances of less than the general transfer balance cap (which will start at $1.6 million) will be eligible to make non-concessional contributions from 1 July 2017. The balance threshold is to be assessed at 30 June in the year prior to making a contribution. This threshold will increase as the general transfer balance cap is increased in $100,000 increments in line with CPI.

Total superannuation balance will include all accounts in all funds for an individual. This will mean both accumulation and retirement phase accounts as well as any roll-overs that are not reflected in those accounts. The retirement phase value will be adjusted for any amounts attributable to structured settlement contributions.

8. Bring forward provisions from 1 July, 2017

For those with total superannuation balances of less than $1.4 million, the bring forward provisions are largely the same as they currently are. That is, an individual under the age of 65 can bring forward two years of contributions and contribute up to three years in one year or $300,000 with the new caps. As with current laws, once more than $100,000 has been contributed as a non-concessional contribution in one year, the bring forward provisions have been triggered and the individual can contribute the balance up to $300,000 (in total) in the next two years.

Where a person has a total superannuation balance of more than $1.4 million, the bring forward provisions have been amended and will apply as follows:

Bring Forward Provisions from 1 July 2017

Total superannuation balance	NCC Cap	Bring Forward Period
<$1.4mil	$100,000	Up to $300,000 over three years (ie 3 x annual cap)
$1.4mil to <$1.5mil	$100,000	Up to $200,000 over two years (ie 2 x annual cap)
$1.5mil to <$1.6mil	$100,000	No bring forward
>$1.6mil	$0	N/A

Eligibility to make non-concessional contributions is assessed for each of the years in the bring forward period. That is, if a person triggers their bring forward provisions in a prior year, but does not contribute the full amount, they will not be able to make further non-concessional contributions if their total superannuation balance at the end of that year is in excess of $1.6million.

9. Transitional Bring Forward Caps

Where individuals have triggered the bring forward provisions in the 2015/16 or 2016/17 financial years by contributing more than $180,000 in either year, transitional bring forward caps will apply from 1 July, 2017.

Transitional Bring Forward Caps from 1 July 2017

Year of triggering Bring Forward Provision	NCC Cap	Bring Forward before 30 June 2017	Transitional Cap from 1 July 2017
2015 / 16	$180,000	$540,000	$460,000 ($180K + $180K + $100K)
2016 / 17	$180,000	$540,000	$380,000 ($180K + $100K + $100K)
2017 / 18	$100,000	N/A	Up to $300,000 depending on super balance.

If a person has not maximised the bring forward caps prior to 1 July 2017 but have exceeded their transitional cap, they will not need to refund any amounts. They will be taken to have met their cap and can make no further non-concessional contributions.

For example, if an individual under 65 contributes $200,000 as a non-concessional contribution in the 2015/16 financial year, their bring forward cap is $540,000 and they are able contribute another $340,000 up until 30 June 2017. However, if they do not contribute the remaining $340,000 by 30 June 2017, their new transitional cap will be $460,000 meaning that from 1 July, 2017, their total contributions for the three year period could only be an additional $260,000 (less any contributions made in the 2016/17 financial year) or $460,000 in total.

10. Government Co-contributions

Government co-contributions are amounts contributed by the Government for eligible low income earners who have also made their own personal non-concessional contributions. The Government will match those personal contributions by 50% for individuals whose income falls below certain thresholds and satisfy certain other criteria.

In order to be eligible, individuals must:

- Make a personal non-concessional contribution to a complying super fund
- Have at least 10% of their total income from an employment or business source
- Have total income less than the higher income threshold ($51,021 for 2016/17)
- Have lodged their personal income tax return for the year in which their own contribution was made

- Be aged less than 71 years (at the end of the income year)
- Not hold a temporary visa

From 1 July, 2017, individual's with total super balances in excess of $1.6 million will be ineligible for Government co-contributions

Additionally, individual's non-concessional contributions for the financial year corresponding to the income year must not exceed their non-concessional contributions cap for that financial year.

Year	Maximum entitlement	Lower Income Threshold	Upper Income Threshold
2016/17	$500	$36,021	$51,021
2017/18	$500	$36,813	$51,813

Where a person's total income (assessable income, reportable fringe benefits plus reportable superannuation contributions) is less than the lower threshold, the Government will contribute 50% of the amount of personal contributions made by the individual up to the maximum amount. That is, if the individual contributed $1,000, the Government's co-contribution would be $500. If they contributed more than $1,000 their co-contribution would still be $500.

If a person's income is above the upper threshold, they are ineligible for a co-contribution.

If a person's income is between the lower and upper thresholds, the co-contribution will be reduced by 3.333 cents for each dollar by which the person's total income for the income year exceeds the lower income threshold.

11. Low Income Superannuation Tax Offset

The LISTO is effectively a refund of contributions tax for low income earners. Concessional contributions are taxed in the super fund at 15%. As this is more tax than low income earners would pay had they received those amounts as salary and wages, the Government will 'refund' the 15% Contributions tax back to the super fund for the relevant members' benefit.

The Low Income Superannuation Tax Offset (LISTO) will replace the Low Income Superannuation Contribution (LISC) scheme from 1 July 2017.

LISTO will operate effectively in the same way as LISC. Individuals satisfying the following criteria are eligible for LISTO:

- Adjusted taxable income of no more than $37,000
- Have at least 10% of their total income from an employment or business source
- Not hold a temporary visa

OTHER MEASURES THAT ARE PARTICULARLY RELEVANT TO SMSFs

The new measures that are most relevant to the SMSF sector are summarised below.

1. Allowing death benefits to be rolled over

The types of superannuation benefits that can be rolled over has been expanded to include a superannuation death benefit. This change will enable a dependant to preserve the concessional tax treatment of a death benefit income stream that is transferred to another fund, and better aligns the tax treatment of those benefits with the cashing and roll-over rules in the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations).

2. Death benefit pensions

The Regulations introduce an additional requirement that a death benefit that is cashed as one or more pensions must also be a superannuation income stream that is in the retirement phase. If a pension that is paid to a dependant ceases to be in the retirement phase, the interests supporting the income stream must be cashed out as a lump sum, or rolled-over and paid as a new pension that is in the retirement phase. If this does not occur, the pension will cease to satisfy the compulsory cashing rules. As a result, it is important to record the death benefit pension income stream clearly so that it is not overlooked in the future.

Also, if the death benefit pension is commuted and cashed out it will be tax free, unlike in the past when it became part of the beneficiary's super account and taxed accordingly (i.e. taxable after the later of 6 months from date of death /3 months from grant of probate.

3. Pension commutations

The Regulations amend the rules so that payments made by way of commutation do not count towards the minimum draw-down requirements.

4. Non-concessional contributions

The Regulations remove the fund-capped contributions limits in the SIS Regulations. These limits have previously prevented a fund from receiving a non-concessional contribution that is greater than three times the amount of the non-concessional contributions cap (or the amount of the non-concessional cap if the individual is between 65 and 75).

However, the changes to the non-concessional contributions cap introduced by the Superannuation reforms, and in particular the eligibility conditions in respect of an individual's total superannuation balance, now mean that it is no longer practical to set a single value for the fund-capped contribution limit. This is because an individual's cap (including the bring forward cap) is no longer based solely on the individual's age, but varies depending on the individual's total superannuation balance.

5. Elections to treat certain payments as a lump sum

The Regulations repeal the section of the Income Tax Assessment Regulations 1997 (ITAA 1997) that currently allows individuals to make an election not to treat a payment as a superannuation income stream benefit.

Whether a benefit paid from a superannuation fund is treated as a lump sum or a pension is significant because there are different tax consequences for each.

From a practical perspective, this change means individuals in a transition to retirement income stream (TRIS), will from 1 July 2017, only be permitted to receive a superannuation income stream benefit from their TRIS. Commutations from an account based pension will still be permitted and taxed as a lump sum. In other words, TRIS payments will be treated as lump sum payments and will not reduce a member's TBA.

6. Anti-detriment provisions

The Regulations amend the ITAA 1997 to remove the anti-detriment income tax deduction from 1 July 2019 for a person who dies before 1 July 2017.

SUPERANNUATION ACCUMULATION STRATEGIES

1. Maximise concessional contributions before 30 June 2017 while caps are higher, particularly for higher income earners that might be impacted by Division 293 tax from 1 July 2017.

2. Contribution Reserving – consider making a "double" contribution this year and re-allocate the second contribution after 30 June 2017. Each contribution should be made separately. The second contribution must be made after 3 June (to allow 28 days to re-allocate to member account) and the details notified to the ATO. Also, the second contribution must not exceed the next year's contribution cap of $25,000.

3. Re-contribution strategies – spouses and partners can equalise their pension accounts by withdrawing a lump sum from the account with the higher balance and re-contributing to the account with the lower balance. This strategy is only available if the requirements for both the withdrawals and the contributions can be met (ie age, work test, caps, bring forward requirements).

4. Contribution splitting – concessional contributions can be split between spouses to assist with re-balancing accounts between them.

5. Maximise non-concessional contributions this financial year before $1.6 million threshold imposed and while the contribution caps are higher – if the contribution rules can be met (ie. age, work test, caps and bring forward requirements).

6. Consider timing of non-concessional contributions if you are also eligible for contributions under Small Business CGT concessions. SB CGT contributions won't be assessed against the $1.6 million threshold but may cause the balance to exceed $1.6 million making further non-concessional contributions impossible.

7. Consider timing of indexation of thresholds and whether a delay in contributions is warranted to access higher thresholds (relevant in future years).

8. Make **Government Co-contributions** where eligible.

9. Make **spouse contributions** where eligible**.**

10. Review salary sacrifice arrangements. Ensure that current salary sacrifice arrangements are adjusted in accordance with the new concessional contribution caps.

11. Review contributions if any elections for CGT relief are made. Contributions may need to be reconsidered in the event that the contribution causes segregated assets or deemed segregated assets to become unsegregated, triggering the CGT relief date.

12. Effective Marginal Tax Rate (EMTR) on ordinary income. Investment portfolios of less than $900,000 may be more tax effective if invested personally or in a family trust rather than in superannuation accumulation accounts.

CONCLUSION

More than ever, the ability for a member of a Superannuation Fund to take full advantage of the new superannuation rules will depend on an accurate knowledge of the rules, an understanding of their practical implications and consequences and have accurate and efficient reporting systems.