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Transitional CGT relief

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Our commitment to you

This Guidance note contains general information and examples. It may omit details that could be significant in your personal circumstances

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This information is for super funds with members who:

- expect to have retirement-phase interests greater than $1.6 million on 30 June 2017 and will have to comply with the new transfer balance cap, or
- are receiving a transition-to-retirement income stream (TRIS).

What is transitional CGT relief?

Transitional CGT relief is temporary relief available to super funds for certain CGT assets that will lose the tax exemption in complying with the new transfer balance cap and TRIS.

As trustee of a super fund, you have access to temporary CGT relief if one or more of your members needs to take action to prepare for the changes.

- Under the new transfer balance cap rules commencing on 1 July 2017, a member may need to reduce amounts currently supporting retirement phase super income streams.

They may do this by transferring amounts back to the accumulation phase or withdrawing amounts from super.

- Under the changes that remove the tax-exempt status of assets that support a TRIS, from 1 July 2017 you will lose the exemption for earnings from assets supporting TRIS (unless it is in the retirement phase) and the earnings will be taxable. This is because TRIS will no longer be considered super income streams in retirement phase, unless your member satisfies a condition of release with a nil cashing restriction.

Choosing to apply CGT relief

You can choose to apply temporary CGT relief if you hold the asset throughout the period 9 November 2016 to 30 June 2017 (or on 1 July 2017, if you have been using the segregated method and the asset supports a TRIS that will continue into 2017–18). You will need to do so before you are 'required to lodge' your 2016–17 tax return.

Applying CGT relief will:

- reset the cost base of an asset to its market value. This is where you reallocate or re-proportion assets from retirement phase to accumulation phase. The market value would be determined under the *Valuation guidelines for self-managed super funds* on the date of the asset transfer, or 30 June 2017 where assets are re-apportioned
- defer a capital gain that arises when resetting the cost base for re-proportioning assets where you use the proportionate method.

How CGT relief applies

CGT relief is not required in situations where you dispose of the asset between 9 November 2016 and 30 June 2017. This is because the existing CGT exemption rules apply to those disposals.

If you choose to use CGT relief, it will apply differently depending on how you calculate your exempt current pension income for a year. You may be calculating your exempt current pension income by:

- selecting specific assets to support your income streams (known as the segregated method), or
- allocating a percentage of your total assets to support your income streams (known as the proportionate method).

Segregated method

If you have been using the segregated method and either continue to use it, or switch to the proportionate method, an asset must cease being a segregated current pension asset at a time between 9 November 2016 and 30 June 2017 (or on 1 July 2017, if the asset supports a TRIS that will continue into 2017–18) to be eligible for relief. The capital gain or loss for that asset will then be entirely disregarded.

An asset ceases to be a segregated current pension asset when:

- it is transferred out of the pool of segregated current pension assets; or
- you make and record an election to switch to the proportionate method.

Proportionate method

If you have been using the proportionate method and continue to use it throughout the period 9 November 2016 to 30 June 2017, CGT relief is available for all your assets.

Capital gains are partly disregarded for unsegregated assets, and may be deferred. Capital losses on unsegregated assets are recognised under existing rules. You will need to keep records of the assets with the CGT relief and any exempt portion of the deferred capital gain.

You can choose not to apply the CGT relief if it is in your members' best interests. For example, if in the future, your members will be predominately in retirement phase, then electing to use the CGT relief may crystallise a CGT liability that would not exist in the future.

You may not be able to use the segregated method to calculate your exempt current pension income for 2017–18 onwards (see 'What you can do from 1 July 2017' below).

What you can do

What you can do before 1 July 2017

Situation	Action
If you: ■ use the segregated method throughout the period 9 November 2016 to 30 June 2017 ■ hold the assets throughout the period 9 November 2016 to 30 June 2017, and ■ have a member who has to comply with the new transfer balance cap or TRIS reforms	If you move an asset from the retirement phase to the accumulation phase before 1 July 2017, you can reset its cost base to its market value at that time. You are deemed to have repurchased the asset for market value on the day it ceases to be a segregated current pension asset. If the asset supports a TRIS that will continue into 2017–18, it will cease to be a segregated current pension asset on 1 July 2017. The asset then becomes a segregated non-current asset. The gain or loss is entirely disregarded for the segregated current pension asset up to this time. You will need to hold the asset for at least 12 months after this time to qualify for the CGT discount. Another effect of resetting the date is that the indexation method for assets originally acquired before 21 September 1999 will no longer be available. You should clearly document the date the assets cease to be segregated current pension assets.
If you: ■ used the segregated method on 9 November 2016 and switch to the proportionate method between 9 November 2016 and 30 June 2017 ■ hold the assets throughout the period 9 November 2016 to 30 June 2017, and	Instead of transferring specific assets to the accumulation phase, you may switch to the proportionate method (for example, where you have large assets with high market values), but your members only need to commute a small amount back to the accumulation phase. All your assets that are segregated to support income streams cease to be segregated from the day you switch methods. This will be the cessation time. You can choose to apply CGT relief to some or all of these assets to reset their cost base(s) to their market value at the cessation time. The gain or loss is entirely disregarded for the segregated current pension asset up

▪ have a member who has to comply with the new transfer balance cap or TRIS reforms	to this time. You will need to hold the asset for at least 12 months after this time to qualify for the CGT discount. Another effect of resetting the date is that the indexation method for assets originally acquired before 21 September 1999 will no longer be available. As you will start to have assets that support both accumulation and retirement phase interests, you will need to obtain an actuarial certificate to support the use of the proportionate method.
If you: ▪ continue using the proportionate method throughout the period 9 November 2016 to 30 June 2017 ▪ hold the assets throughout the period 9 November 2106 to 30 June 2017, and ▪ have a member who has to comply with the new transfer balance cap or TRIS reforms	If you reduce the percentage of assets supporting your members’ income streams, you can choose to apply CGT relief to some or all of your assets to reset their cost bases to their market values at 30 June 2017. You may make a capital gain from this reset. Where these assets have only been partially supporting income streams, you may have to pay tax on some of the capital gain. You can: ▪ Apply the CGT relief and choose not to defer a capital gain. You can recognise any capital gain or loss in the 2016–17 year and the CGT discount may apply if you held the asset before 1 July 2016. You are deemed to have repurchased the asset on 30 June 2017. You will need to hold the asset for at least 12 months after this time to qualify for the CGT discount when disposing of the asset. Another effect of resetting the date is that the indexation method for assets originally acquired before 21 September 1999 will no longer be available. ▪ Apply the CGT relief and choose to defer a capital gain. You cannot defer a capital loss. You need to calculate the capital gain as if it were not being deferred, taking into account any applicable discount, but not applying any capital losses. The calculated capital gain is then deferred and recognised in the year that you cease to hold the asset.
If you change from the proportionate method to the segregated method between 9 November 2016 and 30 June 2017	You will not be eligible for CGT relief under either the segregated or proportionate method. If you need to take action to prepare for the transfer balance cap or TRIS changes, you should carefully consider your eligibility for CGT relief before changing methods.

What you can do from 1 July 2017

Situation	Action
If you want to claim CGT relief	CGT relief is not automatic – you must choose for it to apply to a CGT asset, in the approved form. Once you choose to apply CGT relief, it cannot be

	revoked and must be made on or before the day you are required to lodge your 2016–17 tax return. You need to keep appropriate records for each asset subject to the CGT relief and any deferred tax liability in accordance with your record-keeping requirements.
If any of your members have a total superannuation balances over $1.6 million and you are paying any retirement phase income streams	You will not be able to use the segregated method to calculate your exempt current pension income in an income year if you: ■ are a self-managed superannuation fund or small APRA fund ■ are paying a retirement phase income stream (to any member), and ■ have a member who has a total superannuation balance of over $1.6 million immediately before the start of the income year, where that member is also receiving a retirement phase income stream (from any super provider). In this situation, you will need to use the proportionate method to calculate your exempt current pension income for the year.

Examples

Fund uses the segregated method, and continues to use it

Main points	Example
John: ■ *65 years old and retired* ■ *$2 million in retirement phase account at 1 March 2017* *John's Fund:* ■ *purchased a property on 1 December 2002 with a cost base of $300,000 (the market value of the property is $500,000 on 1 March 2017)* ■ *holds $1.5 million in cash and shares* ■ *uses the segregated method, with all assets supporting John's income stream* ■ *held the assets throughout the period 9 November 2016 to 30 June 2017.*	*On 1 March 2017, John transfers $500,000 from his retirement phase to the accumulation phase, to ensure he complies with the new transfer balance cap.* *John's Fund transfers the property (valued at $500,000) out of the pool of segregated current pension assets supporting John's income stream. The asset is now a segregated non-current asset and CGT relief is available.* *John's Fund applies CGT relief to the property and its cost base is reset to its market value of $500,000 on 1 March 2017. The $200,000 capital gain is entirely disregarded as the property was a segregated current pension asset at the time of the deemed sale (1 March 2017). The gain on this asset, up to this point, would have been exempt from income tax if the asset was sold while it was a segregated current pension asset.* *The date John's Fund is deemed to have repurchased the asset for market value is 1 March 2017 as this is when it ceases to be a segregated current pension asset. The fund will need to hold the asset for at least 12 months after this time to qualify for the CGT discount when disposing of the asset.* *John's Fund will not be able to use the segregated method in 2017–18, and will have to use the proportionate method; because John's total*

	superannuation balance exceeds $1.6 million on 30 June 2017.

Fund uses the segregated method, and switches to the proportionate method

Main points	**Example**
Bettie ▪ *64 years old and retired* ▪ *$2 million in retirement phase account at 20 May 2017* *Barry* ▪ *58 years old, not retired* ▪ *accumulated super balance of $1 million at 20 May 2017* *Bettie and Barry's Fund:* ▪ *purchased a property on 15 December 2002 with a cost base of $1.5 million (the market value of the property is $2 million)* ▪ *holds a share portfolio with a market value of $1 million on 20 May 2017* ▪ *uses the segregated method, with the property supporting Bettie's retirement phase account, and with the share portfolio supporting Barry's accumulation account* ▪ *held the assets throughout the period 9 November 2016 to 30 June 2017.*	*On 20 May 2017, Bettie transfers $400,000 to the accumulation phase, to ensure she complies with the transfer balance cap.* *Bettie and Barry's Fund does not wish to sell any of its assets. None of the assets of Bettie and Barry's Fund can be classified as segregated non-current assets to support the transfer, as the fund cannot transfer assets equal to $400,000 out of the assets supporting Bettie's income stream. The fund chooses to switch to the proportionate method on 20 May 2017.* *The $2 million property ceases to be segregated to support Bettie's income stream, and CGT relief is available. The fund applies CGT relief to the property and its cost base is reset to $2 million on 20 May 2017.* *The $500,000 capital gain is entirely disregarded as the property was a segregated current pension asset at that time. The capital gain up to this point would have been exempt from income tax if the asset was sold while it was a segregated current pension asset at the time of the deemed sale (20 May 2017).* *The date Bettie and Barry's Fund is deemed to have repurchased the asset is the date it ceases to be a segregated current pension asset – that is, 20 May 2017 (the day the fund switches methods). The fund will need to hold the asset for at least 12 months after this time to qualify for the CGT discount.* *As the fund will start to have assets that support both accumulation and retirement phase interest, they will need to obtain an actuary's certificate to support the use of the proportionate method.*

Fund continues to use the proportionate method

Main points	**Example**
Greg: ▪ *61 years old and retired* ▪ *$3 million in retirement phase account at 30 June 2017* *Laura:*	*On 30 June 2017 Greg transfers $1.4 million to the accumulation phase, leaving $1.6 million in his pension account to comply with the transfer balance cap.* *Greg and Laura's Fund adjusts the percentage of the property supporting Greg's pension, so that 40% is supporting Greg's pension and 60% is supporting Greg and Laura's accumulation accounts.*

54 years old, not retired *accumulated super balance of $1 million on 30 June 2017* *Greg and Laura's Fund:* *purchased a property on 20 September 2005 with a cost base of $2 million (the market value of the property is $4 million on 30 June 2017)* *uses the proportionate method and the asset is apportioned, 75% supporting Greg's pension and 25% supporting Laura's accumulation account* *held the assets throughout the period from 9 November 2016 to 30 June 2017.*	*Greg and Laura's Fund chooses to apply CGT relief to the property and this means its cost base is reset to its market value of $4 million on 30 June 2017. The fund makes a capital gain of $2 million in 2016–17, but 75% of it is exempt. The fund can recognise any capital gain or loss in 2016–17 and CGT discount that may apply (provided it had the asset before 1 July 2016).* *Alternatively, the fund can choose to defer the capital gain until it actually sells the property. It acquires the assets on 30 June 2017 and the start of the CGT discount is reset to 30 June 2017. The fund will need to hold the asset for at least 12 months after this time to qualify for the CGT discount.*

Fund complies with TRIS changes – deemed to be segregated method

Main points	Example
Liam: *60 years old and retired* *$2 million in retirement phase account at 15 April 2017* *Luna:* *57 years old* *receiving a TRIS from valued at $1.5 million at 15 April 2017* *Liam and Luna's Fund:* *purchased 100 units in LL Managed Fund on 30 June 2015 with a cost base of $1.8 million, or $18,000 per unit (the market value of the units is $2 million, or $20,000 per unit, on 15 April 2017)* *purchased a property, on 10 January 2010, with cost base of*	*On 15 April 2017, Liam transfers $400,000 to an accumulation account to ensure he will not exceed his transfer balance cap on 1 July 2017.* *Luna also becomes aware that her TRIS will no longer be in retirement phase from 1 July 2017 because she has not satisfied a condition of release with a nil cashing restriction. She decides to cease her TRIS and transfer its entire $1.5 million value to an accumulation account on 15 April 2017.* *Since Liam and Luna's Fund is no longer only supporting income streams, its assets are no longer automatically deemed to be segregated current pension assets.* *The fund remains segregated, and transfers the property and 20 units in LL Managed Fund out of the pool of segregated current pension assets on 15 April 2017. The total value transferred out of the pool of segregated current pension assets ($1.5 million from the property, plus $400,000 from the 20 units) reflects the amounts Liam and Luna transferred to accumulation phase.* *CGT relief is available for any or all of the transferred assets (the property and/or the 20 units).* *The fund applies CGT relief to the property and the 20 units, and the cost bases of those assets are reset to their market values on 15 April 2017. The capital*

$1 million (the market value of the property is $1.5 million at 15 April 2017) - *is solely supporting income streams, so its assets are deemed segregated current pension assets* - *held the assets throughout the period 9 November 2016 to 30 June 2017.*	*gains of $500,000 for the property and $40,000 for the 20 units are entirely disregarded as the assets were segregated current pension assets at the time of the deemed sale (15 April 2017).* *Liam and Luna's Fund is deemed to have repurchased the assets for market value on 15 April 2017, when the assets ceased to be segregated current pension assets. The fund will need to hold the assets for at least 12 months after this time to qualify for the CGT discount when disposing of the assets.* *Liam and Luna's Fund will not be able to use the segregated method in 2017–18, and will have to use the proportionate method; because Liam's total superannuation balance exceeds $1.6 million on 30 June 2017.*

References

ATOlaw topic(s)	Superannuation ~~ Income tax - individuals (superannuation) ~~ Other
Legislative references	
Related Rulings/Determinations	- LCR 2016/8 *Superannuation reform: transfer balance cap and transition-to-retirement reforms: transitional CGT relief for superannuation funds* - LCR 2016/9 *Superannuation reform: transfer balance cap*
Case references	
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