FirstTech 2025–26 Super guide

2025 WEALTH INSIGHTS
FirstTech Ranked #1 Technical Support

Adviser use only

This Super guide has been developed to provide you with an easy reference tool when planning and reviewing your clients' super, tax and retirement strategies.
For additional facts, figures and information for the 2025–26 financial year, refer to your FirstTech pocket guide. For information about the specific rules that apply to self-managed superannuation funds (SMSFs), refer to the FirstTech SMSF guide.

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Part A Superannuation

1 Contribution eligibility

1.1 What is a contribution?

In the superannuation context, a contribution is anything of value that increases the capital of a superannuation fund provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general.[1]

A superannuation fund's capital is most commonly increased by transferring funds to the superannuation provider. Other ways for the capital of a superannuation fund to be increased include transferring an existing asset to the superannuation provider (an in specie contribution), by increasing the value of an existing asset held by the fund or by extinguishing a liability of the fund.

There is generally no limit to the amount that may be contributed by, or on behalf of, a member within a financial year. However, there may be tax consequences where a member exceeds one or more contributions caps. Members may be personally liable for additional tax on contributions made within a financial year that exceed contributions caps.

For more information on contributions caps and taxation of excess contributions, see sections 2 and 3.

In specie contributions

In specie contributions are those made using assets other than cash, and occur where an asset is transferred, but the superannuation fund pays no consideration or pays consideration less than the market value of the asset. Examples of in specie contributions include transferring ownership of shares or transferring the title of a real property into the name of the superannuation fund's trustee.

In specie contributions may be made at any time by a person who is not a related party of the fund, provided that all other relevant SIS provisions are met and subject to the trust deed. A person who is a related party of the fund can make an in specie contribution provided that the asset contributed is one that the fund is permitted by SIS to acquire from a related party (e.g. listed securities, units in widely held trusts or business real property, acquired at market value).

The market value of the in specie contributed asset counts towards the relevant contributions cap. For more information on in specie contributions as well as any other arrangements that may result in a contribution, as well as the timing and value of those contributions, please see the FirstTech SMSF guide and/or TR 2010/1.

1 Tax Ruling TR 2010/1: Income tax: superannuation contributions.

Transfers from foreign superannuation schemes are contributions

Transfers originating from outside the Australian super system, such as a transfer from an overseas super fund, are treated under SIS as contributions which are subject to contribution rules.

See section 13.4 for more information on foreign super transfers.

Rollovers

Tax Ruling TR 2010/1 confirms that for tax purposes, a rollover from one complying superannuation fund to another complying superannuation fund is technically a contribution for tax purposes. However, a rollover superannuation benefit is specifically excluded from the definition of concessional contribution and non-concessional contribution and doesn't count towards a member's concessional or non-concessional contributions caps.

For superannuation law purposes, the definition of contribution excludes benefits that have been rolled over or transferred to a fund (within the Australian super system).

When is a contribution made?

When a contribution is made can be an important factor for many super rules, including whether a fund is able to accept a contribution, and when a tax deduction may be claimed.

Taxation Ruling TR 2010/1 confirms that a contribution is made when the capital of the fund is increased. A fund's capital will be increased when an amount is received, or ownership of an asset is obtained, or a fund otherwise obtains the benefit of an amount.

For example, a contribution of money via an electronic transfer is made when the amount is credited to the superannuation fund's bank account – not when the member did everything necessary to effect the payment.

Table 1.1 summarises the timing of various methods of contribution.

Table 1.1 Timing of various types of contributions

Way contribution made	When contribution made
Electronic transfer	When the funds are credited to the superannuation fund's account.
Personal cheque	The date the cheque is received by the super fund, so long as it is promptly presented and not dishonoured (and not post-dated). **Note** – similar rules apply for promissory notes.
Creating a right in the name of a fund for no consideration	When the superannuation fund commences to hold the right.
Increasing the value of an asset	When ownership of the improvement passes to the fund. In general, the ownership would pass immediately.

Way contribution made	When contribution made
Paying a fund liability or expense	When a person pays a fund's liability or expense.
Forgiving a debt	When the lender executes a deed of release that relieves the superannuation fund from the obligation to repay a loan.
Payment of debt by guarantor	If the guarantor has no right of indemnity – when the super fund's liability is satisfied. Otherwise, when the indemnity expires, or when the guarantor takes formal steps to forgo that right by executing a deed of release.
In specie transfer of listed shares	When the superannuation provider obtains a properly executed off-market share transfer in registrable form. See Taxation Ruling TR 2010/1 for more information.
In specie transfer of real property	When the superannuation provider acquires the beneficial ownership of real property, which is when the fund obtains possession of a properly executed transfer that is in registrable form, together with any title deeds and other documents necessary to procure registration of the superannuation provider as the legal owner of the land. See Taxation Ruling TR 2010/1 for more information.

1.2 SIS contribution categories

The Superannuation Industry (Supervision) Regulations (SIS) categorise contributions as either employer contributions or member contributions, and provide eligibility rules for superannuation funds to accept these contributions based on the age of the member at the time of the contribution.

In contrast, tax legislation categorises contributions as concessional, non-concessional, and other special purpose contributions. Refer to sections 2, 3 and 4 for more detail on the taxation categories of contributions.

Employer contributions

Employer contributions are contributions made by, or on behalf of, an employer-sponsor of the fund. An employer-sponsor is an employer who contributes to the fund for the benefit of a member of the fund who is an employee of the employer. Employer contributions can either be mandated or voluntary.

Mandated employer contributions

Mandated employer contributions are contributions made by an employer on behalf of an employee of any age, that either:

- satisfy an employer's superannuation guarantee (SG) obligations, or
- satisfy an obligation imposed by an award made or an agreement certified by an industrial authority.

Voluntary employer contributions

Voluntary employer contributions are all employer contributions that are not mandated employer contributions. Examples include salary sacrifice and voluntary employer contributions in excess of an employer's superannuation guarantee obligations. They can be a fixed dollar or percentage amount, or a contribution to cover expenses such as insurance premiums or fees.

Member contributions

Member contributions are all contributions by, or on behalf of, the member to the fund that are not employer contributions. Member contributions are split into those made by the member, and those made by someone other than the member for the purposes of contribution eligibility.

Member contributions made by the member

Member contributions, made by the member, include:

- personal concessional contributions
- personal non-concessional contributions
- downsizer contributions
- contributions from personal injury payments
- contributions made under the lifetime CGT cap, whether made by the member or a company or trust
- recontribution of COVID-19 early release superannuation amounts.

Member contribution made by others

Member contributions that are not made by a member include:

- spouse contributions
- child contributions made by a parent
- contributions made by any other third party (excluding an employer of the member)
- Government co-contribution or low income super tax offset (LISTO) contributions.

1.3 SIS contribution eligibility rules

SIS contribution eligibility rules refer to the requirements that must be satisfied in order for a superannuation fund to accept a contribution in respect of a member.

Age-based contribution eligibility requirements

Table 1.2 outlines the aged-based requirements applying to the acceptance of contributions.

Table 1.2 Age-based contribution eligibility requirements

Age of member at time of contribution	Fund may accept contributions made in respect of the member that are
Under 75 (includes the period up to 28 days after the end of the month in which the member reaches age 75)	• Any employer contributions • Any member contributions (including downsizer contributions from age 55)
75 or over (after allowing for the 28-day grace period mentioned above)	• Mandated employer contributions • Member contributions that are downsizer contributions.

Note: In the case of eligible spouse contributions, the above requirements apply to the receiving spouse – the age of the contributing spouse is not relevant.

Maximum age limit for most voluntary contributions

Mandated employer contributions can be received at any time, regardless of the member's age.

Member contributions (including those made by the member and those made by others) and voluntary employer contributions can only be received where the member is under age 75 at the time of contribution (this includes the period up to 28 days after the end of the month in which the member reaches 75).

There is no maximum age limit for downsizer contributions, which are a type of member contribution. Subject to meeting all qualification criteria, someone age 55 or over can make a downsizer contribution. Refer to section 4.3 for more details.

Exception for contributions relating to an earlier period

A superannuation fund is permitted to accept a contribution (which otherwise could not be accepted) if the trustee reasonably believes that it relates to an earlier period during which the fund would have been permitted to accept the contribution.

APRA expects[2] that this exception would only apply to:

- Employer contributions received after the end of a period of gainful employment but clearly related to an earlier employment period that was a valid contribution period for the member. For example, a salary sacrifice contribution relating to a period of employment while a member was under age 75 may be accepted even though it is received more than 28 days after the end of the month in which the member reaches age 75.

2 APRA Prudential Practice Guide SPG 270 [41].

- Contributions accidentally allocated to another member during a valid contribution period for the correct member and the late contribution is merely a corrective transaction to reverse the original error.

It is unlikely that this exception can apply to a contribution over which the member has control. For example, a member whose personal contribution is received more than 28 days after the end of the month in which they reach age 75 due to a delay in selling an investment asset to fund the contribution would not qualify for this exception.

Government co-contribution and LISTO can be accepted at any time

The Government co-contribution and LISTO contribution are examples of contributions made by the Government relating to earlier eligible contribution periods. Because the member was eligible to contribute at the time of the original contribution, a Government co-contribution or LISTO contribution can always be accepted, regardless of the member's age.

Exception for contributions relating to look-through earnout rights

Where a member contribution is made that will count towards (and not exceed) a client's lifetime CGT cap, and the contribution relates to capital proceeds from a CGT event that was or could have been affected by one or more financial benefits received under a 'look-through earnout right', it may be accepted by the fund if the member would have otherwise been able to accept the contribution in the financial year in which the CGT event happened.

For further information, see section 4.5.

TFN requirements

A superannuation fund can only accept member contributions (whether made by the member or by another party) if the member's tax file number (TFN) has been quoted to the fund. However, as discussed below, where the fund has not been supplied with a member's TFN, it can be provided within 30 days of the member contribution being received.

Super funds are not prevented from accepting employer contributions where a member's TFN has not been quoted, however, this may lead to no-TFN contributions tax applying (see section 2.3).

Treatment of contributions received that don't satisfy SIS eligibility requirements

Where a fund receives a contribution that does not comply with SIS contribution eligibility requirements, it must return the contribution to the contributor within 30 days of becoming aware that the requirements were not satisfied.

An exception applies where a member contribution is received and the member's TFN has not been provided to the fund. In this case, the contribution does not have to be returned provided the member's TFN is quoted to the fund within 30 days of the contribution being received.

1.4 Contributions by non-residents and temporary residents

Contributions made by non-residents for tax purposes

There are no restrictions that limit the ability of non-residents to make contributions to an Australian superannuation fund. As a result, Australian citizens or permanent residents who work or live overseas for extended periods of time are eligible to make non-concessional contributions and personal concessional contributions provided they meet standard contribution eligibility rules (see section 1.3) including the requirement to provide the fund with their TFN.

Amounts contributed by non-residents will be preserved, and are subject to the standard conditions of release, such as retirement or permanent incapacity, to be accessed (different rules apply to temporary residents, see below). However, it is important to note that superannuation funds commonly require that documentation (such as the PDS) is received and the application process completed while the person is in Australia.

Contributions made by temporary residents

A temporary resident is generally a foreign national who has been granted the right to stay in Australia for a certain period of time (e.g. with a temporary visa), without full citizenship or permanent residency. A temporary resident can make contributions into a superannuation fund subject to meeting the standard contribution eligibility rules (see section 1.3). A TFN will be required for member contributions.

However, be aware that from 1 April 2009, only limited conditions of release are available to temporary or former temporary residents (see section 13.3). Temporary residents may cash out their superannuation benefits (subject to Departing Australia Superannuation Payment tax – see Table 13.1 for further information) when their visa expires and they have permanently departed Australia.

Superannuation benefits of former temporary residents that are not withdrawn must generally be transferred to the ATO as unclaimed super (see section 7.4).

1.5 Contributions under first home super saver (FHSS) scheme

Individuals can have certain voluntary contributions made on or after 1 July 2017 released (subject to limits), along with an amount of associated earnings, for the purpose of buying their first home under the first home super saver (FHSS) scheme.

Contributions made under the FHSS scheme are not a special or separate category of contributions and therefore:

- Are subject to normal SIS contribution eligibility rules.
- Count towards a member's contributions caps (i.e. concessional cap or non-concessional cap).

For information about the types and amounts of contributions that can be made and then released under the FHSS scheme, see section 8.14.

2 Concessional contributions

2.1 Summary of concessional contributions rules

Concessional contributions (sometimes referred to as pre-tax contributions) are generally those that are:

- not taxed at a client's marginal tax rate (due to being excluded from assessable income or being tax-deductible), and
- taxed at 15% when received by the superannuation fund (due to being included in the fund's assessable income).

Part or all of a client's concessional contributions may be subject to an additional 15% 'Division 293 tax' or have a low income super tax offset (LISTO) apply to reduce the tax impact (see section 2.3).

The concessional taxation above that applies to concessional contributions is limited in each financial year to the client's concessional contributions cap. Any contributions exceeding this cap (excess concessional contributions) don't receive concessional taxation and are effectively taxed at a client's marginal tax rate.

Clients who have a marginal tax rate of more than 15% may obtain a more favourable tax outcome by making concessional contributions (within their concessional cap) compared with making non-concessional contributions. Common types of concessional contributions include employer super contributions (e.g. Super Guarantee or salary sacrifice) and personal tax-deductible contributions.

2.2 Concessional contributions cap

The concessional contributions cap limits the concessional contributions an individual makes to super by effectively taxing any excess contributions at the individual's marginal tax rate.

Depending on a client's situation, their concessional contributions cap for a financial year may be equal to the basic concessional contributions cap. Alternatively, they may have a higher available concessional cap if eligible to carry forward unused cap amounts from previous years.

The concessional contributions cap applies to the individual. For example, if a member has multiple employers or multiple superannuation funds, contributions from all employers and funds (as well as other concessional contributions such as personal tax-deductible contributions) in a financial year will be totalled to count against the member's concessional cap.

FirstTech comment: Concessional contributions cap checklist

Refer to Appendix 2 for a concessional contributions cap checklist. This checklist can assist to determine a client's concessional contributions cap, their total concessional contributions, and whether they have exceeded their concessional contributions cap.

Basic concessional contributions cap

The basic concessional contributions cap is shown in Table 2.1.

Table 2.1 Basic concessional contributions cap

Financial year	Cap amount
2025–26	**$30,000**
2024–25	$30,000
2023–24	$27,500
2022–23	$27,500
2021–22	$27,500
2020–21	$25,000
2019–20	$25,000
2018–19	$25,000

The basic concessional contributions cap is indexed to average weekly ordinary time earnings (AWOTE) each financial year but only increases in increments of $2,500. As a result, it won't necessarily increase each financial year.

Carry-forward of unused concessional cap amounts

A member will have a higher available concessional contributions cap (than the basic cap) in the current financial year if they can carry forward and apply available unused concessional cap amounts from previous financial years.

A member can carry forward and apply available unused concessional cap amounts from any of the previous five financial years to increase their concessional cap in the current financial year if:

- their concessional contributions for the current financial year exceed the basic concessional cap (currently $30,000), and
- their total superannuation balance (TSB) just prior to the start of the current financial year is less than $500,000.

Where an eligible member makes concessional contributions that exceed the basic concessional cap, the amount necessary to accommodate the contribution is taken from the earliest unused concessional cap amount within the five-year period first.

FirstTech comment: Unused concessional contributions cap amounts and total superannuation balance reported through myGov

Details of a member's available unused concessional contributions cap amounts that have accrued in the previous five financial years as well as details of their total superannuation balance at the end of the previous financial year are available via myGov.

However, advisers should be aware that the values reported on myGov may not be accurate where a fund, such as an SMSF, has not yet reported a member's contribution and balance details, or the member is yet to lodge a notice of intent to claim a tax deduction for a personal contribution that they made in the previous financial year. This would increase the level of their concessional contributions for that year and reduce the amount of unused concessional contributions cap amounts they would have for that year.

A client's unused concessional cap details on myGov may show as not being available where no concessional contributions have ever previously been reported for them. For example, where a client has been living and working overseas for many years and they have never previously made or received any concessional contributions, FirstTech is aware that myGov may not report any unused concessional contributions cap information for them. This is despite the fact the ATO has confirmed[3] that a person in this situation would still have accrued unused concessional cap amounts available to them and could apply them to increase their concessional cap in a year depending on the other eligibility requirements.

FirstTech also understands that where no concessional contributions are made during the current financial year or a particular relevant previous financial year, the client's unused concessional contributions cap amount may display incorrectly in ATO online services. In this situation, advisers may need to confirm concessional contributions with a client's super funds and manually determine their unused concessional contributions available for carry-forward.

3 See ATO Private Binding Ruling 1052182564816.

When does an unused concessional cap amount accrue?

A member accrues an unused concessional cap amount for a financial year if their concessional contributions for the year are less than the basic concessional cap for the year.

The unused concessional cap amount for a financial year is simply the amount of basic cap not used during the year. For example, if Bill makes $20,000 of concessional contributions in 2025–26 (when the basic cap is $30,000), he accrues an unused concessional cap amount of $10,000 for 2025–26.

While a member's total superannuation balance can impact their ability to apply the unused concessional cap amounts in the future, unused concessional cap amounts will accrue regardless of a member's total superannuation balance.

How long does an unused concessional cap amount last?

There are two ways that an unused concessional cap amount will no longer exist.

Unused concessional cap amount applied

If an unused concessional cap amount is carried forward and applied in a future eligible financial year, that amount is no longer available.

Example: Celine

Celine has a $10,000 unused concessional cap amount for the 2020–21 financial year. On 30 June 2025, her TSB is $400,000.

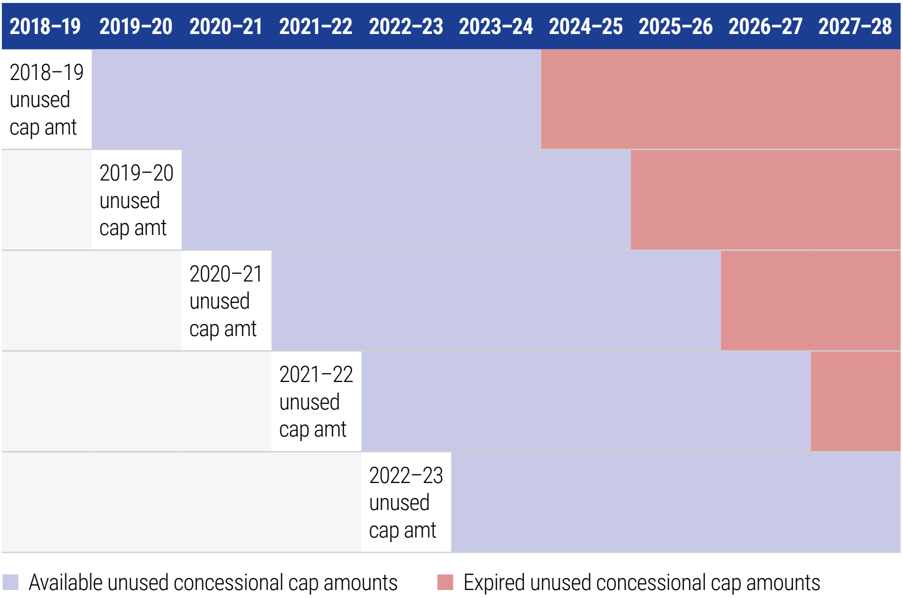
In 2025–26, Celine makes concessional contributions of $32,500. This exceeds the basic concessional cap by $2,500. As a result, $2,500 of Celine's unused concessional cap amount that was carried forward from 2020–21 is applied in 2025–26 to increase her concessional cap to $32,500. The amount of Celine's unused concessional cap amount for 2020–21 is then reduced to $7,500.

Unused concessional cap amount expires

An unused concessional cap amount is available for an eligible member to apply in any of the five financial years after it accrues (not including the year of accrual). After this time, it permanently expires and is no longer available if not used during the five-year period.

The first year that unused concessional cap amounts accrued was 2018–19. Unused concessional cap amounts from that year could be carried forward and applied by an eligible member in any financial year from 2019–20 through to 2023–24. If they remained unused at the end of 2023–24, they expired and are not available in 2024–25 or future years.

The following table shows when unused concessional cap amounts from various financial years are available (blue) and will expire (red), if not already applied.



Example: Celine (continued)

From the previous example, Celine has an unused concessional cap amount from 2020–21 (initially $10,000). She carries forward and applies $2,500 of the unused amount in 2025–26, leaving a remaining 2020–21 unused concessional cap amount of $7,500.

Celine still has an unused concessional cap amount of $7,500 from 2020–21 during the 2025–26 financial year as it is the fifth financial year after 2020–21.

If Celine does not carry-forward and apply her remaining 2020–21 unused concessional cap amount before the end of 2025–26, it will expire and will not be available in 2026–27 or later financial years.

2.3 Taxation of concessional contributions

The general tax treatment of concessional contributions is summarised in Table 2.2.

Table 2.2 Taxation of concessional contributions

	Effective tax treatment	Notes
Concessional contributions within concessional cap	15%	• Included in complying superannuation fund's assessable income • Taxed at complying super fund tax rate
Excess concessional contributions	Client's MTR	• Taxed in the superannuation fund as per above treatment, and • Included in client's assessable income and taxed at MTR, less a 15% non-refundable tax offset.

However, the effective tax rate that applies to concessional contributions may also be impacted by no-TFN contributions tax, Division 293 tax and the low income superannuation tax offset (LISTO).

No-TFN contributions tax

Where a TFN is not attached to an individual's account, any employer contributions are subject to no-TFN contributions tax (32% in the 2025–26 financial year). This tax is on top of the 15% contributions tax that would also be applicable to assessable contributions.

Member concessional contributions (i.e. personal deductible contributions) must be refunded if no TFN is provided (see 'Tax file numbers for member contributions' in section 1.3).

Contributions of less than $1,000 in an income year to an account that existed prior to 1 July 2007 are not subject to no-TFN contributions tax.

No-TFN contributions tax is payable by the super fund, in addition to any other tax paid on the contribution. Where a TFN is subsequently provided within a four-year period (including the financial year the contribution was made), a super fund or RSA provider is entitled to claim a tax offset for the amount of tax paid on the no-TFN contributions income in the most recent three income years before the current year.

Division 293 tax

Division 293 tax is an additional tax that applies to part or all of a member's concessional contributions where their income and 'low tax contributions' for a financial year exceeds $250,000.

Division 293 tax of 15% is levied on a member's 'taxable contributions'.

Taxable contributions

Taxable contributions are the lesser of:

- the member's 'low tax contributions' (generally non-excessive concessional contributions) or
- the member's Division 293 income amount, less $250,000.

Note: If the member does not have any low tax contributions or if the member's Division 293 income amount (which includes low tax contributions) is less than $250,000, taxable contributions are nil and no Division 293 tax is payable.

Division 293 income amount

A member's Division 293 income amount[4] is their income for surcharge purposes (disregarding reportable super contributions) plus low tax contributions. This can be calculated using the worksheet below:

Taxable income (disregarding any assessable FHSS released amount)[1]	$
Amounts on which family trust distribution tax has been paid	$
Reportable fringe benefits	$
Total net investment loss[2]	$
'Low tax contributions' (generally non-excessive concessional contributions)	$
Total Division 293 income amount	**$**

1 Taxable income is assessable income less deductions. Excess concessional contributions are included in taxable income.

2 Total net investment loss of an individual for an income year means the sum of:

- a the amount (if any) by which the individual's deductions, that are attributable to financial investments, exceed the individual's gross income from those investments and
- b the amount (if any) by which the individual's deductions that are attributable to rental property exceed the individual's gross income from rental property.

4 See s 293-25 (ITAA 97) definition of low tax contributions and s 995-1 (ITAA 97) definition of income for surcharge purposes. Income for surcharge purposes is also reduced by the low rate part of assessable super lump sum member benefits paid from a taxed super fund to a taxpayer who has reached preservation age but is under 60. However, since 1 July 2024 this is not relevant as no taxpayer can both have reached their preservation age and be under 60.

What are low tax contributions?

In most cases, low tax contributions are simply concessional contributions that do not exceed the member's concessional contributions cap (see section 2.2), including superannuation guarantee, salary sacrifice, personal concessional contributions and defined benefit contributions (funded and unfunded).

Low tax contributions do not include transfers from foreign superannuation funds that are taxed in the receiving fund, or rollovers of taxable component (untaxed element) from untaxed public sector funds.

Where excess concessional contributions are disregarded or reallocated under the 'special circumstances' provisions, they become low tax contributions for the financial year. In the case of excess contributions reallocated to a different financial year, they become low tax contributions of the year they were originally made (not the year they are allocated to).

While excess concessional contributions are not low tax contributions[5] (and therefore cannot be subject to the higher tax on contributions), excess concessional contributions form part of a member's taxable income and therefore count toward a member's Division 293 income amount.

Low tax contributions are modified for defined benefit interests and for State higher level office holders and Commonwealth justices and judges (see sections below).

Examples of taxable contributions for Division 293 purposes

Table 2.3 highlights the calculation of taxable contributions in a range of scenarios. In all scenarios, the individual's concessional contributions cap is $30,000 (i.e. the basic concessional contributions cap).

5 Note that concessional contributions that exceed the basic concessional cap, but don't exceed a member's higher concessional cap due to the carry forward concessional contributions cap rules, are not excess concessional contributions and therefore are low tax contributions.

Table 2.3 Calculating taxable contributions

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Assessable salary[1]	$230,000	$230,000	$270,000	$270,000
Breakdown of super contributions				
Salary sacrifice	$2,143	$11,071	$0	$10,000
Superannuation guarantee[2]	$27,857	$28,929	$30,000	$30,000
Total concessional contributions	**$30,000**	**$40,000**	**$30,000**	**$40,000**
Excess concessional contributions	$0	$10,000	$0	$10,000
Low tax contributions (A)	$30,000	$30,000	$30,000	$30,000
Division 293 income				
Taxable income[3]	$230,000	$240,000	$270,000	$280,000
Amounts subject to family trust distributions, reportable fringe benefits, and total net investment losses	$0	$0	$0	$0
Low tax contributions (from above)	$30,000	$30,000	$30,000	$30,000
Income for Division 293	$260,000	$270,000	$300,000	$310,000
Excess of Division 293 income above $250,000 threshold (B)	$10,000	$20,000	$50,000	$60,000
Taxable contributions (lesser of A and B)	**$10,000**	**$20,000**	**$30,000**	**$30,000**

1 To remove doubt, assessable salary is the salary paid to the client after allowing for any reduction in salary due to salary sacrifice contributions (or any other salary sacrifice arrangements).

2 Lesser of 12% × assessable salary plus salary sacrifice, and 12% × SG maximum contributions base of $62,500 per quarter for 2025–26.

3 Includes excess concessional contributions, as they are assessable income of the member.

Modifications for defined benefit interests

For superannuation interests that are identified as defined benefit interests, there is a modification to the way low tax contributions are calculated.

Low tax contributions are calculated[6] as:

- low tax contributed amounts (that do not relate to a defined benefit interest)
- subtract excess concessional contributions
- add defined benefit contributions.

6 If a negative amount results from the calculation, then low tax contributions are nil and, as a result, there is no Division 293 tax.

For members of defined benefit funds, an actuary must calculate a notional level of employer contributions, which are also included. The method of determining the amount of defined benefit contributions for accruing members is set out in the Tax Regulations.

The inclusion of defined benefit contributions in low tax contributions ensures that a person with defined benefit interests is treated similarly to a person with accumulation interests for the purposes of the Division 293 tax. In defined benefit funds, employer contributions are typically not allocated to individual members' defined benefit interests. Employer contributions are made in aggregate to the fund, based on actuarial advice, to ensure that there is enough money in the fund to pay benefits to members as they leave and when benefit payments become due.

For more information on modifications for defined benefit interests for Division 293 tax, refer to the ATO website page: Division 293 for defined benefit members.

Modifications for State higher level office holders and Commonwealth justices and judges

For certain State higher level office holders, the general rules are modified so that low tax contributions do not include contributions made to a constitutionally protected super fund, except where they are made as part of a salary package arrangement.

A salary package arrangement in this situation is where a member has agreed for contributions to be made in return for a reduction in other remuneration (e.g. salary). For a complete list of State higher level office holders, see Regulation 293-145.01 of the *Income Tax Assessment (1997 Act) Regulations 2021*.

For Commonwealth justices and judges, the general rules are modified so that low tax contributions do not include defined benefit contributions made to a super scheme that was established under the *Judges Pension Act 1968*.

While the above contributions for certain state higher level office holders or Commonwealth justices and judges are excluded from the definition of low tax contributions (and therefore cannot be subject to additional tax), they are still included in this definition for the purposes of calculating whether the member has exceeded their $250,000 income threshold.

Example

Jane is a justice of the NSW Supreme Court. She receives $50,000 of concessional contributions to her superannuation interest in a CPF in the income year. Jane has no other superannuation interests.

Since Jane did not salary package these contributions, they are not included in low tax contributions, so she is not subject to Division 293 tax on any of her $50,000 concessional contributions, regardless of her level of adjusted taxable income.

How is Division 293 tax collected?

The additional tax on contributions for members earning in excess of $250,000 is administered by the ATO and levied on the individual member in a similar way to excess contributions tax. Division 293 tax may be paid from a member's own money or, in certain circumstances, from their super interest using a release authority.

Contributions made to accumulation interests

For members with accumulation super accounts, the Commissioner will issue a notice of assessment, which is due for payment within 21 days. Where an amount of Division 293 tax liability remains unpaid after the due date, the General Interest Charge will start to accrue on the unpaid amount.

A member may request, in the approved form, for the release of an amount equal to part or all of the amount of Division 293 tax liability from one or more of their super interests, within 60 days of the issuance of the Division 293 notice of assessment. The member can select any one or more of their superannuation interests for this release request, including any accumulation and pension accounts. While defined benefit interests can also be selected, a superannuation fund's compliance with this release request is voluntary in respect of a defined benefit interest.

The Commissioner must then issue a release authority to the superannuation provider identified in the request. The superannuation provider must release the lesser of the amount stated in the release authority, and the sum of the maximum available release amounts[7] held by the provider, to the ATO within 10 business days after the release authority is issued. Where there are insufficient funds remaining in the superannuation interest, only part of the identified amount will be released. In this situation, the ATO will notify the individual who may then make a further request within 60 days for the release of the remaining amount from another superannuation interest.

Where a fund complies with a release authority, and the member has already paid the Division 293 tax from their own pocket, the ATO will credit the member with any excess amount received from the fund.

The ATO may also issue a release authority directly to a member's superannuation fund for an outstanding amount of Division 293 tax owing where the member has failed to either:

- pay the full amount of the tax personally, or
- request for an outstanding amount to be released from super within the allowed time frames.

Effectively, a member can choose to pay for the Division 293 tax from their superannuation fund, out of their own pocket, or a combination of both. Funds released in accordance with a release authority are non-assessable non-exempt income.

7 The maximum available release amount for a super interest is the total of all superannuation lump sums that could be payable from the interest at that time. Where the interest is a defined benefit interest, the maximum available release amount is nil. However, a super provider may voluntarily comply with a release authority for a defined benefit interest.

Contributions made to defined benefit interests

For members who have taxable contributions that relate to a defined benefit interest, the Commissioner will instead maintain a 'debt account' where the tax liability will be deferred and accrue with interest.

The Commissioner will still issue the member with a notice of assessment for the Division 293 tax that has been deferred to a debt account, although the member is not required to pay the assessed amount within 21 days. As with other Division 293 tax assessments (see above), members can request to release Division 293 tax amounts that have been deferred to a debt account within 60 days of the notice of assessment, with amounts released counting as a voluntary repayment to their debt account.

Members can also make further voluntary repayments to debt accounts at any time; however (with the exception of requests made within the 60-day timeframe discussed above) they cannot release amounts from super to make these voluntary payments.

Once the relevant defined benefit interest becomes payable, the amount that has accrued in the debt account must then be paid within 21 days after the day on which the end benefit is paid. The Commissioner will also provide a voluntary release authority for the amount accrued in the debt account, which can only be given to the super provider that holds the defined benefit interest relevant to that debt account.

Where a member has multiple defined benefit interests, a separate debt account will exist for each interest. Where a member has an accumulation and defined benefit interest, the amount of additional tax that can be deferred to a debt account is generally calculated by looking at the proportion of taxable contributions that were made to the defined benefit interest.

Refund for former temporary residents

Temporary residents who depart Australia and receive a Departing Australia Superannuation Payment (DASP) are entitled to a refund of any additional tax paid under these rules.

The following elements must be satisfied in order for a former temporary resident to be entitled to a refund:

- The person has made payments of Division 293 tax.
- They have received a Departing Australia Superannuation Payment.
- They have applied to the ATO in the approved form for the refund.

A refund for assessed Division 293 tax is not available for any period when a person is a permanent Australian resident.

Low income superannuation tax offset

The low income superannuation tax offset (LISTO) is a contribution by the Government, which seeks to return the 15% tax paid on concessional contributions, if the individual is a low income earner with adjusted taxable income of $37,000 or less (please see definition of adjusted taxable income below).

A LISTO contribution made by the Government does not count toward either the concessional or the non-concessional contributions caps.

Maximum LISTO

The maximum Government contribution under the LISTO is $500 (not indexed). So the maximum amount of concessional contributions that may benefit from the LISTO in a financial year is $3,333.33 (i.e. 15% of $3,333.33 = $500). The amount of LISTO payable cannot be less than $10 (if an amount is payable).

Not an offset

The LISTO is not a tax offset within the meaning of the income tax law. Instead, the name reflects the payment offsetting the tax detriment incurred by eligible low income earners due to the flat rate of tax on concessional contributions exceeding their effective tax rate.

How LISTO is paid

The LISTO is normally paid into the superannuation account of an individual, but can be paid in other ways. For example, it can be paid to the individual directly, if they have no eligible superannuation account and have retired, or to the individual's estate if they have passed away.

Adjusted taxable income

Adjusted taxable income (ATI) for the LISTO is calculated as:

taxable income (disregarding assessable FHSS released amounts)
+ adjusted fringe benefits
+ target foreign income
+ total net investment loss
+ tax free pensions or benefits
+ reportable superannuation contributions
– any deductible child maintenance expenditure for that year.

There is no taper of adjusted taxable income. Individuals who have an adjusted taxable income of more than $37,000 are not eligible for the LISTO.

LISTO applies to concessional contributions

The LISTO applies to concessional contributions and is a different payment from the Government co-contribution (which applies to personal non-concessional contributions). Examples of concessional contributions that will be eligible include:

- superannuation guarantee contributions
- notional taxed contributions
- personal tax deductible contributions
- allocations from reserves that are concessional contributions, and
- contributions an employer makes under a salary sacrifice arrangement.

Eligibility for LISTO

A person may be entitled to the LISTO for concessional contributions if the individual:

- has adjusted taxable income (see definition of ATI above) that does not exceed $37,000
- has at least one concessional contribution made by or for them in the corresponding financial year
- is not a holder of a temporary resident visa (New Zealand citizens in Australia do not hold a temporary resident visa and are, as such, eligible for the payment)
- either:
  - has at least 10% or more of their total income[8] derived from the individual carrying on a business or engaging in activities where they are treated as an employee for superannuation guarantee purposes, or
  - 12 months after the end of the income year, the Commissioner reasonably believes there is insufficient information to determine the taxpayer's adjusted taxable income, and estimates it does not exceed $37,000 and at least 10% of the individual's total income for the income year is from employment.

When an individual does not lodge an income tax return (e.g. if an individual is under the tax free threshold), the ATO will determine eligibility for the LISTO, based on information available. This could include information already held by the ATO which has been collected for other purposes.

The LISTO will only apply for amounts of an individual's concessional contributions that are included in the assessable income of a superannuation fund. Therefore, concessional contributions to constitutionally protected funds or unfunded defined benefit interests are not eligible for the LISTO, since these concessional contributions are not subject to contributions tax.

8 Total income means assessable income (disregarding any assessable FHSS released amounts) + reportable fringe benefits + reportable employer super contributions.

2.4 Excess concessional contributions rules

Generally, when an individual makes a concessional contribution into super, they are either entitled to a tax deduction (i.e. personal deductible contribution) or the pre-tax income is not taxed to them personally (e.g. salary sacrifice), but instead taxed in the superannuation fund at a concessional rate. The concessional contributions cap essentially limits the amount of concessional contributions an individual makes into super by removing the tax concessions on excessive contributions.

Where a member has multiple employers, the combined Superannuation Guarantee contributions of the employers alone may cause excess concessional contributions. Where this occurs, a member may apply for an exemption certificate from the ATO so that one of their employers does not have to make SG contributions to their super, for one or more quarters in a financial year, to avoid having excess concessional contributions. Please see section 12 Employer super issues for more information on SG opt-out.

Where an individual has exceeded their concessional contributions cap, the excess amount is included in their assessable income and taxed at their marginal rates. The individual is also entitled to a 15% non-refundable tax offset to compensate for the tax paid by the superannuation fund on the same excess contribution.

Members can elect to have up to 85% of their excess concessional contributions released from super. See section 'Electing to release excess concessional contributions' below for further details. It is important to note that excess concessional contributions (excluding the grossed up amount of those that are released) count toward an individual's non-concessional contributions cap.

Example

Frank (subject to a MTR plus Medicare levy of 32%) makes excess concessional contributions of $20,000. Firstly, these contributions will be assessable income of his super fund and be taxed at up to 15% ($3,000). Secondly, $20,000 will be included in Frank's assessable income for the year and taxed at his marginal rate plus Medicare levy ($6,400) less a 15% tax offset ($3,000). Frank's excess concessional contributions have effectively been subject to a maximum of 32% (his MTR plus Medicare levy).

Shortfall interest charge

When there has been an excess concessional contribution, the member's tax return may be amended to include the excess contribution (and applicable 15% tax offset). As a result, the tax liability may be increased. The ATO applies interest to this shortfall amount for the period between when it would originally have been due and when the assessment is corrected and is due.

The ATO applies a lower-rate interest called shortfall interest charge (SIC) rather than general interest charge (GIC). This is because taxpayers are usually unaware of a shortfall amount until they receive an amended assessment.

General interest charge

If an amount of additional income tax and shortfall interest charge remains unpaid after the time it is due, the individual will also be liable to pay the general interest charge (GIC) on the unpaid amount for each day in the period from when the amount was due until it is paid. See the ATO website for current GIC rates. As a guide, the annual GIC rate for the July to September quarter of the 2025–26 financial year is 10.78%.

Administration of excess concessional contributions

The ATO will issue an individual who has exceeded their concessional contributions cap with an *Excess concessional contributions determination*. Together with the determination, the ATO will issue an income tax return *Notice of assessment/Notice of amended assessment to advise the individual* that their excess amount has been included as assessable income in their tax return.

Individuals should check that the information on the determination is correct. The ATO makes assessments and determinations based on information provided by superannuation funds and the individual's tax return and it's possible the individual's super fund has incorrectly reported the contribution. If there has been a mistake, the super fund can re-report the contribution to the ATO. A fund can't re-report contributions simply to assist its member to avoid exceeding one or more contributions caps.

If an individual thinks the ATO has applied the law incorrectly, they can object to the excess concessional contributions determination by going through the standard ATO objection process. Individuals should still pay the liability even if they decide to object.

If there's no error in the ATO's excess concessional contributions determination, the individual will be liable for the amount of tax specified in the determination. In this case the member can choose to release up to 85% of the excess amount from their superannuation fund to pay the tax. Note excess concessional contributions (excluding the grossed up amount of those that are released) count toward an individual's non-concessional contributions cap.

Electing to release excess concessional contributions

Individuals may elect to have up to 85% of any excess concessional contributions released from their super fund. This may be necessary, for example, to allow the individual to have enough funds available to pay income tax on their excess concessional contributions.

An individual must make such an election to the ATO in the approved form within 60 days from when an excess concessional contributions determination or an amended determination is issued. The request must specify a valid release amount (up to 85% of the excess concessional contributions amount) and identify the superannuation interests from which it is to be released. Once made, an individual is not able to revoke an election to release excess concessional contributions.

Where there are insufficient funds in the superannuation interest from which an individual has elected to release excess concessional contributions, only part of the requested amount is released. In this situation, the ATO will notify the individual, who may then make a further request within 60 days, or such further time as the Commissioner may allow, to release the remaining amount from another superannuation interest.

Once an individual has made an election, the ATO will issue a release authority to the member's super fund. The superannuation provider has 10 business days from the date of issue of the release authority to release this amount to the ATO, unless a further period had been allowed by the ATO.

Superannuation providers that have been issued with a release authority are required to pay to the ATO the lesser of the following amounts:

- the amount stated in the release authority, or
- the sum of the maximum available release amounts for each of the superannuation interests held for the individual in the superannuation plan.

Note: Benefits held in both accumulation accounts and superannuation income streams are included in the maximum available release amount calculation; however, defined benefit interests are excluded.[9]

The superannuation provider must notify the ATO of the payment within 10 business days from the date the release authority is issued:

- when a payment is made
- if the trustee is not required to make the payment, or
- if the amount it is required to pay is less than the amount stated in the release authority.

Excess concessional contributions released to the ATO are applied as a credit against the individual's tax liabilities. To the extent the released amount exceeds the individual's liabilities, it is refunded to the individual. The individual may be entitled to the payment of interest if there is an unreasonable delay between the ATO receiving the released amount and the payment of any refund to the individual.

9 A superannuation provider may, however, choose to voluntarily comply with a release authority for a defined benefit interest.

Excess concessional contributions amounts released from the individual's superannuation are non-assessable non-exempt income and are exempt from the proportioning rule.

Excess concessional contributions count towards a member's non-concessional contributions cap

A member's excess concessional contributions also counts toward their non-concessional contributions cap. This is important as it could cause a member to inadvertently exceed their non-concessional cap in that year, or in a later year if it caused them to trigger the non-concessional contribution cap bring forward rule earlier than expected. See sections 3.2 and 3.4 for more information on the non-concessional contributions cap (including bring-forward rule) and excess non-concessional contributions.

However, where a member elects to release up to 85% of their excess concessional contributions, the amount of their excess concessional contributions that counts towards their non-concessional cap is also reduced. In this case, the amount of the reduction is grossed up to an amount equal to the amount released × 100/85.

For example, if a member had $1,000 of excess concessional contributions, $1,000 would also count towards their non-concessional contribution cap. However, if they elected to release 85% ($850) of their excess concessional contributions, the amount of their excess concessional contributions that counts towards their non-concessional contribution cap would be reduced by $1,000 ($850 × 100/85 = $1,000).

Commissioner's discretion to disregard or reallocate excess contributions

The taxpayer may apply to the ATO, in the approved form, for a determination that part or all of the excess concessional contributions be disregarded or reallocated to another income year. The application can only be made once all of the relevant contributions have been made and must be made either before, or within 60 days of, receiving an excess concessional contributions determination. A determination to disregard or reallocate excess concessional contributions will only be issued where the taxpayer can demonstrate that special circumstances exist (i.e. that it was unjust, unreasonable or inappropriate to impose the tax liability on excess concessional contributions).

Where excess concessional contributions are disregarded or reallocated under the 'special circumstances' provisions, they become low tax contributions and potentially subject to Division 293 tax (see section 2.3).

Tip

The ATO has produced a Practice Statement dealing with the Commissioner's discretion to disregard or reallocate a contribution and includes useful examples. See PS LA 2008/1, available at www.ato.gov.au/Law/. The ATO provides additional information on its website: *If the information used for excess contributions is wrong*.

2.5 Types of concessional contributions

A concessional contribution is generally a super contribution to a complying super fund which is included in the super fund's assessable income. Some contributions which are not included in a fund's assessable income because it is an unfunded defined benefit scheme or constitutionally protected fund are also concessional contributions – see section 2.7 for more information.

The following contributions are concessional contributions and count towards a client's concessional contributions cap:

- Employer contributions (including compulsory contributions such as SG and voluntary contributions such as salary sacrifice).
- Personal contributions made by the member for which a valid notice of intent (deduction notice) is submitted and acknowledged and a tax-deduction is claimed.
- Member contributions made on behalf of the member by another person, e.g. contribution by a friend (does not include spouse contributions, Government co-contributions, LISTO contributions or child contributions)
- Payments by the Commissioner of Taxation to a super fund from the Superannuation Holding Accounts Special Account
- Payments by the Commissioner of Taxation to a super fund of SG shortfall amounts (see section 12.2)
- Any of the above contributions made to constitutionally protected funds (see section 2.7)
- Certain contributions to interests in defined benefit schemes (see section 2.7).

Assessable contributions directed to an unallocated contributions account and then allocated to a member's benefits in accordance with timeframes specified in the SIS Regulations also count towards the member's concessional cap in the year they are allocated. For more information, please see section 7.2 of the FirstTech SMSF guide.

Some of the key concessional contribution types, and eligibility requirements, are summarised below.

Employer contributions

Employer contributions are often separated into compulsory employer contributions and voluntary employer contributions.

- Compulsory employer contributions. These include:
  - Contributions made to satisfy an employer's superannuation guarantee obligations (see section 12.1 for further information).
  - Contributions made to satisfy an obligation imposed by an award made or an agreement certified by an industrial authority.
- Voluntary employer contributions. These include:
  - Contributions made under an effective salary sacrifice agreement (see section 12.8 for further information).

- Voluntary employer contributions to fund insurance premiums for policies held within superannuation.
- Any other discretionary employer contributions.

Importantly, contributions remitted by an employer from an employee's after tax salary or wages are not employer contributions, but instead are the employee's personal (member) contributions contributed by the employer at their direction.

Tax deductions for employer contributions

Employers may claim a full tax deduction for any employer super contributions made on behalf of employees to a complying super fund. While there is no limit on the amount of contributions an employer may claim as a tax deduction, an employee is unlikely to want their employer(s) to make contributions in excess of their concessional contributions cap because of the additional tax imposed on the individual.

An employer may claim a full tax deduction for super contributions made on behalf of employees where:

- the contribution is made on or before the day that is 28 days after the end of the month in which the employee turns 75, or
- the contribution reduces the employer's SG charge percentage, or
- the employer was required to make the contribution by an Australian law, industrial award, determination[10] or notional agreement preserving State awards that is in force.

Former employees

Employers can claim a deduction for contributions made within four months after an individual stops being their employee, provided:

- the employer would have been entitled to the deduction if the contribution was made at a time the individual was an employee of the employer and either of the following also applies:
  - the contribution is to satisfy the employer's SG obligation in respect of the individual
  - the contribution relates to a one-off payment in lieu of salary or wages that relate to a period during which the individual was an employee.

Controlling interest

A taxpayer may claim a tax deduction for a superannuation contribution made in respect of an individual who is not the taxpayer's employee, but an employee of an entity where the taxpayer has a controlling interest. For more information, contact the FirstTech team.

10 An award or determination does not include an industrial agreement, such as an Australian Workplace Agreement, Collective Agreement or preserved State agreement under the *Workplace Relations Act 1996*, or a similar agreement made under a State law.

Employee

For an employer to deduct a contribution for an employee, the employee must be:

- an employee within the expanded definition of 'employee' in section 12 of the *Superannuation Guarantee (Administration) Act 1992*, or
- engaged in producing the assessable income of the employer, or
- an Australian resident who is engaged in the employer's business.

Employers can claim a deduction for contributions made on behalf of SG employees who are not engaged in producing the assessable income of the business, nor engaged in the business for the employer, but who are SG employees for the purpose of the SGAA (e.g. some directors may fall into this category).

However, individuals who are not SG employees will still need to be engaged in producing the assessable income of the business or engaged in the business before a deduction can be claimed.

See Taxation Ruling TR 2010/1 for further information relating to employer eligibility to claim a tax deduction on super contributions.

Limits on deductions for personal services income

Personal services income (PSI) is income produced mainly from personal skills or efforts as an individual. Income is classified as PSI when more than 50% of the amount received for a contract was for an individual's labour, skills or expertise. When working out if PSI tax rules apply, the income received from each separate contract or job is looked at separately and if PSI is received (including through a company, partnership or trust), then three further tests are applied to see if the income is subject to PSI rules. If the PSI rules apply, they affect how the PSI is reported to the ATO and the deductions that may be claimed.

An employer cannot deduct a contribution made to a super fund or an RSA for an associate's work if the contribution relates to gaining or producing the employer's PSI. An associate includes a spouse, business partner or relative of the employer.

However, an employer is permitted to deduct a contribution for principal work performed by the associate that does not relate to gaining or producing the employer's PSI. In this case, the deduction would be limited to SG contributions.

See Taxation Ruling TR 2003/10 for further information on tax deductions that relate to PSI.

Personal tax-deductible contributions

A personal tax-deductible contribution (also known as a personal concessional contribution) is a superannuation contribution made personally by a client, to the extent that the client claims an income tax deduction for the financial year in which the contribution is made. A client's superannuation fund must be notified (within certain timeframes) of their intention to claim a tax-deduction for the contribution, with the fund then acknowledging the notice and treating the contribution as a taxable contribution.

FirstTech comment: Personal deductible contributions cannot create a tax loss

Unlike some other types of tax-deductions, a deduction for a personal super contribution is not allowable to the extent that it would leave the client with a tax loss for the financial year. This means that a client's deduction for personal contributions for a financial year is limited to their assessable income, less all other allowable deductions.

To the extent that a tax-deduction for a personal contribution is not allowable, the contribution is instead a non-concessional contribution and counts towards a member's non-concessional contributions cap.

For further information about personal tax-deductible contributions, including strategy considerations, see the FirstTech Personal Deductible Contributions Guide.

FirstTech comment: Personal deductible contributions and total super balance

As they are concessional contributions, a client with a total superannuation balance of $2 million or more is not restricted from making personal tax-deductible contributions. However, to the extent that the deduction is denied by the ATO (for example if the client does not have enough assessable income to use the deduction, or fails to meet work test requirements if applicable) or is otherwise not claimed by the client, the contribution will be reclassified as a non-concessional contribution.

Individuals with a total superannuation balance of $2 million or more on 30 June have a non-concessional contributions cap of nil in the following financial year, so any non-concessional contributions will be excessive.

For this reason, extra care should be taken when making personal deductible super contributions for members with total superannuation balances of $2 million or more.

A client must satisfy requirements in the following areas to be eligible to claim a tax-deduction for a financial year for personal contributions:

- They must make an eligible personal contribution.
- They must meet age requirements.
- They must satisfy work test requirements from age 67.
- They must have submitted a valid 'notice of intent' to their fund within required timeframes and have received acknowledgment of receipt of the notice from their fund.

These requirements are discussed in further detail below.

Personal contribution requirement

A client will only be eligible to claim an income tax-deduction for a financial year if they have made a personal contribution to a complying super fund during that year. Other types of member contributions such as spouse contributions and child contributions, as well as employer contributions made for the client, are not tax deductible to a client.

Contributions to some funds not deductible

To claim an income tax deduction, a client's personal contribution must be made to a complying superannuation fund.

However, a client will not be eligible to claim a deduction for contributions they make to the following funds:

- A Commonwealth public superannuation scheme in which they have a defined benefit interest.
- An untaxed superannuation fund (e.g. unfunded public sector super scheme or constitutionally protected super fund).
- A superannuation fund prescribed in the regulations. Prescribed funds include a fund that has defined benefit interest members, and the trustee elects to make the fund one that prevents members from claiming tax deductions. The election must be made in the approved form by the fund before the start of the financial year in which the contribution is made.

Super funds not covered by the above are also able to elect that contributions to a defined benefit interest cannot be claimed as a tax-deduction by members. Again, the trustee must have elected to prevent members from claiming tax deductions for the contributions, and the election must have been made in the approved form by the fund before the start of the financial year of the fund in which the contribution is made.

Certain contribution types excluded

The following types of contributions (even though they may be considered personal contributions) cannot be claimed as a tax-deduction by a client:

- Downsizer contributions.
- Recontribution of amounts previously released under the first home super saver (FHSS) scheme.
- COVID-19 recontributions.
- Contributions required to be made to super to qualify for the CGT small business retirement exemption (as the individual or CGT concession stakeholder is under age 55 just prior to the contribution being made).

Age requirements

The Tax Act imposes a number of additional age-related conditions to claim a tax deduction for a personal contribution. These are summarised as follows:

- Members under age 18
  Members under age 18 at the end of the financial year in which a personal contribution is made can only claim a tax-deduction for the contribution if they have derived income during the year from employment[11] or carrying on a business.
- Members age 67 to 74 (including up to 28 days after the end of the month in which they turn 75)
  Members who make personal contributions during the period starting on the day they turn 67 and ending on the day that is 28 days after the end of the month in which they turn 75 will only be eligible to claim a tax deduction for their contribution where they satisfy a work test during the financial year (or a work test exemption). See below for further information.
- Members age 75 and over
  Members over age 75 will only be permitted to claim a tax deduction for a personal contribution where they made the contribution within 28 days after the end of the month in which they turned 75 and they satisfied work test during the financial year (or a work test exemption). See below for further information. This upper-age limit is consistent with super regulations, which prohibit most voluntary contributions[12] being made after this time.

Work test requirements

Where a member makes a personal contribution on or after the time they reach age 67 and no later than the 28th day after the end of the month in which they turn 75, they need to meet one of the following requirements to claim a tax-deduction for their contribution:

- they satisfy the work test, or
- they satisfy the work test exemption.

While a member self-assesses whether they satisfy the work test or work test exemption when claiming a tax deduction for their contribution in their income tax return, the ATO may investigate and require supporting evidence that these requirements have been satisfied. This may occur for example, if a member aged 67 to 74 claimed a tax deduction for a personal contribution, but their tax return for the income year showed no assessable employment or business income.

11 Income from employment means income attributable to activities that result in the client being an employee as defined in section 12 of the *Superannuation Guarantee (Administration) Act 1992*.

12 Excluding downsizer contributions.

FirstTech comment: Consequences of failing work test requirements

A work test no longer has to be satisfied in order for a superannuation fund to accept any personal contributions.

This means that where a member aged 67 to 74 (including the period up to 28 days after the end of the month in which they reached age 75) makes a contribution with the intention of claiming a tax-deduction, and then subsequently fails to meet the work test requirements:

- They will not be eligible to claim a tax-deduction for their contribution.
- The contribution cannot be refunded (as it has been validly accepted by the fund).
- The contribution will count towards the member's non-concessional contributions cap.

Depending on the member's remaining non-concessional contributions cap, failing work test requirements could therefore lead to the member exceeding their non-concessional cap. This would happen if, for example:

- the member's total superannuation balance just prior to the start of the financial year was $2 million or more, or
- the member had already fully used their available non-concessional cap for the financial year.

The work test

A member satisfies the work test if they have been gainfully employed for at least 40 hours in any period of 30 consecutive days during the income year in which the contribution was made.

FirstTech comment: Timing of satisfying work test

Where a member must satisfy a work test in order to claim a tax deduction for a personal contribution, it can be satisfied at any time during the financial year in which the contribution is made (including after the contribution is made).

However, if a member makes the contribution before satisfying the work test but then fails to satisfy the work test by the end of the financial year due to a change in personal circumstances, the contribution will be a non-concessional contribution and (as per above) could cause them to exceed their non-concessional cap.

Gainfully employed

Gainfully employed means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.[13]

The concept of 'gain or reward' envisages receipt of remuneration such as salary or wages, business income, bonuses, commissions, fees or gratuities, in return for personal exertion.

Voluntary or charity work arrangements are unlikely to satisfy the definition of gainfully employed, even where they involve the provision of meals or reimbursement of expenses.

Note, in 2023 the ATO registered Taxation Administration (Remedial Power – work test for personal superannuation contributions) Determination 2023 which confirms that people who are an employee under subsection 15A(2) to 15A(10) of the SIS Act are treated as an employee for the purposes of the work test and work test. This ensures certain types of employees in this age group who are not covered under the common law definition of employee, such as company directors and parliamentarians, are still able to satisfy the work test and work test exemption.

Gainful employment and periods of leave

Whether a person is gainfully employed can be unclear where a person who is employed in a paid employment position is not physically working. The absence of any personal exertion may be due to the person being:

- on paid annual leave, or
- on unpaid leave, or
- off work while being paid workers compensation or income protection.

Leave taken (paid or unpaid)

Periods of paid and unpaid leave taken in the ordinary course of employment (where the employment involves working at least 40 hours in a 30 consecutive day period) are likely to count towards satisfying the work test. This view is based on:

- a previous version of APRA SPG270 (paragraph 59), which stated: 'APRA regards periods of authorised leave, whether paid or unpaid, and actually taken by the member as leave, as periods of gainful employment in applying the gainful employment test for contributions in respect of members aged 65 or more'. While the updated version of this SPG removed this guidance, there was no indication from APRA that their view had changed regarding this issue.
- non-binding correspondence from the ATO, which discussed a person who had been on unpaid leave, stated that although 'unpaid work does not meet the definition of gainfully employed' that in the particular circumstances: '...while this member is not currently being remunerated for their employment it is accepted that if their usual arrangement is to be remunerated and they would under ordinary circumstances work at least part time as defined above they can be accepted as remaining in gainful employment'.

13 Note that this definition of gainful employment for tax-deduction purposes is identical to the pre-1 July 2022 definition required for super fund contribution acceptance purposes.

Unfortunately, neither APRA nor the ATO has any currently published information that confirms this view. Clients may wish to consider seeking a private binding ruling to confirm the ATO's view regarding periods of leave counting towards satisfying the work test.

Unused leave payments

Note that lump sum payments for unused leave received after an individual's termination of employment do not count as a period of gainful employment.

The previous version of APRA SPG270 at paragraph 59 stated: '…where the member has not taken actual leave but has taken their entitlement to it as a lump sum or equivalent, this cannot be counted as a gainful employment period'.

While the updated version of this SPG removed this guidance, there was no indication from APRA that their view had changed regarding this issue.

Workers compensation and income protection

A person continuing an employment arrangement and receiving:

- workers compensation payments from their employer or insurer, or
- income protection payments from their employer, insurer or super fund,

may still be considered gainfully employed for the work test even though they are not currently undertaking physical work, if the payment is connected to their employment arrangement.

Personal legal advice or a private binding ruling should be sought where circumstance of work arrangements and/or payments are unclear.

Work test exemption

Members who would otherwise need to satisfy the work test in order to claim a tax-deduction for personal contributions can instead claim a tax-deduction by satisfying the work test exemption.

The work test exemption essentially allows members aged 67 to 74 (including the period up to 28 days after the end of the month in which they reach age 75) with a low total superannuation balance an additional income year from when they last satisfied the work test to claim a tax deduction for their personal contributions.

A member satisfies the work test exemption if:

- they satisfied the work test (40 hours of gainful employment in a 30 consecutive day period) in the previous income year, and
- their total superannuation balance at the end of the previous income year is less than $300,000, and
- they have not claimed a tax deduction for a personal contribution in a previous income year on the basis of satisfying the work test exemption, and
- no voluntary contribution was accepted prior to 1 July 2022 in respect of the member by a fund on the basis that the member satisfied the work test exemption.

The work test exemption is a one-off opportunity that applies for one income year only. Once a member has taken advantage of the work test exemption, it cannot be relied on in any future income year.

Valid notice of intent requirement

To claim an income tax deduction for a personal contribution made to a complying super fund, a client must submit a valid 'Notice of intent to claim or vary a deduction for personal contributions' form (notice of intent) to the fund within required timeframes, and the fund must have acknowledged receipt of the notice in writing. A super fund that has received a valid notice of intent is required to acknowledge receipt without delay.

A notice of intent states the amount of the contribution that the client intends to claim as a tax deduction, and therefore allows the fund to determine the amount of contributions made by the client that will be taxable to the fund.

A client may use the ATO approved 'Notice of intent to claim or vary a deduction for personal contributions' form (available at www.ato.gov.au), or alternatively some super funds may maintain their own approved form that meets the same requirements and can be used by members.

Timeframes for submitting notice of intent

The normal timeframes for submitting a valid notice of intent require that it is provided to the fund by the earlier of:

- the day the client lodges their tax return for the financial year of contribution, and
- the end of the financial year after the year of contribution.

However, as there are a range of events that make a notice invalid (e.g. commencing an income stream, making a lump sum withdrawal or rolling over), an earlier effective notice of intent timeframe can often apply for clients wanting to claim a tax-deduction for their full personal contribution.

What makes a notice of intent invalid?

A notice of intent will not be valid if any of the following apply:

- It is not in respect of the contribution.
- It includes any amount of a contribution covered by a previous notice.
- When the notice is given any of the following applies:
    - the client is no longer a member of the fund
    - the fund no longer holds the contribution
    - the fund has started paying an income stream based in whole or part on the contribution.

FirstTech comment: Ensuring full deduction can be claimed

To ensure a full tax-deduction can be claimed for a personal contribution, a client must ensure their notice of intent is submitted by the required general timeframes, as well as being a valid notice.

From a timeframe perspective, this means that a client must, after making their contribution, submit a notice of intent prior to the earlier of the following:

- the time they lodge their tax return for the year of contribution
- the end of the financial year after the year of contribution
- the time a lump sum withdrawal or rollover is made (including any rollover to fund insurance premiums)
- the time a superannuation income stream is commenced.

Submitting notice of intent after partial rollover or lump sum withdrawal

Where a client has made a personal contribution and then made a full rollover or lump sum withdrawal from the same superannuation interest, no valid notice of intent can later be submitted in respect of the contribution as the trustee will no longer hold the contribution.

In Tax Ruling TR 2010/1, the ATO confirms that any partial rollover or lump sum withdrawal will include a proportion of any personal contributions previously made to that interest.[14] This means that a valid notice of intent can only be provided for part of a personal contribution (the part still held by the trustee) where a partial rollover or withdrawal has been made from the superannuation interest between the time the contribution was made and the notice of intent provided.

In this situation, the maximum amount of contributions still held by a trustee for which a valid notice of intent can be submitted is calculated as follows:

$$\frac{\text{Contributions} \times \text{tax free component of remaining interest}}{\text{tax free component of initial interest}^{15}}$$

Where:

- Tax free component of remaining interest is the tax free component of the superannuation interest immediately after the partial rollover or lump sum withdrawal.
- Tax free component of initial interest is the tax free component of the superannuation interest immediately before the partial rollover or lump sum withdrawal.

14 Tax Ruling TR 2010/1, [71]

15 From Example 10 of TR 2010/1: Note that the formula has been rearranged for simplicity – the formula in TR 2010/1 reads tax free component of remaining interest x contribution / tax free component of interest before rollover.

Example: Notice of intent after partial rollover

Ian makes a $30,000 personal contribution in 2025–26. In August 2026, the value of his superannuation interest is $200,000 ($50,000 tax free component, $150,000 taxable component). Ian immediately rolls $140,000 of his interest to another super fund.

Due to the proportioning rule:

- Ian's rollover consists of $35,000 tax free component and $105,000 taxable component.
- Ian's remaining balance consists of $15,000 tax free component and $45,000 taxable component.

The maximum amount of his personal contribution still held by the trustee and for which Ian can submit a valid notice of intent is:

$30,000 (contribution) x $15,000 (TFC of remaining interest) / $50,000 (TFC of initial interest) = $9,000

FirstTech comment:

An alternative way of thinking about the level of contributions for which a valid notice of intent can be submitted after a partial rollover or lump sum withdrawal is to assume that whatever proportion of a client's superannuation interest is rolled over or withdrawn, the same proportion of the contributions is included in the rollover or withdrawal and is no longer held by the trustee.

For example, in the above example where Ian made a $30,000 contribution and then immediately rolled over $140,000 or 70% of his $200,000 balance – 70% of his personal contribution will be included in the rollover and is no longer held by the trustee. As a result, Ian could then only submit a valid notice of intent for the 30% of the contribution the fund still holds, i.e. $9,000.

Where personal contributions are made and then multiple partial rollovers and/or withdrawals are made, the same logic applies as shown above, however the calculations are more complex. For an example of how to calculate the contributions that remain held by a trustee (and therefore able to be covered by a valid notice of intent) in this situation, refer to Example 10A in Tax Ruling TR 2010/1.

Cannot submit a valid notice of intent after commencing a super income stream

Where a client has made personal contributions to a superannuation interest, and then commences a superannuation income stream with any part of that interest, the ATO has confirmed that the income stream will be based in whole or part on the contribution.[16] Where this occurs, no valid notice of intent can then be submitted for any part of the contributions. Unlike the situation for partial rollovers or lump sum withdrawals, this is the case regardless of whether part, or all, of the member's superannuation interest was used to commence the income stream.

It's therefore critical to ensure that any notices of intent for contributions made to a superannuation interest are submitted to the fund prior to commencing any income stream from that interest.

Example: Notice of intent invalid after income stream commenced

Gwen (age 60) makes a $30,000 personal contribution in 2025–26. In August 2026, the value of her superannuation interest is $200,000. Gwen then commences a $50,000 transition to retirement income stream from her superannuation interest to allow her to drop down to part-time employment.

As Gwen's superannuation income stream is based in whole or part on her contribution, she cannot submit a valid notice for any amount of her personal contribution once her income stream has commenced.

Important: Don't let your client lose their eligibility for a tax deduction

If you are planning to commence any kind of pension for a client, remind the client to send the fund trustee a valid notice of intention to claim any tax deductions for personal super contributions prior to commencing the pension. The trustee must acknowledge the notice – only then is it safe to commence the pension.

If the notice is not submitted prior to commencing the pension (or is not acknowledge by the trustee as a valid notice), the client will lose their eligibility to claim the tax deduction.

Varying a previous notice of intent

A client cannot revoke a notice of intent they have already submitted. However, they can vary a previous notice of intent to reduce the amount stated on the original notice of intent (including to nil). This variation is done by submitting another 'Notice of intent to claim or vary a deduction for personal contributions' form, but indicating (at Question 10) that the new notice is to vary an earlier notice of intent.

16 Tax Ruling TR 2010/1, [72].

Where a client instead wishes to increase the amount stated (for example, their previous notice of intent was for only part of a contribution and they now wish to claim the full contribution), they must submit a separate new valid notice of intent for the additional amount within normal timeframes.

Timeframes for varying notice of intent

The same general timeframes that apply to submitting an original notice of intent also apply to submitting a variation to a previous notice of intent. The variation must be submitted by the earlier of:

- the day the client lodges their tax return for the financial year of contribution, and
- the end of the financial year after the year of contribution.

However, as with the submission of an original notice of intent, there are a range of events that make a variation invalid.

What makes a variation invalid?

A variation of a notice of intent will not be valid if, when the varied notice is given, any of the following applies:

- the client is no longer a member of the fund
- the fund no longer holds the contribution
- the fund has started paying an income stream based in whole or part on the contribution.

Longer timeframes for variations where deduction not allowable

The general timeframes for submitting a variation do not apply where a client had submitted a notice of intent in relation to a contribution, and:

- the client claimed a deduction for part or all of the contribution, and
- part or all of the deduction was not allowed by the ATO, and
- the variation reduces the amount stated in relation to the contribution by the amount of the non-allowable deduction.

However, note that the events which make a variation invalid do not change in this situation. For example, where the fund has begun to pay an income stream with any part of the contribution, a valid variation cannot be provided, even if part of the amount stated in the original notice is not allowable as a tax-deduction.

In this case, the amount claimed as a non-allowable deduction will now be included in both the member's taxable income as well as the fund's assessable income (as any notice given to the fund to vary the deduction down will be invalid). In addition, the amount claimed will count as a non-concessional contribution[17] and could cause the client to exceed their non-concessional contributions cap depending on their circumstances.

17 See sub-section 292-90(4)(b) of ITAA 97.

Other notice of intent/variation rules

Notices of intent and successor fund transfers

While a notice of intent cannot otherwise be provided where a client is no longer a fund member or the trustee no longer holds the contribution, a special rule applies where the contribution has since been fully rolled to another fund without the member's consent as a result of a successor fund transfer.

In this situation, the client can treat the contribution made to the original fund as if it had been made to the successor fund and submit a notice of intent to the successor fund in line with the normal timeframes and valid notice requirements.

When providing a variation to an original notice of intent, a client who has been subject to a successor fund transfer can also treat the contribution made to the original fund as if it had been made to the successor fund and submit a variation to the successor fund in line with the normal timeframes and valid notice requirements above. This is the case regardless of whether the original notice of intent was provided to the original fund or successor fund.

Submit notices of intent (and variations) before requesting release under FHSS scheme

Where a client wishes to withdraw benefits under the First Home Super Saver (FHSS) scheme, they must first apply for an FHSS determination from the ATO which confirms their maximum FHSS release amount and eligible concessional and non-concessional contributions. Once this determination is received, the client can then request the release of their eligible contributions and associated earnings.

When applying to release these amounts, the client must confirm (as part of the application process) that they will not claim further tax deductions on the non-concessional contributions included in the determination.

In practice, this means that a client must not provide a notice of intent (or variation) for any contribution already included in an FHSS determination where the client then requests the release based on that determination.

As FHSS determinations can be requested more than once, where a client has already requested a determination and then realises they wish to claim a contribution included as a tax deduction, they can submit a valid notice of intent (subject to normal timeframes and requirements), and then request a further FHSS determination that corrects their contribution types, prior to requesting the release of their eligible contributions and associated earnings.

2.6 Contributions excluded from being concessional contributions

The following contributions are excluded from the definition of concessional contributions and don't count towards a member's concessional contributions cap:

- Contributions to a non-complying superannuation fund.
- Transfers or rollovers of untaxed benefits from an untaxed scheme into a taxed fund.
- Applicable fund earnings from an overseas pension transfer, received after six months of Australian tax residency, which the member elects to have taxed in the Australian super fund (see section 13.4).

2.7 Concessional contributions modifications and exclusions for CPFs and defined benefit interests

There are some modifications to the concessional contributions cap rules that apply to constitutionally protected funds and defined benefit interests, both in terms of:

- The way a member's concessional contributions are calculated.
- The circumstances where a member's concessional contributions to these funds don't (by themselves) result in excess concessional contributions.

Constitutionally protected funds (CPFs) – concessional contributions

CPFs are untaxed super funds that do not pay income tax on contributions or earnings they receive. CPFs are operated by some state governments in Australia for their employees. Under the Australian Constitution, state governments cannot be taxed, so different arrangements apply to concessional contributions. Funds created for members of the judiciary are also often CPFs.

Prior to 1 July 2017, contributions that would have normally been included in an individual's concessional contributions cap, if made to a taxed fund (see the list in section 2.5), did not count towards an individual's concessional contributions cap if they were made to a CPF.

From 1 July 2017, contributions in the list in section 2.5 that are made, or allocated to, a CPF on or after 1 July 2017 are counted toward an individual's concessional contributions cap. However, these contributions and amounts, on their own, cannot result in excess concessional contributions.

Example: Modified from Example 1 in LCR 2016/11

Jamie has an interest in a CPF that is not a defined benefit interest. During a financial year, Jamie's employer contributes $32,500 to the CPF for Jamie. This contribution exceeds the $30,000 concessional contributions cap, but because the contribution has been made to a CPF, Jamie's total concessional contributions are taken to be $30,000 for the financial year; that is, he does not have excess concessional contributions. For this modification, the basic concessional contributions cap is used, and any available carry-forward concessional cap amounts from previous years are ignored.

In contrast, if Jamie also salary sacrificed $20,000 to another superannuation fund, which is not a CPF, in the financial year, Jamie's total concessional contributions would be $52,500. As the amount of concessional contributions in relation to Jamie's interest in CPFs ($32,500) is taken to be $30,000, as explained above, Jamie has excess concessional contributions of $20,000 for the financial year.

Note: This example assumes that Jamie is not eligible to carry-forward any unused concessional cap amounts from previous years (or has no unused cap amounts from previous years).

Defined benefit interests – concessional contributions

A member's superannuation fund is a 'defined benefit interest' to the extent the member's entitlements are defined by reference to one or more of the following:

- the individual's salary at a particular date or averaged over a period
- another individual's salary at a particular date or averaged over a period
- a specified amount
- specified conversion factors.

Some superannuation plans may pay death or disability benefits that are referenced to the member's salary. However, a superannuation interest is not a defined benefit interest if the only benefits payable in reference to a salary (or other matters outlined above) are death or disability benefits.

Calculation of concessional contributions where a client has a defined benefit interest

If a client has superannuation that is, or includes, a defined benefit interest, the amount of their concessional contributions for a financial year, commencing on or after 1 July 2017, is the sum of:

- any concessional contributions which do not relate to a defined benefit interest (this includes CPFs that are not defined benefit interests; see list in section 2.5), and

- 'notional taxed contributions' for the financial year, in respect of defined benefit interests (from 1 July 2017 onwards, CPFs that are defined benefit interests must also calculate this amount), and
- the amount by which 'defined benefit contributions' for the financial year exceed the notional taxed contributions for the financial year, in respect of defined benefit interests (this last element was added for all unfunded defined benefit interests from 1 July 2017, including CPFs).

Notional taxed contributions

Notional taxed contributions are determined by the funded part of a superannuation interest. A defined benefit interest is funded to the extent that it is sourced from contributions made into the fund or earnings from those contributions. The amount of notional taxed contributions is an estimate of the amount of concessional contributions that would be required to be paid to the fund for the member in that year to fund the member's expected final benefits.

The amount of notional taxed contributions may be calculated in different ways depending on:

- the person who has the superannuation defined benefit
- the superannuation plan in which the superannuation exists, or
- the superannuation provider regarding the superannuation plan.

Notional taxed contributions for funds with five or more defined benefit members

Notional contributions are determined by an actuary, according to one of two methods. The first method applies to accruing members of a defined benefit category, where the fund benefit is not wholly sourced from an accumulation of contributions made for the member.

Notional taxed contributions: Method 1

Notional taxed contributions = 1.2 × (**new entrant rate × S × D** ÷ 365) - **M**, where:

- **New entrant rate** is the new entrant rate for the benefit category worked out by an actuary and can be advised by the fund.
- **S** is the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the scheme.
- **D** is the number of days during the financial year that the member was an accruing defined member of the benefit category.
- **M** is the amount of member contributions paid by or on behalf of the member in respect of the member's defined benefit interest in the fund during that part of the financial year that the member was an accruing member of the benefit category, and which are not assessable income of the fund.

The second method applies in special circumstances and relies on the advice of an eligible actuary. Such special circumstances arise where:

- a discretion is exercised to pay a benefit upon voluntary exit or redundancy that is not bona fide and the benefit exceeds the benefit assumed in calculating the new entrant rate
- a member's accrued retirement benefit increases during a financial year as a result of a change of benefit category
- the governing rules of the defined benefit fund are amended in a way that may result in an increase in a member's benefit and the amendment is made for a reason other than to satisfy a legislative requirement
- a member's superannuation salary is increased in a non-arm's length way with the primary purpose being to achieve an increase in superannuation benefit.

The method above is used to determine the notional taxed contributions of members of a superannuation fund where:

- the fund has five or more defined benefit members
- the fund has five or more defined benefit members on 1 July 2007 and the number of defined benefit members becomes less than five after that date
- the trustee is an RSE licensee, the fund has been in existence for five or more years and had five or more members at any time before 1 July 2007 and the employer-sponsor is dealing at arm's length with each defined benefit member
- the fund meets either criteria above and the defined benefit members are transferred after 1 July 2007 to another fund whose trustee is an RSE licensee and the employer-sponsor is dealing at arm's length with each defined benefit member
- the fund had no defined benefit members on 30 June 2007, but has at least 50 defined benefit members on or after 1 July 2007, and the employer sponsor is dealing at arm's length with each defined benefit member.

Notional taxed contributions for funds with fewer than five defined benefit members

Allocation of contributions must be made in proportion to the present and prospective liabilities of the fund to its members. The notional taxed contributions are the amount of assessable contributions which have been allocated to the member in the financial year. An amount allocated from a reserve may count towards the member's concessional cap unless the amount allocated is used solely for the purpose of allowing the fund to discharge all or part of its pension liabilities.

Notional taxed contributions for non-accruing members

Where the notional contributions are determined by an actuary and the member is a non-accruing member of the fund for the whole of the financial year, the amount of notional taxed contributions of the defined benefit interest of the member is nil.

A non-accruing member is a member of a defined benefit superannuation fund where the member meets either of the following requirements:

- the member's membership in the fund consists only in the member receiving pension payments under the scheme (subject to further conditions), or
- the member has a benefit entitlement in the defined benefit fund but no employer-provided benefits have accrued to the member during the period and the rules of the fund provide that the benefit is not to increase in nominal terms (subject to some exceptions regarding indexing).

For the purposes of determining whether a member of a defined benefit superannuation fund is a non-accruing member, any employer contributions paid to the fund to meet partially, or wholly, unfunded benefit liabilities of the fund are not to be treated as employer contributions for the benefit of the member for the period.

Notional taxed contributions for public sector superannuation schemes

Notional taxed contributions will also be taken to be nil where the defined benefit interest is in a public sector superannuation fund and none of the interest is sourced to any extent from contributions made into a super fund or earnings on such contributions, unless the interest is an element taxed in the fund that is attributable to one or more rollover superannuation benefits.

Grandfathering of notional taxed contributions for existing defined benefit interests

Given the unique nature of defined benefit interests, and the difficulty for members to reduce their contributions or notional taxed contributions, certain arrangements are grandfathered so that these members are not unfairly taxed on what would otherwise be excess concessional contributions. Special arrangements apply to members with a defined benefit interest on 5 September 2006 and 12 May 2009.

If these members have notional taxed contributions for that interest that exceed the basic concessional contributions cap, the notional taxed contributions for that interest will be taken to be equal to the basic concessional cap. This arrangement will cease to apply if the scheme amends its rules to increase the member's benefits.

The grandfathered arrangement will continue to apply if the defined benefit interest has been transferred to one or more successor superannuation funds that retained equivalent rights for members.

To be eligible for grandfathering, the member must have:

- for the 2007–08 and 2008–09 financial years, been a member of an eligible defined benefit fund on 5 September 2006
- for the 2009–10 financial year onwards, been a member of an eligible defined benefit fund on 12 May 2009, and
- not had a change to improve their benefit, or a move to a new benefit category since that date, and
- not had a non-arm's length change to their salary of more than 50% in a year or 75% in three years since that date.

Defined benefit contributions less notional taxed contributions

For financial years commencing 1 July 2017 and later, an additional amount may be included in concessional contributions for members of unfunded or partially unfunded defined benefit schemes. This amount is the 'defined benefit contributions' for the interest, less the notional taxed contributions for the interest.

Calculation of defined benefit contributions

Defined benefit contributions are calculated by the actuary, under Schedule 1AA of ITAR 2021. The high level calculation is as follows:

(**BC** - **NTC**) × 0.85 + **NTC**, where:

- **BC** is the notional employer contribution (calculated under subclause 2 of Schedule 1AA, and on advice from an actuary), and
- **NTC** is the notional taxed contributions (calculated under Schedule 1A of ITAR 2021).

The grandfathering transitional rules for notional taxed contributions are ignored for the purpose of calculating defined benefit contributions.

Defined benefit contributions for a fully funded defined benefit interest (excluding interest in a CPF) are equal to the notional taxed contributions for that interest (so defined benefit contributions, less notional taxed contributions, will be Nil).

Defined benefit contributions for a defined benefit interest are also Nil where a member is a non-accruing member for the financial year. See earlier in this section for the definition of non-accruing member.

Contributions and amounts that do not result in excess concessional contributions

For financial years commencing on or after 1 July 2017, the following amounts that count towards the concessional contributions cap do not, on their own, cause an individual to exceed their basic concessional contributions cap. Instead, the sum of those contributions is taken to be equal to the basic concessional contributions cap[18] and cannot create an excess.

- Contributions to a CPF that would be counted as concessional contributions (including notional taxed contributions to CPFs and defined benefit contributions in excess of notional taxed contributions to CPFs).
- Notional taxed contributions where the grandfathering transitional rules apply (these rules do not apply to CPFs).
- Defined benefit contributions less notional taxed contributions (to the extent this excess does not relate to an interest in a CPF).

18 Any higher concessional cap that an eligible member may have for the financial year due to the concessional cap carry-forward rules is ignored for this calculation.

3 Non-concessional contributions

3.1 Summary of non-concessional contributions rules

Non-concessional contributions (sometimes referred to as after-tax contributions) are generally those that are:

- made from after tax money (and don't provide the contributor with a tax-deduction), and
- not taxed when received by the superannuation fund (i.e. not included in the fund's assessable income).

Common types of non-concessional contributions include personal non-concessional contributions made by a member, contributions made for a member by their spouse (spouse contributions) and (non-employer) contributions made on behalf of a child (child contributions).

Where an eligible client makes a personal non-concessional contribution, they may qualify for a Government co-contribution. Where a client makes an eligible spouse contribution for their spouse, they may qualify for a spouse contribution tax offset. See section 3.5 for information about both of these concessions.

The non-concessional contributions cap limits the level of non-concessional contributions a client can make before additional tax consequences apply. Where a client exceeds their non-concessional cap, they can elect to release the excess (plus 85% of an associated earnings amount), with 100% of the associated earnings amount being assessable to the client and taxed at their MTR (less a 15% non-refundable tax offset). The ATO will also initiate this release of the excess amount as a default option where possible. If instead the excess remains in the fund, it is subject to excess non-concessional contributions tax of 47% on the excess amount.

3.2 Non-concessional contributions cap (including bring-forward rule)

FirstTech comment: Non-concessional contributions cap checklist

Refer to Appendix 3 for a non-concessional contributions cap checklist. This checklist can assist to determine a client's non-concessional contributions cap (including under the bring-forward rule), their total non-concessional contributions, and whether they have exceeded their non-concessional contributions cap.

The non-concessional contributions cap limits the level of non-concessional contributions a client can make before additional tax consequences apply. Depending on their circumstances, a client's non-concessional cap may be:

- nil
- equal to the standard non-concessional cap
- a higher or lower amount than the standard cap due to the bring-forward rule.

Standard non-concessional contributions cap

The standard non-concessional contributions cap is set at four times the basic concessional contributions cap, which is indexed to AWOTE in increments of $2,500. Therefore the standard non-concessional contributions cap will increase in line with increases in the concessional contributions cap, in increments of $10,000. The standard non-concessional contributions cap did not increase on 1 July 2025.

In addition, a member's total superannuation balance just prior to the start of a financial year must be less than the general transfer balance cap for the financial year ($2 million for 2025–26) to access the standard non-concessional cap – where this is not the case the member's non-concessional cap for the financial year will be nil.

The standard non-concessional cap and total superannuation balance requirement is shown in Table 3.1.

Table 3.1 Standard non-concessional contributions cap

Financial year	Standard non-concessional contributions cap	If total superannuation balance is:
2025–26	$120,000	Less than $2 million at 30 June 2025
	Nil	$2 million or more at 30 June 2025
2024–25	$120,000	Less than $1.9 million at 30 June 2024
	Nil	$1.9 million or more at 30 June 2024
2023–24	$110,000	Less than $1.9 million at 30 June 2023
	Nil	$1.9 million or more at 30 June 2023

A client may have a higher or lower non-concessional contributions cap than the standard non-concessional contributions cap in the table above where they are eligible for, or have already triggered the bring-forward rule. See below for information about the bring-forward rule.

Bring-forward rule

Members under age 75 at any time in a financial year may effectively bring-forward up to two years' worth of non-concessional contributions cap for that income year, allowing them to contribute a greater amount (potentially up to $360,000 in 2025–26) without exceeding their non-concessional contributions cap.[19] This is known as the 'bring-forward rule'.

The non-concessional cap available when triggering the bring-forward rule, and access to (and length of) a bring-forward period is determined based on caps and total superannuation balance thresholds in the year it is triggered.

As the total superannuation balance thresholds increased on 1 July 2025, members who trigger the bring-forward rule in the 2025–26 financial year are subject to different total superannuation balance thresholds, compared to members who triggered the bring-forward rule in 2024–25. Members who triggered the bring-forward rule in 2023–24 are also subject to different caps and total superannuation balance thresholds.

Bring-forward rule triggered in 2025–26 financial year

When triggering the bring-forward rule in 2025–26, the number of years that may be brought forward into the first financial year is determined by the member's total superannuation balance (see section 5) at 30 June 2025, as shown in Table 3.2.

Table 3.2 Bring-forward rule triggered in 2025–26

Total superannuation balance at 30 June 2025	Standard non-concessional contributions cap for 2025–26 financial year	Allowable number of years bring-forward	Non-concessional cap for bring-forward period
Less than $1.76 million	$120,000	2 × $120,000	$360,000 (three year bring-forward period)
At least $1.76 million but less than $1.88 million	$120,000	1 × $120,000	$240,000 (two year bring-forward period)
At least $1.88 million but less than $2 million	$120,000	0	$120,000 (no bring-forward applies)
$2 million or more	Nil	0	Nil (no non-concessional cap available)

A person who is eligible to use the bring-forward rule, automatically 'triggers' the rule when they contribute more than the standard non-concessional contributions cap in a financial year (no election is required).

An eligible person's 'bring-forward period' (where eligible) is the number of years shown in column 4 above. Bring-forward periods will therefore be either two or three years in total, depending on the individual's total super balance just prior to the first year.

19 Note - where a member turns 75 on 1 July in a year, they will not be taken to be under age 75 at any time during that year as they are taken to have turned 75 at the start of that day. See section 37A *Acts Interpretation Act 1901*.

If the maximum contributions are made in the year the bring-forward rule is triggered, the person will not be able to make further non-concessional contributions during the remainder of their bring-forward period without exceeding the cap.

The bring-forward rule is not retrospective. That is, if a person has not made non-concessional contributions for several years in the past, this cannot be added to their non-concessional contributions cap for the current financial year. The non-concessional contributions cap operates on a 'use it or lose it' basis.

Bring-forward rule triggered in 2024–25 financial year

If a member triggered the bring-forward rule during 2024–25, their bring-forward period and non-concessional contributions cap during that period were determined based on their total superannuation balance at 30 June 2024, the total superannuation balance thresholds for 2024–25, and the standard non-concessional contributions cap for 2024–25. These are shown in Table 3.3.

Table 3.3 Bring-forward rule triggered in 2024–25

Total superannuation balance at 30 June 2024	Standard non-concessional contributions cap for 2024–25 financial year	Allowable number of years bring-forward	Non-concessional cap for bring-forward period
Less than $1.66 million	$120,000	2 x $120,000	$360,000 (three year bring-forward period)
At least $1.66 million but less than $1.78 million	$120,000	1 x $120,000	$240,000 (two year bring-forward period)
At least $1.78 million but less than $1.9 million	$120,000	0	$120,000 (no bring-forward applies)
$1.9 million or more	Nil	0	Nil (no non-concessional cap available)

Bring-forward rule triggered in 2023–24 financial year

If a member triggered the bring-forward rule during 2023–24, their bring-forward period and non-concessional contributions cap during that period were determined based on their total superannuation balance at 30 June 2023, the total superannuation balance thresholds for 2023–24, and the standard non-concessional contributions cap for 2023–24. These are shown in Table 3.4.

Table 3.4 Bring-forward rule triggered in 2023–24

Total superannuation balance at 30 June 2023	Standard non-concessional contributions cap for 2023–24 financial year	Allowable number of years bring-forward	Non-concessional cap for bring-forward period
Less than $1.68 million	$110,000	2 × $110,000	$330,000 (three year bring-forward period)
At least $1.68 million but less than $1.79 million	$110,000	1 × $110,000	$220,000 (two year bring-forward period)
At least $1.79 million but less than $1.9 million	$110,000	0	$110,000 (no bring-forward applies)
$1.9 million or more	Nil	0	Nil (no non-concessional cap available)

Note: A member who triggered the bring-forward rule in 2023–24 can only still be in their existing bring-forward period in 2025–26 where their total superannuation balance at 30 June 2023 was less than $1.68 million (three year bring-forward period).

Upper total super balance threshold applies throughout bring-forward period

Where a member has triggered the bring forward rule, it is important to note that if their total superannuation balance just prior to Year 2, or Year 3 (if applicable), of their bring-forward period is equal to or greater than the general transfer balance cap for that year ($2 million in 2025–26), their non-concessional contributions cap for that financial year is reduced to nil - this means that any non-concessional contributions made in that year will be in excess of the non-concessional contributions cap.

Example

Cliff (age 60) has a total superannuation balance of $1.65 million on 30 June 2024. In 2024–25, he made non-concessional contributions of $300,000, triggering the bring-forward rule with a $360,000 cap over a three year bring-forward period. On 30 June 2025, his total superannuation balance had increased to $2.02 million.

While Cliff would normally have the remaining unused $60,000 of his $360,000 bring-forward amount available in 2025–26, as his total superannuation balance at 30 June 2025 is at least $2 million, his non-concessional cap for 2025–26 is instead nil.

In contrast, the other total superannuation balance thresholds ($1.76 million and $1.88 million in 2025–26) are used only to determine the length of a member's bring-forward period in the first year and have no impact throughout the remainder of the bring-forward period.

Operation of non-concessional cap during bring-forward period

Where a member with a total super balance of less than $1.76 million at 30 June 2025 triggers the bring-forward rule in 2025–26, their non-concessional cap for that year (Year 1) automatically becomes $360,000. The member's non-concessional contributions cap for the second year (Year 2) is then calculated as $360,000 less total non-concessional contributions made in Year 1. The non-concessional contributions cap for the final year of the bring-forward period is then calculated as $360,000 – (total non-concessional contributions for Year 1 + Year 2).

Note that a member's non-concessional contributions cap in this situation is based on the above rules so long as their total superannuation balance just prior to the start of each financial year during the bring-forward period is less than the general transfer balance cap for that year ($2 million in 2025–26).

FirstTech comment: No indexation available when in year two or three of bring-forward period

Because the non-concessional contributions cap that applies to a member during their bring-forward period is calculated with reference to the standard non-concessional contributions cap in the first year, the member will not receive the benefit of any increase in the standard non-concessional contributions cap (due to indexation of concessional contributions cap) in year two or three of their bring-forward period.

For example, if a member triggered a three year bring-forward period in 2023–24, their non-concessional contributions cap during that period is $330,000, even though the standard non-concessional contributions cap increased to $120,000 in 2024–25 and 2025–26.

Bring-forward rule for members approaching age 75 – need to consider eligibility to contribute

A member can trigger the bring-forward rule as long as they are under 75 at the start of the first financial year, subject to total superannuation balance requirements.

However, note that under SIS contribution eligibility requirements, non-concessional contributions (and all other voluntary contributions apart from downsizer contributions) must be received no later than the 28th day after the end of the month in which a member reaches age 75.

This means that members who will reach age 75 during their bring-forward period can still fully utilise their non-concessional cap determined under the bring-forward rule, but need to ensure that any contributions are made no later than 28 days after the end of the month in which they reach age 75.

Example: Bring-forward triggered in year of reaching age 75

Tim has a total superannuation balance of $1 million on 30 June 2025. He is not in the middle of an existing bring-forward period in 2025–26, and will reach age 75 on 1 November 2025.

Tim makes a non-concessional contribution of $200,000 on 1 August 2025 (triggering a $360,000 three-year bring-forward period). Tim's remaining non-concessional cap for the rest of his bring-forward period is $160,000. However, if he wants to fully utilise this cap he would need to make a further $160,000 non-concessional contribution by no later than 28 December 2025 (28 days after the end of the month in which he reaches 75).

FirstTech comment: Inadvertently triggering the bring forward rule can result in a client exceeding the NCC cap in a subsequent year

A common strategy to maximise NCCs is to make an NCC in one year of up to the NCC cap (currently $120,000 2025–26) and then to make NCCs of up to three times the NCC cap (currently $360,000 2025–26) in the following year using the bring forward rules. For example, this could potentially allow a member to make total NCCs of up to $480,000 over two consecutive financial years.

However, where a member inadvertently exceeded the standard NCC cap in the first year, such as due to not being eligible to claim a full tax deduction for any other personal contributions they made during the year (see section 3.4 below for more information), they would trigger the NCC bring forward rules in that year, ie one year earlier than expected. This would then mean their NCC cap in the following year (year two of the bring forward period) would be less than expected as it would be reduced by the NCCs they made in the prior year. This can then lead to situations where a member will exceed their NCC cap by a significant amount.

For example, where a member's total NCCs in a year was assessed to be $121,000, due to them not being eligible to claim a full deduction for a separate personal contribution, they would trigger the bring forward rule in that year and their NCC cap in that year would revert to $360,000.[20] If the member was unaware of this and then made NCCs of $360,000 in the following financial year (when their NCC cap had reduced to $239,000 ($360,000 - $121,000)), they will be assessed as having exceeded their NCC cap in that year by $121,000.

20 Assuming the member was under 75 at some time during the year and their TSB at the end of the previous financial year permits a three-year bring-forward period to be triggered.

3.3 Taxation of non-concessional contributions

Non-concessional contributions are not included in the assessable income of a complying superannuation fund and are not taxed in the fund. The tax treatment of non-concessional contributions for a member is summarised in Table 3.5.

Table 3.5 Taxation of non-concessional contributions

	Effective tax treatment	Notes
Non-concessional contributions within non-concessional cap	Nil	
Exceeding cap and either: • excess + 85% of associated earnings withdrawn, or • insufficient funds in super to withdraw.	Associated earnings assessable to member and taxed at MTR (less a 15% non-refundable tax offset)	ATO will generally apply as default option where member exceeds their non-concessional cap.
Excess non-concessional contributions (amount exceeding cap not withdrawn)	47% of excess	Tax amount must generally be released from fund.

3.4 Excess non-concessional contributions rules and options

After a financial year ends, the ATO determines whether a client has exceeded their non-concessional contributions (NCCs) cap based on:

- Super contributions information reported to the ATO by the super fund
- Whether they have successfully claimed a deduction for personal contributions in their individual tax return
- Age, and
- Total super balance at the previous 30 June.

Where a client exceeds their NCCs cap, the ATO will issue an excess NCCs determination advising options to deal with the excess.

Unexpected situations that may result in breaching the non-concessional contributions cap

Even if a good record is kept to track a client's super contributions, some unexpected circumstances may lead to breaching the NCCs cap. Below are some of the scenarios the FirstTech team has dealt with in recent times.

Situation 1: Leaving excess concessional contributions (CCs) in the fund

If a client exceeds their CCs cap, the excess CCs count towards the client's NCCs cap unless the excess CCs are released from the super fund.

To release the excess CCs, the client is required to make an election within 60 days[21] after the ATO issues the excess CCs determination letter to release 85% of the excess CCs from the super fund(s).

Where such an election to withdraw excess CCs is not made within the required 60-day timeframe[22], the excess CCs are left in the fund and the ATO includes these amounts in the client's NCCs when determining whether they have exceeded their NCC cap in that year or triggered the NCC bring forward rules (which can result in the client inadvertently exceeding their NCC cap in a subsequent year).

Where a client breached their CCs cap and those excess CCs would cause a breach of the client's NCCs cap, it is therefore important for the client to make an election within the required timeframe to release 85% of the excess from their super fund so that a breach of the client's NCCs cap doesn't result. For further information about excess concessional contributions and their impact on a client's tax, super and estate planning situation, see the article 'Excess concessional contributions – release or keep in super?' on the FirstTech site.

Situation 2: A personal contribution intended to be a CC but became an NCC

A personal contribution counts towards a client's CC if:

- The contribution amount is included in a valid Notice of Intent (NOI) to claim a deduction for personal contributions form lodged with the fund, and
- The amount is successfully claimed as a deduction in the client's individual tax return.

However, such a contribution will count towards the client's NCCs cap if the client cannot successfully claim the personal super contribution as a deduction in their individual tax return. This can typically happen in the following situations.

Failing the work test

Since 1 July 2022, the work test is no longer required for making a voluntary super contribution. However, if the client is age 67 or over, they will need to meet the work test (or work test exemption) to be able to claim a tax deduction for a personal super contribution in the tax return. See section 2.5 for further information about the work test and work test exemption.

Where a client in this age group makes a personal super contribution but fails to meet the work test (or work test exemption) in that financial year, it is not possible to claim the personal contribution as a deduction. Any personal contributions that cannot be claimed as a deduction will count towards the client's NCCs cap.

Depending on the client's circumstances, this could then cause the client to exceed their NCC cap in that year, or trigger the NCC bring forward rules (which can result in the client inadvertently exceeding their NCC cap in a subsequent year).

21 Note that this election form is available in the ATO online services for up to 120 days after the determination issue date. If a late lodgement is received, the ATO will decide whether to accept the election based on the circumstances. Given the uncertainties associated with late lodgement, the election to release should be made within the 60-day timeframe where possible.

22 Or a late lodgement is not accepted by the ATO.

Notice of intent (NOI) issues

Part or all of a personal contribution will count towards a client's NCCs cap if the client is unable to lodge a valid NOI and the contributed amount cannot be claimed as a deduction in the individual tax return. This can happen where:

- The client commenced an income stream based in whole or part on the contribution prior to lodging the NOI; or
- A partial or full rollover or withdrawal occurred prior to lodging the NOI and part or all of the contributed amount cannot be subject to a valid NOI or be claimed as a deduction; or
- The client lodged the tax return for the year the contribution was made prior to lodging the NOI.

Part or all of a personal contribution will also count towards a client's NCCs cap where a valid NOI was lodged with the fund but the client does not have sufficient taxable income before claiming the personal super contribution deduction. The amount that can be claimed as a deduction for a personal super contribution is limited to reducing an individual's taxable income to $0. Any excess that cannot be claimed as a deduction will count towards the NCCs cap.

What happens if a client exceeds their NCCs cap?

The ATO works out whether a client exceeded their NCCs cap based on the information reported to the ATO by the client's super fund and in the tax return (if the client lodged one).

If a client exceeds their NCCs cap in a financial year:

- The ATO will issue an excess NCCs determination notice to the client that explains options. This usually happens after the client's tax return becomes due.
- The client must lodge a tax return for that financial year where their NCCs exceeded their NCCs cap. If the tax return is not lodged by the due date and the client does not want the ATO to issue a determination before they lodge the return, the client needs to request a lodgement deferral.

Tax consequences

If the excess amount and 85% of the associated earnings (calculated by the ATO) are released from one or more super accumulation or pension accounts, or the client's super interest (in both accumulation and pension phases) is Nil, the associated earnings are included in the client's assessable income and taxed at their marginal tax rates less a 15% non-refundable tax offset.

If the excess amount is not released from super and the client still has a super interest (usually because the client's only super interest is in a defined benefit scheme), the 47% excess NCC tax applies to the excess amount that cannot be released.

FirstTech comment: voluntary lump sum withdrawals won't fix excess

It's important to note that making a voluntary lump sum withdrawal from the fund will not rectify the breach of the NCCs cap.

The client must wait until the ATO sends the excess NCCs determination notice. Once an option is chosen, the ATO will then send the release authority to the client's super fund(s).

Excess NCCs determination notice

The ATO's excess NCCs determination notice advises the following:

- The client's TSB at the previous 30 June
- The NCCs cap for the financial year
- The client's NCCs in that financial year
- Excess NCCs for the determination
- Excess NCCs tax (ie 47% of the excess NCCs if the excess amount is not released. This is explained in option 2 below)
- Associated earnings amount. This is relevant where the excess amount is released from the super fund. Associated earnings are calculated using three key elements:
  - The client's excess NCCs.
  - The associated earnings rate[23]. This proxy rate is based on the average of the general interest charge rates for the four quarters of the financial year where the NCCs cap was exceeded. For the 2024–25 financial year this rate was 11.33%.
  - Associated earnings period. This period starts on the first day of the financial year where the NCCs cap was exceeded (regardless of when the contribution is received by the fund) through to the date of the original excess NCCs determination letter issued by the ATO.
- Amount to be released from the client's super fund(s) under option 1 (see below) which is the excess NCCs amount for the determination plus 85% of the associated earnings amount.

23 Table 5: Associated earnings rates from the ATO's Contributions caps webpage

Options

The ATO's excess NCCs determination notice will also advise the client of the following options:

Do nothing option

If the client does nothing upon receiving a determination notice, the ATO will approach the client's super fund(s) in order of which has the highest reported account balance at the time. The ATO will ask the fund to release and send the "Amount to be released" specified in the determination notice to the ATO.

The ATO will include 100% of the associated earnings amount in the client's income tax assessment. The associated earnings are taxed at the client's marginal tax rate less a 15% non-refundable tax offset.

Once the ATO receives the amount released from the fund, the ATO will deduct any outstanding tax or Australian government debts and refund any remaining balance to the client.

If the client has withdrawn all their super and there's no money left in either an accumulation or a pension account, the ATO will include 100% of the associated earnings in the client's income tax assessment. The client will pay tax on the associated earnings at their marginal tax rate less a 15% non-refundable tax offset. Given no amount is released from the super fund to the ATO, the client will need to pay tax (if any) out of their own pocket.

If the ATO has exhausted all amounts from a client's super accounts and the only super interest left is a defined benefit interest, and the fund cannot or will not voluntarily release, the ATO will apply option 2 (please see below) by sending the client an excess NCCs tax assessment which will specify 47% tax payable on the excess amount that cannot be released from the defined benefit interest. The client needs to pay the excess NCCs tax out of their own pocket.

Alternatively, the client can choose one of the following two options within 60 days after the ATO issues the excess NCCs determination notice.

Option 1: Release the excess from a super fund(s) the client chooses

Under this option, the client can elect to release all of the excess NCCs plus 85% of the associated earnings (ie amount to be released specified by the determination notice) from a super fund(s) that the client chooses. It does not need to be the super fund that received the excess NCCs. The client can choose any of their super account(s) where the client has super interests either in accumulation or pension phase.

The tax consequences under Option 1 are the same as the 'Do nothing option'. That is, where the full amount is released, or the full amount cannot be released because the client no longer has any super interest, 100% of the associated earnings are taxed at the client's marginal tax rate with a 15% non-refundable tax offset available to reduce tax liabilities.

The client needs to make an election choosing Option 1 within the required 60-day timeframe.

There are three ways for a client to make a request:

- The client can make this election through ATO online services by logging into myGov, selecting the ATO linked service, and then select Super, then Manage, then Non-concessional election.
- The client can ask their tax agent to submit an election on the client's behalf through Online services for tax agents.
- Clients or their tax agents who are unable to lodge online have the option to download the paper form, Excess non-concessional contributions election form (NAT 74824) via the ATO website and mail the form to the address included in the form once it's completed.

If the election is accepted by the ATO, the ATO will issue a release authority to the client's chosen fund(s) and ask the fund(s) to release the specified amount to the ATO.

Once the ATO receives the amount released from the fund, they will deduct any outstanding tax or Australian government debts and refund the remaining balance to the client.

Option 2: Don't release the excess amount and pay excess NCCs tax (at 47%)

This option is relevant where the client's only super interest is a defined benefit interest and the fund cannot or will not release the requested amount.

Under this option, the excess NCCs amount is taxed at 47%. This tax will need to be paid from the client's own pocket.

Associated earnings are not relevant under this option.

Example

Lily is a member of a defined benefit scheme. Her defined benefit is calculated based on the after-tax member contributions she makes to the scheme. Her NCCs cap is $0 based on her total super balance.

Lily breached her NCCs cap by $30,000 from the after-tax member contributions she made to the scheme. She doesn't have any other super interest.

The ATO issues a release authority to her defined benefit scheme, but the scheme is unable to release the required amount based on its governing rules.

The ATO then issues an excess NCCs tax assessment to Lily, with the $30,000 taxed at 47%. Lily needs to pay this tax out of her own pocket.

Considerations when dealing with an excess NCCs determination notice

1. Check information on the determination notice

The first step after receiving an excess NCCs determination is to check that the information on the determination is correct.

Where the super fund reported incorrect contributions to the ATO, the adviser can request the super fund to re-report the correct contribution to the ATO. However, re-reporting is only possible if there was a mistake. A fund cannot re-report contributions simply to help a member avoid excess contributions.

If the client thinks the ATO has applied the law incorrectly, they can object to the excess NCCs determination by going through the standard ATO objection process.

It's also worthwhile noting that where a client exceeded their NCCs cap due to special circumstances, the client can apply to the ATO, in the approved form, for a determination that part or all of the excess NCCs be disregarded or reallocated to another year.[24] Special circumstances are unusual or out of the ordinary factors that lead to an unjust, unreasonable or otherwise inappropriate outcome. Making a mistake, not knowing about or misunderstanding the law or receiving incorrect professional advice is generally not considered special circumstances. Please refer to the ATO website for further details.

2. Do nothing vs option 1

If the determination notice is correct, assuming the client does not have any defined benefit interests, the client can either do nothing or make an election within the required 60-day timeframe to choose option 1, to have the excess amount and 85% of associated earnings released from their super account.

Tax consequences are the same

Regardless of which of the two options the client chooses (ie do nothing or option 1), provided the required release amount can be released from the fund or the clients super interest is Nil, the tax consequences of exceeding the NCCs cap are the same. The tax consequences are:

- 100% of the associated earnings amount calculated by the ATO is included the client's assessable income in the year the client exceeded the NCCs cap and taxed as usual at the client's marginal tax rate, and
- a 15% non-refundable tax offset (ie 15% of associated earnings included in the client's assessable income) is available to reduce the client's income tax liabilities. This offset cannot be used to reduce any Medicare levy and is not refundable if in excess.

24 The application can only be made once all of the relevant contributions have been made and must be made either before, or within 60 days of, receiving an excess NCCs determination notice.

Differences between the two options

The main differences between doing nothing and electing to choose option 1 are:

- By doing nothing, the ATO will select the client's super account(s) to release the funds, generally in order of which has the highest reported account balance.
- By electing option 1, the client can instruct the ATO to send the release authority to the super account(s) the client chooses.

If the client has only one super account, choosing to do nothing would be the easiest option. The ATO will automatically instruct the fund with the only super account the client has to release the funds.

However, if the client has multiple super accounts that have different taxable and tax-free components or different preservation status, it is important to consider which super account the amount should be released from. Important points to consider are:

- release authority payments are not subject to the proportioning rules, and
- release authority payments are subject to the preservation cashing order rules.

Payment of a release authority and the proportioning rules

The payment of a release authority is a super benefit, however, it is not subject to the proportioning rules. This means:

- If an amount is released from a super accumulation account, it generally only reduces the taxable component of the member's interest in the account.
- If an amount is released from a super pension account, the taxable and tax-free components percentages have already been determined when the pension commences and therefore the released amount will reduce both taxable and tax-free components in accordance with already determined percentages.

Based on the above,

- If a client has both accumulation and pension accounts and the pension account has a high tax-free component, it can be beneficial to instruct the ATO to send the release authority to the super accumulation account under option 1. The payment of a release authority will generally only reduce the taxable component in a super accumulation interest. This can be advantageous for estate planning purposes. However, it is important to note that the ATO flagged on their website that they are concerned about strategies to deliberately exceed the NCCs cap with a view to manipulating the taxable and tax-free component of a super interest and severe penalties can apply.
- If a client has multiple pension accounts, it can be beneficial for estate planning purposes to instruct the ATO under option 1 to have the amount released from a pension account that has higher taxable component.

Preservation cashing order

The cashing order for benefits paid to satisfy a release authority is:

1. Unrestricted non-preserved benefits
2. Restricted non-preserved benefits
3. Preserved benefits

If a client has multiple accumulation accounts that have different preservation benefits, it can be beneficial to elect Option 1, as they can choose an account with only preserved benefits to release the amount from. This can help to retain any unrestricted non-preserved benefits.

Super fund compliance with release authorities

Where a super fund is issued with a release authority in relation to releasing excess non-concessional contributions for one or more specified super interests, it must generally release the lesser of:

- The amount specified in the release authority, and
- The maximum available release amounts for each specified super interest.

The maximum available release amounts for each superannuation interest includes the total amount of all the superannuation lump sums that could be payable from the interest at that time. This would include amounts held both in accumulation phase accounts and superannuation income streams.

However, defined benefit interests are not included when calculating the sum of the maximum available release amounts for an individual's superannuation interests (although a defined benefit fund may voluntarily comply with a release authority).

Where there are insufficient funds remaining in the superannuation interest, only part of the identified amount will be released. In this situation, the ATO will notify the individual who may then make a further request within 60 days for the release of the remaining amount from another superannuation interest.

Unless the ATO receives an election to release a nil amount, the ATO will send a release authority to the nominated (or ATO chosen) super fund. The super fund will then be required where possible to pay the ATO an amount equal to the excess non-concessional contributions amount and 85% of the associated earnings. The super fund will then have 10 business days to action the release authority and pay the required amount to the ATO.

Note

Once the ATO has issued a release authority to a fund, the fund will have no option and must pay the amount required to the ATO within the required 10 business days. It is therefore vital that if a member disagrees with the excess determination, or wishes to have their excess contribution disregarded or allocated to a different year (see below), they must apply to the ATO within the allowed 60 day time period. Otherwise the trustee will have no option but to pay the amount specified to the ATO, which means it will have left the superannuation system.

Once the amount has been paid to the ATO it will then calculate and withhold the tax payable on the notional earnings amount and then pay the remaining balance to the individual. Note - where the individual has other outstanding tax liabilities, the ATO can also deduct those liabilities from the amount released.

3.5 Types of non-concessional contributions

A non-concessional contribution is generally a super contribution to a complying super fund which is not included in the super fund's assessable income. However, a number of contributions (which would otherwise be non-concessional contributions) are specifically excluded from the definition of non-concessional contribution.

The following contributions are non-concessional contributions and count towards a client's non-concessional contributions cap:

- Personal contributions for which no valid notice of intent (deduction notice) is submitted by the member and acknowledged by the trustee).
- Personal contributions where a valid notice of intent is submitted but a tax deduction is unable to be claimed or is denied.[25]
- Spouse contributions (counted as a non-concessional contribution of the receiving spouse).
- Contributions made on behalf of a child under age 18 by anyone other than the child's employer (counted as a non-concessional contribution of the child).
- Excess concessional contributions (where excess concessional contributions are released from the fund, a client's non-concessional contributions for the financial year are reduced by the grossed up value of excess concessional contributions that they have elected to release from super - see section 2.4 for further details).
- 100% of transfers of overseas pensions into Australian super funds within six months of Australian residency.

25 Note that while this type of contribution will be a non-concessional contribution for the member, it will still be included in the assessable income of the fund to the extent that it is covered by a valid notice of intent.

- A portion of transfers of overseas pensions into Australian super funds after six months of Australian residency. The portion included is: gross transfer – applicable fund earnings (see section 13.4), assuming the member has elected for the Australian fund to be taxed on the applicable fund earnings.
- Proceeds from the sale of a small business that are contributed to super where the member did not, or could not, elect to have the amount counted under the lifetime CGT cap (assuming that no valid notice of intent is submitted by the member and acknowledged by the trustee).
- Any contributions made after 10 May 2006 to a fund while it was non-complying are counted to the member's non-concessional cap in the year the fund regains its complying status.

Non-assessable contributions directed to an unallocated contributions account and then allocated to a member's benefits in accordance with timeframes specified in the SIS Regulations, as well as amounts allocated from a fund's reserves to a member's benefits, may also count towards the member's non-concessional cap. For more information, please see section 7.2 of the FirstTech SMSF guide.

Some of the key non-concessional contribution types, and associated Government concessions, are summarised below.

Personal non-concessional contributions

A personal non-concessional contribution is a member contribution made personally by a member, to the extent that it either:

- is not covered by a valid notice of intent (deduction notice), or
- is covered by a valid notice of intent but a tax deduction is unable to be claimed or is denied.

A client who makes a personal non-concessional contribution may qualify for a Government co-contribution.

Government co-contribution

The Government co-contribution involves the Government contributing to the super accounts of low and middle income employees and self-employed people to encourage and assist them to save for their retirement.

The maximum Government co-contribution is 50 cents for every $1 of eligible personal super contributions made in a financial year and is subject to an income test. The maximum co-contribution of $500 reduces by 3.333 cents for every $1 that the taxpayer's total income exceeds $47,488 in 2025–26 until it reaches or exceeds $62,488. If the amount of the Government co-contribution would otherwise be less than $20, the amount of the co-contribution is rounded up to $20.

The Government co-contribution does not count toward either the concessional or the non-concessional contributions caps.

Eligibility

A person may be eligible to receive a co-contribution if all of the following criteria are met:

- the person makes one or more eligible personal super contributions (a personal non-concessional contribution) during the income year
- 10% or more of the person's total income 1 for the income year is attributable to the following:
    - employment, where the person is an employee for SG purposes, and/or
    - self-employment, where the person is carrying on a business

> **Total income 1** = assessable income + reportable fringe benefits + reportable employer super contributions (RESC).
>
> See definition of RESC below.

- an income tax return for the person for the income year is lodged
- the person is less than 71 years old at the end of the income year
- the person does not hold a temporary visa under the *Migration Act 1958* at any time in the income year or, if they do, is a New Zealand citizen or the holder of a visa to be prescribed in the Regulations
- the person's total income 2 for the income year is less than $62,488

> **Total income 2** = assessable income + reportable fringe benefits + reportable employer super contributions (RESC) – any amounts for which the person is entitled to a deduction as a result of carrying on a business.
>
> See definition of RESC below.

- the person's total non-concessional contributions for the income year is less than or equal to their non-concessional contributions cap for that year (see section 3.2)
- at 30 June of the previous year, the person's total superannuation balance is less than the general transfer balance cap – $2 million for 2025–26 (see section 5.3, 'Total superannuation balance').

Assessable income

- Assessable income is income before deductions, disregarding any assessable FHSS released amounts.
- Deductions for personal super contributions will reduce taxable income, but will not reduce assessable income.

- Salary sacrifice will reduce assessable income; however salary sacrifice super contributions are effectively added back through the inclusion of reportable employer super contributions in the income definitions (refer to section below).
- A sole trader's gross business income is included in their assessable income.
- For individuals with income from partnership distributions or shared income from a passive investment, please see FirstTech article, Financial planning considerations for co-investment owners (on the FirstTech website) for more information.

Reportable fringe benefits (RFB)

Fringe benefits are benefits provided to an employee (or their associate, such as a family member) in respect of employment. Benefits can be provided by the employer, employer's associate or by a third party under an arrangement with the employer.

An employee has a reportable fringe benefits amount for an income year (1 July to 30 June) if the taxable value of their individual fringe benefits amount for the FBT year (1 April to 31 March) is more than $2,000.

The employer must record the grossed up taxable value of those benefits on the employee's payment summary for the corresponding income year (1 July to 30 June).

Reportable employer super contributions (RESC)

An individual's 'reportable employer superannuation contributions' (RESC) for an income year include any super contributions made by an employer or associate of the employer, to the extent that either or both of the following applies:

- The individual has or had the capacity to influence the size of the amount.
- The individual has or had the capacity to influence the way the amount is contributed so that his or her assessable income is reduced.

Contributions to superannuation that are required by an 'industrial instrument' or rules of a superannuation fund are expressly excluded from the RESC definition to the extent that there is no capacity to influence the content of the requirement to make the contribution or its size.

An example of a reportable employer superannuation contribution is a salary sacrifice contribution. Salary sacrifice contributions typically involve negotiations by an employee with their employer.

Employer contributions made to meet the employer's superannuation obligations under Federal, State or Territory legislation are not RESCs. This includes an obligation under the *Superannuation Guarantee (Administration) Act 1992*.

Business deductions

The income concept used is a net concept for individuals who carry on a business. It is designed to ensure that self-employed individuals with high gross business receipts are not arbitrarily exceeding the co-contribution income threshold.

'Any amount for which a person is entitled to a deduction as a result of carrying on a business' has the meaning given by the *Income Tax Assessment Act 1997* (ITAA 1997).

The general principles of section 8–1 of ITAA 1997 must be met. That is, a business can deduct any loss or outgoing to the extent that 'it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income'. There are also specific deductions that certain provisions of the Act allow. Division 12 of ITAA 1997 contains a reference table of specific personal and business deductions.

Deductions for personal super contributions are not business deductions. The Explanatory Memorandum to the *Tax Laws Amendment (Simplified Superannuation) Act 2007* made this specific exclusion to business deductions:

'Business deductions do not include work-related employee deductions or deductions that are available to eligible individuals (including the self-employed) for their personal superannuation contributions.' (paragraph 7.53)

Calculating the maximum Government co-contribution

The maximum co-contribution of $500 is potentially available to individuals whose **total income 2** in 2025–26 does not exceed $47,488 p.a. The maximum co-contribution reduces by 3.333 cents for every dollar of total income 2 over $47,488, cutting out at $62,488.

A person's maximum co-contribution limit is calculated as follows:

> $500 – [((total assessable income (disregarding any assessable FHSS released amounts) + RFB + RESCs – any amounts for which the person is entitled to a deduction as a result of carrying on a business) – $47,488) × 0.03333].
>
> See definitions of RFB and RESC above.

Calculating the Government co-contribution entitlement

A person's co-contribution entitlement is the lesser of:

- 50% of personal non-concessional contributions made during the financial year, and
- the person's maximum co-contribution limit as calculated above.

Where is the Government co-contribution paid?

In most cases, a member's Government co-contribution is paid directly to one of their eligible superannuation accounts. Where a member has multiple eligible accounts, the ATO will determine which account to pay the Government co-contribution to via tiebreaker rules.[26] A member can also nominate an eligible account into which they wish the ATO to direct the co-contribution.

26 For example, the ATO will try to pay the co-contribution to an account that has already received a Government contribution during the financial year, or in other cases to the account with either the greatest eligible personal contributions or greatest concessional contributions.

Where the ATO is satisfied that the member has reached preservation age or is permanently incapacitated, is retired, and no longer has an eligible account, it must pay the Government co-contribution directly to the member.

Where the member does not have an eligible account and is not retired, the ATO must pay the Government co-contribution to a new or existing account of the member in the Superannuation Holding Accounts Special Account.

Where the ATO is satisfied that the member is deceased, it must pay the Government co-contribution directly to the member's LPR.

An 'eligible superannuation account' is one where all of the following apply:

- The ATO has not been advised that the account will not accept Government co-contributions (note that it is not mandatory for a particular super fund to accept Government co-contributions).
- The account has not commenced paying a pension or an annuity.
- The account is not an insurance only super account.[27]

Tip

- If a client or LPR qualifies to be paid a Government co-contribution directly, they may apply to the ATO to have the co-contribution paid directly to them using ATO online services (via myGov) or via the following form available at www.ato.gov.au 'Application for payment of ATO-held superannuation money' (NAT 74880).
- The ATO super co-contribution calculator can be found at www.ato.gov.au
- If a client has closed the super fund to which they made eligible personal contributions and rolled over to another fund, or the fund to which they made eligible personal contributions is not an eligible super account (e.g. an insurance-only account), they can notify the ATO of the new fund details for receipt of a co-contribution by nominating a preferred superannuation account on myGov to receive the contribution, or by phoning the ATO.

Are children eligible for Government co-contributions?

A child may receive a co-contribution if the child makes a personal contribution and meets all the eligibility tests outlined above. Note that contributions made on behalf of a child are not eligible for the Government co-contribution.

Are spouse contributions eligible for Government co-contributions?

No, spouse contributions are not personal contributions made by the member and as such are not eligible for Government co-contributions.

27 An insurance only account is one where the only conditions of release a member can satisfy are death, terminal medical condition, permanent incapacity or temporary incapacity.

Are non-concessional contributions eligible to be released under the FHSS Scheme eligible for Government co-contribution?

Yes, subject to meeting all other eligibility criteria, a non-concessional contribution made under the FHSS scheme may be eligible to receive a co-contribution. However, only the non-concessional contribution can be released as an FHSS amount; the co-contribution itself must remain in the superannuation fund.

Spouse contributions

A spouse contribution is a member contribution made by a client to their spouse's account in a complying super fund. This type of contribution is treated as a non-concessional contribution of the receiving spouse.

To qualify as a spouse contribution:

- the contribution must not be tax-deductible as an employer contribution for the client, and
- the client's spouse must not be living permanently separately and apart from the client.

Spouse contributions may allow the contributing spouse to claim a spouse contribution tax offset of up to $540.

Spouse contribution tax offset

Where a member has made a spouse contribution, the contributing spouse is eligible to claim a tax offset for the spouse contribution if the following conditions are satisfied:

- The receiving spouse is under age 75 at the time of the contribution (including 28 days after the end of the month in which they turn 75).
- The contribution is made to a complying super fund for the purpose of providing super benefits for the spouse or providing death benefits for the spouse's dependants.
- The couple live together in a bona fide domestic relationship (includes a de facto spouse) or in a relationship that is registered under a law of a State or Territory. However, the spouse contribution tax offset is not available if the spouse claiming the tax offset is living separately and apart from their spouse on a permanent basis.
- Both the contributing and receiving spouse are Australian residents for tax purposes when the contribution is made.
- The receiving spouse's assessable income + reportable fringe benefits (RFB) + reportable employer superannuation contributions (RESC) for the income year must be less than $40,000 (note that the income threshold to qualify for the full tax offset is $37,000). See definition of RFB and RESC earlier in this section.
- The contribution is not eligible for a deduction (either as a personal or employer contribution).

- The receiving spouse has not exceeded their non-concessional contributions cap for the financial year in which the spouse contribution is made.
- The receiving spouse's total superannuation balance on 30 June prior to the year of the spouse contribution is less than the general transfer balance cap for the financial year of the spouse contribution.

Amount of offset

The maximum tax offset is $540. The amount of the offset is calculated as 18% of the lesser of:

- $3,000 - [(receiving spouse's assessable income + RFB + RESC) - $37,000], and
- the amount of the spouse contribution actually made.

Child contributions

A child contribution is a member contribution made on behalf of a child under age 18, by a third party other than the child's employer. This type of contribution is treated as a non-concessional contribution of the child.

Child contributions are not tax-deductible to the contributor and do not qualify for a Government co-contribution or spouse contribution tax offset.

In contrast, personal member contributions made by a child under age 18 may be tax-deductible to the child or may qualify for a Government co-contribution.

3.6 Contributions excluded from being non-concessional contributions

The following contributions are excluded from the definition of non-concessional contributions and don't count towards a member's non-concessional contributions cap:

- Downsizer contributions (see section 4.3).
- Personal injury contributions (see section 4.4).
- Contributions that count towards, and do not exceed, the lifetime CGT cap (see section 4.5).
- Recontribution of COVID-19 early release superannuation amounts (see section 4.6).
- Rollover superannuation benefits received by a complying super fund.
- Government co-contributions.
- LISTO contributions.
- Contributions to constitutionally protected funds other than contributions included in the contributions segment
- Amounts that a trustee of a public sector super scheme, that came into operation before 5 September 2006, choose to not be included in its assessable income.

4 Special purpose contributions

Special purpose contributions are contributions that fall into specific categories for tax purposes. They include:

- Downsizer contributions
- Personal injury contributions
- Lifetime CGT cap contributions
- Recontribution of COVID-19 early release superannuation amounts

Special purposes contributions are excluded from the definition of non-concessional contributions (and by their nature also don't count towards a member's concessional contributions cap). In the case of downsizer contributions, modified SIS contribution eligibility rules also apply (i.e. no upper age limit to accept the contribution).

A member must make an election (at or before the time of the contribution) to have a contribution recognised as a special purpose contribution.

Each type of special purpose contribution has its own eligibility requirements.

4.1 Exclusion of special purpose contributions from non-concessional cap

All special purpose contributions are specifically excluded from the definition of a non-concessional contribution and therefore don't count towards a member's non-concessional contributions cap.

As special purpose contributions are not included in the assessable income of the fund[28], they are also not included in the definition of concessional contributions and don't count towards a member's concessional contributions cap.

4.2 Election requirements for special purpose contributions

A member must make an election in the approved form in order to have a contribution treated as a special purpose contribution. The ATO has the following election forms available on its website for this purpose:

- Downsizer contribution into superannuation form.
- Contributions for personal injury election form.
- Capital gains tax cap election form.
- Notice of re-contribution of COVID-19 early release amounts form.

Superannuation funds may also have their own version of these election forms which allow the member to provide the information required in order to make the election.

28 While it may be technically possible for an eligible member to submit a valid notice of intent to claim a tax deduction for a personal injury contribution and some lifetime CGT cap contributions (which would make these contributions assessable to the fund and therefore concessional contributions), there appears to be no point in electing to treat such a contribution as a special purpose contribution in the first place.

For all types of special purpose contributions, the member must make the election (e.g. by providing the approved form to the super fund) at or before the time the contribution is made to the fund. If they don't make the election until after the contribution, it cannot qualify as a special purpose contribution – there is no leniency to this rule.

FirstTech comment: Treatment of ineligible contributions

Where a member makes a personal contribution which they seek to have classified as a special purpose contribution, but don't satisfy the eligibility requirements (e.g. they do not submit the required election form on time, or fail to meet other eligibility requirements), the contribution is treated as a standard personal contribution instead.

Where the personal contribution was not able to be accepted under SIS contribution eligibility requirements (e.g. the member had tried to make a downsizer contribution later than 28 days after the end of the month in which they reached age 75 but was ineligible), the fund must return the contribution to the member.

In other cases, the contribution will be treated as a non-concessional contribution by default, or a concessional contribution to the extent that the member chooses for it to be a personal deductible contribution (if eligible and a valid notice of intent is provided and a tax-deduction claimed).

4.3 Downsizer contributions

Individuals aged 55 or over can contribute an amount equal to all or part of the sale proceeds from the sale of their (or their spouse's) main residence, up to $300,000 each, into super. Downsizer contributions can be made regardless of the other contributions caps and restrictions that might apply to making voluntary contributions, i.e. age restrictions. There is no upper age limit on making downsizer contributions.

Downsizer contributions are not non-concessional contributions and do not count towards any contributions caps. As a result, downsizer contributions can still be made if an individual has a total super balance of $2 million or more. For tax component purposes, downsizer contributions form part of the tax free component of a member's super interest (contributions segment).

Downsizer contributions are not included in an individual's total super balance until it is recalculated to include all contributions, including downsizer contributions, on 30 June at the end of the financial year. This may affect the individual's ability to make non-concessional contributions in the following financial year. For more information on total superannuation balance, see section 5.

Once an individual has made a downsizer contribution, it forms part of the tax-free component of their accumulation phase superannuation interest. Subject to the transfer balance cap (see section 21 for more information), an individual may be able to convert downsizer contributions into a retirement phase income stream, including an account based pension.

Individuals cannot claim a deduction for any contributions that they choose to treat as downsizer contributions. However, this restriction does not apply to any other contributions that an individual otherwise makes from the proceeds of selling their main residence.

As with all types of contributions, a superannuation provider does not have to accept a downsizer contribution if it does not meet their trust deed rules.

Eligibility

An individual is eligible to make a downsizer contribution to superannuation if they satisfy all of the following:

- The contributor is age 55[29] or over at the time of the contribution. There is no upper age limit.
- The contract of sale of the main residence was exchanged on or after 1 July 2018.
- The contribution is an amount equal to all or part of the sale proceeds of a qualifying main residence, capped at $300,000 per person. See the requirements of a qualifying main residence below.
- The main residence was owned by the individual, their spouse or former spouse for 10 years or more prior to the sale. This is regardless of whether the ownership interest was held solely, joint tenants or tenants in common.
- The contribution must be made to a complying superannuation fund within 90 days of the change of ownership (or a longer time allowed by the Commissioner of Tax). The change of ownership is usually at the date of settlement.
- The individual must provide the super fund with a downsizer contribution into superannuation form either before or at the time of making the downsizer contribution. If multiple downsizer contributions are made to the same fund or different super funds, a form must be provided for each contribution.
- The individual must not have previously made a downsizer contribution into super from the sale of another home.

Note that even though the contributions are called 'downsizer contributions', there is no obligation to subsequently purchase a new residence or purchase a new residence of a lower value.

29 For contributions made prior to 1 January 2023, the contributor must have reached age 60 (if contribution made on or after 1 July 2022) or 65 (if contribution made prior to 1 July 2022).

Downsizer contribution amounts

If eligible, an individual can make a downsizer contribution up to a maximum of $300,000. For couples, each spouse may make maximum downsizer contributions of $300,000. This means a couple can contribute up to $600,000 of sale proceeds into super between them.

However, the contribution amount for an individual cannot be greater than:

- the individual's share of the sale proceeds, plus
- the individual's spouse or former spouse's share of the proceeds, less
- the sum of any downsizer contributions already made to a complying super fund in respect of that property for the individual or their spouse.

Example

Hong and Jia are spouses who are both age 63. They sell their main residence for $500,000. Assuming all other eligibility criteria are met, the maximum contribution both can contribute cannot exceed $500,000 in total. This means they can choose to contribute half ($250,000) each, or split it – for example $300,000 for one and $200,000 for the other.

If instead, Jia is age 53, Jia will not be eligible to make a downsizer contribution. In this case, the maximum amount of downsizer contribution Hong can make is $300,000.

The proceeds may in some cases relate to proceeds from a property where only part of the property is the owner's main residence, e.g. where part of the dwelling is used in a business and the owner lives in the other part. In this case, the maximum downsizer contribution may still be made (i.e. an amount less than or equal to the capital proceeds, capped at $300,000) assuming they meet all other eligibility criteria. There is no need to apportion the sale proceeds to the portion that refers to their main residence.

Sale proceeds

Downsizer contributions are limited to "an amount equal to all or part of the capital proceeds received from the disposal" and are also subject to the individual $300,000 limit.

Where a CGT asset is sold for more or less than its market value, the income tax law (s 116-30 ITAA 97) deems the capital proceeds to be the market value of the asset. This is known as the market value substitution rule and is used to calculate the taxpayer's capital gain. However, for the purposes of the downsizer contribution rules, the market value substitution rule does not apply if it would lead to an increase in capital proceeds. For example, if an individual sold their home to a relative for $200,000 but the market value of the home was $300,000, the capital proceeds would be $200,000 for downsizer contribution purposes.

The LCR 2018/9 Housing affordability measures: contributing the proceeds of downsizing to superannuation, also provides further guidance on downsizer contributions.

This ruling confirms that a downsizer contribution does not have to be made directly from the actual proceeds of sale. Here are examples:

"Downsizer contributions may be able to be made as an in-specie contribution, for example, if the capital proceeds have been used to purchase an asset and that asset is contributed." (paragraph 61).

"Where an individual uses the capital proceeds to discharge a mortgage, the individual is still able to make a downsizer contribution up to the lesser of $300,000 or the total capital proceeds." (paragraph 64).

Qualifying main residence

Amounts eligible to be downsizer contributions must be equal to or less than the capital proceeds received from the sale of a main residence. There are several eligibility requirements concerning the main residence:

- The main residence must be a dwelling located in Australia that is not a caravan, houseboat or other mobile home.
- The dwelling will qualify as a main residence for downsizer contribution purposes if the owner of the main residence is:
  - eligible for a full or partial CGT main residence exemption, or
  - would be eligible for a full or partial CGT main residence exemption, except for the fact that it was acquired before 20 September 1985.
- If a dwelling is wholly owned by the spouse of the individual who's making the downsizer contribution, the dwelling will be a qualifying main residence if the individual would have been able to disregard wholly or partially the capital gains under the main residence exemption provision, if they had acquired the dwelling on or after 20 September 1985 and owned it for a period before the disposal.

Dwellings owned by a company or trust cannot qualify for the main residence CGT exemption and therefore won't be a qualifying main residence for downsizer contributions.

To qualify for a full or partial CGT main residence exemption, the property must have a dwelling on it and the individual must have lived in it for all or part of its ownership period. A vacant block of land or an investment property the individual never lived in won't qualify.

Generally, a dwelling is considered to be the main residence of a person if:

- the person and their family live in it
- the person's personal belongings are in it
- it is the address that the person's mail is delivered to
- it is the address on the electoral roll, and
- services such as gas and power are connected.

Whether a dwelling is a main residence of a person is not based on one factor alone, and is determined based on the individual's circumstances. Relevant factors also include the length of time the person stayed in the property and their intention in occupying it.

A person would qualify for a full CGT main residence exemption if the dwelling:

- has been the home of the person, their partner and other dependants for the whole period they've owned it
- has not been used to produce assessable income – that is, they've not rented it out or run a business from it, and
- is on land of two hectares or less.

If a dwelling was the main residence for part of an individual's ownership period, the capital gain or loss is only disregarded for the period it was their main residence.

FirstTech comment: Main residence at time of disposal not required

The individual doesn't have to be residing in the property immediately prior to its disposal to qualify for a downsizer contribution. For a property to qualify under the downsizer contribution rules, the dwelling needs to qualify for either a full or partial main residence exemption under the CGT provisions of the Tax Act.

Therefore, if a property is an investment property at the time of disposal, as long as it was the individual's main residence at some point during the ownership period and qualifies for at least a partial CGT main residence exemption, it meets the qualifying main residence qualification criteria.

For more information on the CGT main residence exemption, refer to FirstTech quick reference guide, Capital gains tax and the main residence exemption.

10-year ownership period condition

To make a downsizer contribution, the individual and/or their spouse or former spouse must have had an ownership interest in the dwelling for 10 years just before the sale. This 10-year period is generally measured from the settlement date when the dwelling was acquired to the settlement date of the sale of the main residence.

In the event that only one spouse holds an ownership interest in the dwelling, but the other spouse does not, both individuals will be eligible to make a downsizer contribution as long as the other spouse continues to meet all other eligibility requirements.

If there has been a change in ownership between two spouses over the 10-year period that preceded the sale of the dwelling (e.g. due to a relationship breakdown) downsizer contributions can be made for the person who held the ownership interest just before disposal (and for another person who is their spouse at that time). This is provided the original two spouses held an ownership interest in the dwelling at all times during the period.

Where a spouse who held an ownership interest dies, the surviving spouse can count the period of ownership of their deceased spouse (including the period the dwelling is held by the trustee of the deceased estate) towards the 10-year ownership test.

Applying to the ATO for an extension to the 90 day rule

All downsizer contributions must be made to the individual's super fund within 90 days after change of ownership. Change of ownership generally occurs at the date of settlement.

Individuals can apply to the ATO and request a longer period for making a downsizer contribution where a delay has been caused by factors outside of their control. However, the ATO will not extend the timeframe where the timing of the sale is within the contributor's control. For example, the ATO is unlikely to exercise its discretion to extend the timeframe if a 54-year-old decides to sell a dwelling that would otherwise qualify for the downsizer contribution, but it will be more than 90 days from the date of settlement until they reach age 55.

Individuals can seek a review of any decisions the Commissioner makes in allowing a longer period (e.g. if they are dissatisfied with the length of the extension), or a decision the Commissioner makes not to allow a longer period.

What if a downsizer contribution was made and later found to be ineligible?

The ATO will monitor the legitimacy of all individuals' downsizer contributions. Superannuation funds will report any downsizer contributions to the ATO through its normal contribution reporting process. Data is being matched with information from the State Land Titles Offices, which is provided quarterly.

If the Commissioner finds that a contribution does not satisfy all the requirements of a downsizer contribution, it is expected that the ATO will write to the individual in question and ask them to provide further information. If the ATO remains of the view that a downsizer contribution does not satisfy all the requirements to be a downsizer contribution, the ATO must notify the superannuation fund that received the contribution. Once notified, the super fund trustee will assess whether they could otherwise have accepted the contribution from the member based on their age.

If the contribution was received later than 28 days after the end of the month in which the member reached age 75, the super fund trustee must return the contribution to the individual within 30 days of being notified by the ATO. When returning the contribution, the super fund trustee may also return an amount that reflects investment outcomes (e.g. gains or losses that the account made after the contribution was accepted) net of administrative costs. If a contribution is returned to a member, the super fund will also report or amend any previous report they had provided to the ATO.

If the contribution can be accepted, it will be treated as a non-concessional contribution by default, or a concessional contribution to the extent that the member chooses for it to be a personal deductible contribution (if eligible and a valid notice of intent is provided and a tax-deduction claimed).

The ATO has indicated that penalties for providing false and misleading information may apply if an individual incorrectly declares they are eligible to make a downsizer contribution.

4.4 Personal injury contributions

Payments arising from structured settlements or orders for personal injuries that are contributed to superannuation are excluded from the non-concessional contributions cap. These contributions are also often known as 'structured settlement contributions'. For tax component purposes, personal injury contributions form part of the tax free component of a member's super interest (contributions segment).

Note that normal contribution eligibility rules apply to the personal injury contributions, i.e. the contribution must be made no later than 28 days after the end of the month in which the member reaches age 75. For the non-concessional contributions cap exclusion to apply, the payment must meet the requirements of section 292–95 of ITAA 1997, as follows:

Eligible types of payment

In order to make a personal injury contribution, a client must have received a payment that meets one of the following requirements.

1 The payment is for the settlement of a claim for compensation or damages for, or in respect of, personal injury suffered by the member, and the claim is based on the commission of a wrong, or on a right created by statute. The settlement must take the form of a written agreement between the parties to the claim (whether or not the agreement is approved or endorsed by a court), or

2 The payment is for the settlement of a claim in relation to a personal injury suffered by the member under a law of the Commonwealth or of a State or Territory relating to workers compensation, or

3 The payment is made following an order of a court for compensation or damages for, or in respect of, personal injury suffered by the member, and the claim is based on the commission of a wrong, or on a right created by statute. The order cannot be one approving or endorsing an agreement as set out in point one.

A claim for compensation or damages referred to above has to be made either by the member or their legal personal representative (LPR).

Note that if a claim is both:

- for compensation or damages for personal injury, and
- for some other remedy (e.g. compensation or damages for loss of, or damage to, property),

only the amount of the payment that relates to compensation or damages for personal injury and identified in a settlement agreement or court order as being solely in payment of that compensation or those damages, can be contributed to super as a personal injury payment.

The above definitions may result in a relatively broad interpretation of which payments are made 'for, or in respect of' personal injury and could include amounts paid for pain and suffering, for loss of future earnings, for future medical expenses, home modifications. However, specific legal advice should be sought to ascertain exactly which amounts paid to a particular member are eligible personal injury payments.

Administration requirements

To qualify as a personal injury contribution:

- The contribution must be made within 90 days of the later of:
    - the day the member received the personal injury payment
    - the day an agreement for settlement of the personal injury payment was entered into
    - the day on which a court order for the personal injury payment was made.
- Two legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that the member can ever be gainfully employed in a capacity for which they are reasonably qualified because of education, experience or training. This effectively means that the member must be totally and permanently disabled to make a personal injury payment to super that is excluded from their non-concessional cap.
- Either before or when the contribution is made, the member or their LPR provides a completed 'contributions for personal injury election' form to their super fund. In addition to gathering details relating to the payment, this election form requires a declaration by the member, or their LPR, that the contributions were derived from a personal injury payment received by the member or the LPR and that the contributions meet the requirements of section 292-95 of ITAA 1997 (and as outlined above).

We would therefore suggest that when providing advice to a member about personal injury contributions, financial advisers recommend that the member also seek legal and/or tax advice as to whether they meet the requirements of section 292-95 of ITAA 1997.

Note

Despite the fact that part of the eligibility criteria for personal injury contribution is that the contributor must be totally and permanently disabled, acceptance of a personal injury contribution by a superannuation fund does not mean that the contributed amount automatically forms part of a member's unrestricted non-preserved benefits.

As a default rule, contributions made by anyone under age 65 are automatically preserved and can only be accessed upon the member satisfying a condition of release. For a member to meet the permanent incapacity condition of release, the trustee of a superannuation fund must be 'reasonably satisfied that the member is unlikely, because of the ill health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience'.

A member making a personal injury contribution will need to enquire with their superannuation provider in relation to the fund's process and requirements for release of benefits.

4.5 Lifetime CGT cap contributions

Important

The small business capital gains tax (CGT) concessions can be very complex and this section provides only a brief overview of some of the main issues in the context of superannuation.

Clients should seek professional tax advice from a qualified tax professional in regard to the CGT small business concessions.

Lifetime CGT cap

An individual may contribute certain proceeds from the sale of assets used in the course of carrying on a small business, and elect for them to count towards a separate lifetime CGT cap, rather than the non-concessional or concessional caps. For tax component purposes, contributions made under the lifetime CGT cap form part of the tax free component of a member's super interest (contributions segment).

Broadly, there are two CGT small business concessions that relate to amounts that may be contributed to super under the lifetime CGT cap:

- small business 15-year exemption
- small business retirement exemption.

Importantly, there are separate rules for:

- qualifying for the small business CGT exemptions, and
- contributing certain proceeds from the sale of business assets to superannuation under the lifetime CGT cap.

In certain limited circumstances, amounts that do not qualify for the two small business CGT exemptions may be contributed to superannuation under the lifetime CGT cap. These circumstances, the requirements for meeting the CGT exemptions and the requirements for contributing amounts under the lifetime CGT cap are covered in detail below ('15-year exemption' and 'Small business retirement exemption').

Amounts contributed in excess of the lifetime CGT cap will be either concessional (if a valid notice of intent is submitted and a tax deduction claimed) or non-concessional contributions, and will count toward the person's available concessional or non-concessional cap.

An individual's total superannuation balance will not impact their ability to contribute CGT exempt amounts. However, CGT contributions (once made) count towards an individual's total superannuation balance and may then impact a range of other measures (e.g. the individual's future non-concessional cap).

CGT contributions are subject to the same contribution rules that apply to other types of voluntary contributions. For example, contributions must be made no later than 28 days after the end of the month in which the member reaches age 75. However, a modification to the general rule applies for contributions relating to earnout arrangements - see later in this section for further information.

Table 4.1 shows the lifetime CGT cap amounts.

Table 4.1 Lifetime CGT cap

Income year	Lifetime CGT cap
2025–26	$1.865 million
2024–25	$1.78 million
2023–24	$1.705 million
2022–23	$1.65 million

The CGT cap for each financial year is indexed by changes in average weekly ordinary time earnings (AWOTE). This is rounded down to the nearest $5,000. Due to this rounding, the cap may not rise every financial year. The cap will never decrease.

CGT cap election form must be provided

To elect for a contribution to count towards the lifetime CGT cap, a member must complete a 'Capital gains tax cap election' form (ATO form NAT 71161) and give it to the super provider at or before the time the contribution is made.

It is not compulsory to use the ATO version of the form. These notifications can be made to the super fund in various ways and super funds may create their own form for their members to use. The ATO form sets out the minimum data requirements.

Failure to provide a valid CGT cap election form at or before the time of a contribution will mean that the contribution cannot count towards the lifetime CGT cap.

CGT concessions for small business

Four main small business CGT concessions

Qualifying disposers, such as individuals, companies, trusts and partners in partnerships that are CGT small business entities, potentially have four concessions available to them to reduce any capital gain upon the sale of active assets of a business

1. The 15-year exemption, which allows the disposer to disregard the entire capital gain for tax purposes.
2. The small business 50% active asset reduction.
3. The small business retirement exemption, which allows the disposer to disregard up to $500,000 of capital gains for tax purposes.
4. The small business rollover, which allows deferral of the capital gain realised on the sale of active assets of the business where the proceeds are used to purchase a replacement asset or improve an existing one.

In addition, a small business owner who is an individual or a trust, may also be eligible for the 50% general CGT discount for CGT assets held for longer than 12 months.

There are some basic conditions (see below) that must be met for an entity to qualify for any of the four main concessions above. There are also additional requirements to be met that are specific to each concession.

Only eligible amounts related to the 15-year exemption and $500,000 small business retirement exemption can potentially qualify to count toward the lifetime CGT cap when contributed to superannuation.

Steps in navigating small business CGT concessions

The CGT small business concessions are complex, but there are some key pieces of information that will simplify navigation of the rules. Answers to the following questions will help determine eligibility:

- What is the nature of the asset(s) being sold?

For example, are they shares in a company, units in a trust, assets such as plant and equipment or business premises? Note, there are additional rules to follow when the asset being sold is a share in a company or an interest in a trust.

- Was the asset used in the course of carrying on a business?

That is, was it an active asset? Who carried on that business?

- Who is the immediate owner of the asset being sold?

For example, is it an individual, a company or a trust? It is the owner who will be claiming the CGT exemption on the sale of the asset and who has to pass many of the eligibility tests.

- What is the ownership structure between the entity that owns the asset and the individual who ultimately receives an amount as a result of the sale?

For example, are there a chain of trusts and companies involved? This question is important for determining who may receive CGT exempt proceeds. When trusts and companies are involved, additional information is needed for the eligibility tests.

- If trusts are involved:
  - What type of trust is it? Discretionary or fixed
  - Who are the beneficiaries of the trust(s)?
  - What are their entitlements to distributions of income or capital?
  - Who are the controller(s) of the trust(s)?
- If companies are involved:
  - Who are the shareholders and what are their ownership percentages?
  - What are their entitlements to distributions of income or capital?
- Are there any connected entities or affiliates of the taxpayer that need to be considered in meeting the basic conditions below? This is required to determine the assets for the maximum net asset value test and is also used to determine whether the asset is being actively used.

Basic conditions for all small business CGT concessions

Where a capital gain arises from the sale of a CGT asset(s), there are two basic conditions that must be met to qualify for the small business CGT concessions:

- either:
  - the disposer is a CGT small business entity or a partner[30] in a partnership that is a CGT small business entity, or
  - the net value of assets that the entity and related entities own must not exceed $6 million, and
- the CGT asset must satisfy the active asset-test.

Additional basic conditions must be met if the asset being sold is a share in a company or an interest in a trust.

There are also further rules specific to each CGT small business concession. See later in this section for further requirements for each specific small business CGT concessions.

Maximum net asset value test or CGT small business entity test

The first basic condition is that the taxpayer (entity wanting to claim the small business CGT concessions) must either satisfy the net asset value test, or the CGT small business entity test (also known as the aggregated turnover test).

Maximum net asset value test

To satisfy the maximum net asset value test, the net value of assets of the taxpayer, their affiliates and connected entities, just prior to the CGT event, must not exceed $6 million.

In calculating the net value of CGT assets, some assets are disregarded, including:

- assets held by the taxpayer's affiliates and entities connected with the affiliates, unless they are used in a business of the taxpayer or their connected entity
- assets held solely for personal use and enjoyment by the taxpayer
- the taxpayer's main residence (if not being used to produce income)
- superannuation interests and life insurance policies.

CGT small business entity (aggregated turnover test)

A CGT small business entity is an entity that carries on a business during the financial year and the aggregate of its annual turnover plus the annual turnover of connected entities and affiliates satisfies the turnover test.

30 See 'Partnership integrity changes' later in this section for additional rules impacting some partners.

An entity will generally satisfy the turnover test for small business CGT concessions if it is carrying on a business and its aggregated turnover:

- was less than $2 million in the previous income year (and it carried on a business in that year)
- is estimated to be less than $2 million for the current year, or
- is actually less than $2 million at the end of the current year.

Note: The small business turnover threshold is $10 million[31] when determining access to a range of small business tax concessions; however, the turnover threshold for the small business CGT concessions is $2 million.

The CGT small business entity test can also be satisfied where:

- a taxpayer owns an asset that is used by an affiliate or connected entity that is a small business entity
- a taxpayer is a partner[32] in a partnership that is a small business entity and the CGT asset is a partnership asset or a CGT asset used by the partnership.

Active asset test

An active asset is generally an asset that is used, or held ready for use, in the course of carrying on a business by the taxpayer, their affiliates or connected entities. An asset does not have to be an active asset immediately before the CGT event.

A CGT asset meets the active asset test if:

- it has been owned for 15 years or less and was an active asset for at least half of the ownership period, or
- it has been owned for more than 15 years and the asset was an active asset for at least 7½ years.

The ownership period starts from the time the taxpayer owns the asset and ends at the time of the CGT event, or if the business ceased within the last 12 months, at the cessation of the business.

Additional basic conditions for sale of shares or units

Where the asset being sold is a share in an Australian company or an interest in a resident trust (the object entity), the taxpayer selling the asset and claiming the CGT exemption must pass the first two basic conditions discussed above (CGT small business entity or maximum net assets not exceeding $6 million, and CGT asset is an active asset), as well one of the following basic conditions. Just before the CGT event, the taxpayer:

- must be a CGT concession stakeholder of the object company or trust, or
- CGT concession stakeholders in the object company or trust must together have a small business participation percentage in the taxpayer of at least 90%.

31 The turnover threshold for some small business concessions has increased to $50 million.

32 See 'Partnership integrity changes' later in this section for additional rules impacting some partners.

The below additional basic conditions also apply to a CGT event happening on or after 8 February 2018 where a taxpayer is seeking to apply the CGT small business concessions upon the sale of a share in a company or an interest in a trust (the object entity). These conditions are to ensure that the concessions can only be accessed in relation to assets used in a small business or ownership interest in a small business.

Additional conditions relating to the taxpayer

The taxpayer must generally have carried on the business just prior to the CGT event occurring. This ensures that entities do not benefit from this concession where the relevant business activities are too remote to justify the entity receiving a concession for business activities.

This condition does not apply to taxpayers who satisfy the maximum net asset value test regarding the CGT event. In this case, eligibility to access the concession relates to the level of assets owned by the taxpayer and their related entities, not any related small business activities.

Additional conditions relating to the object entity

The object entity (i.e. the object company or trust) must be a CGT small business entity for the income year or satisfy the maximum net asset value test. This prevents the concession being available for interests in entities that are carrying on a business that is not a small business as it has both substantial aggregate turnover and net assets.

When working out if the object entity is a CGT small business entity or satisfies the maximum net asset value test, the turnover or assets of entities that may control the object entity are disregarded. This ensures that the outcomes for taxpayers do not depend upon the income or assets of third parties.

For these purposes, an entity is treated as controlling another entity if it has an interest of 20% or more, rather than 40% or more. This means that more entities are considered to be connected with one another for the purpose of this test and need to count the assets or turnover of the other entity towards their aggregate turnover or the total net value of their CGT assets.

Modified active asset test

Shares or interests in the object entity must satisfy a modified active asset test. This test looks through shares in companies and interests in trusts to the activities and assets of the underlying entities. These conditions apply on an entity basis. A taxpayer at the top of a chain of companies or trusts may not qualify for the small business concessions in respect of shares or interests it holds (e.g. because the chain includes an entity with an interest in a large business). However, another taxpayer in the same chain of companies or trusts may qualify for the concessions for shares or interests it holds in a small business.

In order to satisfy the new modified active asset-test, for the lesser of 7.5 years or at least half the period a taxpayer has held the shares or interests, at least 80% of the sum of the total market value of the assets of:

- the object entity (disregarding any shares in companies or interests in trusts), and
- any entity (a later entity) in which the object entity had a small business participation percentage of greater than zero, multiplied by that percentage,

must have related to assets that are:

- active assets, or
- cash or financial instruments that are inherently connected with a business carried on by the object entity or a later entity.

If the assets above are held by a later entity, the assets will only be active at a time if the later entity is an entity:

- that is, at the relevant time, either:
  - a CGT small business entity, or
  - satisfies that maximum net asset value test in relation to the capital gain, and
- in which the taxpayer has a small business participation percentage of at least 20% or is a CGT concession stakeholder at the relevant time.

15-year exemption

The small business 15-year exemption allows a taxpayer to disregard all of a capital gain from the sale of a CGT asset.

15-year exemption for individuals – additional conditions

The basic conditions must be met before any specific small business CGT concession can be claimed. The following additional conditions must be met by individuals to qualify for the 15-year exemption:

- the taxpayer continuously owned the asset for the 15-year period leading up to the CGT event
- the taxpayer is:
  - age 55 or over and the CGT event happens in connection with their retirement, or
  - permanently incapacitated, and
- if the CGT asset being sold is a share in a company or an interest in a trust, the company or trust must have had a significant individual for periods totalling at least 15 years during the entire time the taxpayer owned the share or interest. This is even if it was not the same significant individual during the whole period.

15-year exemption for individuals – contribution rules in order to utilise lifetime CGT cap

If the sale of an asset by an individual qualifies for the 15-year exemption, the individual can contribute all or some of the total proceeds from the sale to superannuation and elect for it to count towards the lifetime CGT cap. The total proceeds from the sale will likely exceed the capital gain from the sale.

Also, if the sale of an asset would otherwise qualify for the small business 15-year exemption, but does not because:

- the asset was a pre-CGT asset, or
- there was no capital gain on the disposal of the asset, or
- the asset was sold within the 15-year timeframe due to permanent incapacity,

the owner can contribute all or some of the total proceeds from the sale to super and elect for it to count towards the lifetime CGT cap.

To have the amount count towards the CGT lifetime cap, the individual must submit a CGT cap election form (ATO form NAT 71161) to the super provider at or before the time of the contribution.

Note that normal contribution eligibility rules apply to the contribution of eligible small business sale proceeds. This means that the member's TFN must have been quoted to the fund and any contribution would need to be made no later than 28 days after the end of the month in which the member reaches age 75.

Timing of contribution

An individual must contribute an amount qualifying for the 15-year exemption on or before the later of the following days:

- the day the individual's income tax return is required to be lodged for the income year in which the CGT event happened, or
- 30 days after the day the individual receives the capital proceeds.

15-year exemption for companies and trusts – additional conditions

The basic conditions must be met before any specific small business CGT concession can be claimed.

The following additional conditions must be met by companies or trusts to qualify for the 15-year exemption:

- the taxpayer continuously owned the asset for the 15-year period leading up to the CGT event
- the taxpayer had a significant individual for a total of at least 15 years of the whole period of ownership (even if it was not the same significant individual during the whole period), and
- just prior to the CGT event, an individual who is a significant individual is:
  - age 55 or over and the CGT event happens in connection with their retirement, or
  - permanently incapacitated.

Payments to stakeholders

A company or trust is not required to make a payment to one or more stakeholders in order to qualify for the 15-year exemption. However, if the sale of an asset by a company or trust qualifies for the 15-year exemption (or would otherwise qualify except for it being a pre-CGT asset), a payment of the exempt amount made within two years of the CGT event[33] to a CGT concession stakeholder is exempt from tax, to the extent that the proportion of exempt gain distributed to the stakeholder does not exceed their 'stakeholder participation percentage'.

15-year exemption for companies or trusts – contribution rules in order to utilise lifetime CGT cap

Where a member who is a CGT concession stakeholder receives such a payment within two years of the CGT event, they can contribute it to super and elect for it to count towards the lifetime CGT cap.

However, if any part of the payment received exceeds the member's stakeholder participation percentage in the company or trust multiplied by the capital proceeds from the CGT event, the member cannot elect to count the excess towards the lifetime CGT cap (normal contributions caps would apply to the excess).

To have the eligible amount count towards the CGT lifetime cap, the CGT concession stakeholder must submit a CGT cap election form (ATO form NAT 71161) to the super provider at or before the time of the contribution.

It is also important to note that normal contribution eligibility rules apply to the contribution of eligible small business sale proceeds. This means that the member's TFN must have been quoted to the fund and any contribution would need to be made no later than 28 days after the end of the month in which the member reaches age 75.

Timing of contribution

The contribution must be made within 30 days of the payment from the company or trust.

Small business 50% (active asset) reduction

The amount of a capital gain may be reduced by 50%, if the basic conditions are satisfied for the gain. There are no additional rules for the 50% (active asset) reduction.

If the capital gain has already been reduced by a discount percentage (where the asset is held for at least 12 months), the 50% active asset reduction applies to the reduced gain.

If a taxpayer qualifies for only the 50% active asset reduction, these proceeds cannot be contributed to super under the lifetime CGT cap, but may be contributed to superannuation and count towards an individual's concessional or non-concessional caps.

33 A longer period may apply to a payment received under an earnout right arrangement. The Commissioner also has the power to extend the general two-year period.

Taxpayers have the option of not applying the active asset reduction when selling CGT assets. By not applying this 50% reduction, the amount of capital gain that can be exempt under the $500,000 retirement exemption (and contributed to super under the lifetime CGT cap) can, in many cases, be maximised.

Small business retirement exemption

The small business retirement exemption allows a taxpayer to disregard a capital gain from the sale of a CGT asset. The maximum amount of exempt gain is limited to $500,000 (lifetime limit) for individual taxpayers and $500,000 (lifetime limit) per eligible stakeholder for company or trust taxpayers.

The basic conditions must be met before any specific small business CGT concession can be claimed.

Retirement exemption for individuals – additional conditions

The following additional conditions must be met by individuals to qualify for the retirement exemption:

- A choice to disregard the capital gain (i.e. the CGT exempt amount) must be specified in writing by the day the taxpayer lodges their tax return for the year of the CGT event (or longer as permitted by the Commissioner), and
- If the taxpayer is under age 55 just before making the choice, they must contribute an amount equal to the CGT exempt amount to a super fund at the later of when they made the choice, or receipt of the capital proceeds.

Retirement exemption for individuals – contribution rules in order to utilise lifetime CGT cap

If the sale of an asset qualifies for the small business retirement exemption, the owner can contribute all or some of the exempt capital gain to super and elect for it to count towards the lifetime CGT cap. The capital gain that is exempted from capital gains tax is limited to a lifetime limit of $500,000.

Note: Where an owner is under age 55 just prior to choosing for the retirement exemption to apply, or receiving a payment, the exempt amount must be contributed to superannuation in order for the retirement exemption to be claimed.

To have the eligible amount count towards the CGT lifetime cap, the CGT concession stakeholder must submit a CGT cap election form (ATO form NAT 71161) to the super provider at or before the time of the contribution.

It is also important to note that normal contribution eligibility rules apply to the contribution of eligible small business sale proceeds. This means that the member's TFN must have been quoted to the fund and any contribution would need to be made no later than 28 days after the end of the month in which the member reaches age 75.

Timing of contributions

In order to claim the CGT exemption and to have the amount count toward the lifetime CGT cap, an individual under the age of 55 must contribute the retirement exemption amount to superannuation by the later of:

- the day the choice is made to apply the retirement exemption to the capital gain (this must generally be by the day the tax return is lodged for the year in which the CGT event happened), or
- the day the capital proceeds are received.

A member age 55 or over may qualify for the retirement exemption without contributing the amount to superannuation. However, if the amount is contributed to superannuation, to have the amount counted under the lifetime CGT cap, the individual must make the contribution by the later of:

- the day the tax return is required to be lodged for the year in which the CGT event happened, or
- 30 days after receiving capital proceeds.

Retirement exemption for companies or trusts – additional conditions

The following additional conditions must be met by companies or trusts claiming the retirement exemption:

- the company or trust had at least one significant individual just prior to the CGT event, and
- a choice to disregard the capital gain (i.e. the CGT exempt amount) must be specified in writing by the day the taxpayer lodges their tax return for the year of the CGT event (or longer as permitted by the Commissioner), and
- the choice has specified the proportion of the CGT exempt amount attributable to each CGT concession stakeholder (where there are multiple stakeholders) and be made in a way that ensures that each CGT concession stakeholder's $500,000 CGT retirement exemption limit is not exceeded, and
- the company or trust has paid 100% of the CGT exempt amount to at least one of its CGT concession stakeholders (where there is more than one stakeholder, it must be paid in accordance with the percentage of the exempt amount attributable to each stakeholder as determined when making the choice), and
- the payment of the exempt amount to CGT concession stakeholders must be paid by the later of:
    - seven days after the company or trust makes the choice, or
    - seven days after the company or trust received capital proceeds, and
- if a CGT concession stakeholder receiving a payment is under age 55 (just prior to the payment), the company or trust must make the payment by contributing it to a complying super fund on the stakeholder's behalf within the timeframes above.

Retirement exemption for companies or trusts – contribution rules in order to utilise lifetime CGT cap

If the sale of an asset is to qualify for the small business retirement exemption, the company or trust must distribute the exempt capital gain to one or more CGT concession stakeholders. Where a CGT concession stakeholder receives a payment representing an exempt capital gain under the retirement exemption, and the payment is contributed to the stakeholder's superannuation, an election may be made for it to count towards the lifetime CGT cap.

To have the eligible amount count towards the CGT lifetime cap, a CGT cap election form (ATO form NAT 71161) must be submitted to the super provider at or before the time of the contribution.

The amount of exempt capital gains that a company or trust can pay to a particular CGT concession stakeholder under the retirement exemption, and therefore the amount of contribution that can be made under this concession, is limited to a lifetime limit of $500,000.

It is also important to note that normal contribution eligibility rules apply to the contribution of eligible small business sale proceeds. This means that the member's TFN must have been quoted to the fund and any contribution would need to be made no later than 28 days after the end of the month in which the member reaches age 75.

Note: Where a CGT stakeholder is under age 55 just prior to receiving a payment from the company or trust, the CGT exempt amount must be contributed directly to the CGT stakeholder's superannuation fund on their behalf in order for the retirement exemption to be claimed.

Timing of contributions

Where a member is under the age of 55 just before the payment of an amount under the retirement exemption, the company or trust must make the contribution to the CGT concession stakeholder's superannuation by the later of:

- seven days after it makes the choice, or
- seven days after receipt of capital proceeds.

Where a member is age 55 or over just before the payment of an amount under the retirement exemption, they must contribute the amount to super:

- within 30 days of receiving the payment

to be eligible to have it counted toward their lifetime CGT cap.

Small business rollover

The small business rollover broadly allows a CGT rollover to apply where the proceeds from the sale of an active asset are used to purchase a replacement asset or improve an existing one.

The eligibility rules for the small business rollover concessions are not included in this guide. Refer to the ATO website for further information.

Small business contribution timeframes summary

Strict timeframes apply in order to contribute eligible small business sale proceeds and elect for them to be counted towards the lifetime CGT Cap. The relevant timeframes depend on the member's situation and are shown in table 4.2.

Table 4.2 Small business CGT contribution timeframes

Concession being claimed	Asset ownership	Contribution timeframe
15-year exemption	Individual	Later of: • day tax return is required to be lodged for the year in which the CGT event happened • 30 days after receiving capital proceeds.
	Company/ trust	Payment must be received from company or trust within 2 years[34] of the CGT event happening. Contribution must be made within 30 days of receiving the above payment.
Small business retirement exemption	Individual aged 55 or over	Later of: • day tax return is required to be lodged for the year in which the CGT event happened • 30 days after receiving capital proceeds.
	Individual aged under 55	Later of: • day individual makes the choice that the exemption will apply (choice must generally be made by the time they lodge their tax return for the year of CGT event) • day capital proceeds are received.
	Company/ trust, CGT stakeholder aged 55 or over	Payment must be received from company or trust by the later of: • 7 days after the company or trust makes the choice that the exemption will apply (choice must generally be made by the time the company or trust lodges its tax return for the year of CGT event) • 7 days after the company or trust receives the capital proceeds. Contribution must be made within 30 days of receiving the above payment.
	Company/ trust, CGT stakeholder aged under 55	Contribution must be made directly into superannuation by the company or trust by the later of: • 7 days after the company or trust makes the choice that the exemption will apply (choice must generally be made by the time the company or trust lodges its tax return for the year of CGT event) • 7 days after the company or trust receives the capital proceeds.

34 A longer period may apply to a payment received under an earnout right arrangement. The Commissioner also has the power to extend the general two-year period.

Death and the small business CGT concessions

Beneficiaries, legal personal representatives, trustees of testamentary trusts and surviving joint tenants who acquire small business assets as a result of death will generally be eligible for the small business CGT concessions if:

- the deceased would have met the basic conditions if disposing of the asset just prior to the time of death, and
- the asset is disposed of by the beneficiary, legal personal representative, trustee or surviving joint tenant within two years of the date of death.

Where the 15-year exemption is claimed in this case, the requirement that the CGT event happens in connection with retirement does not apply.

Where the small business retirement exemption is claimed in the event of death, there is no need to contribute the exempt amount to super, regardless of the individual's age.

FirstTech comment: Lifetime CGT cap not available on death

While beneficiaries, legal personal representatives and surviving joint tenants may be eligible for one or more small business CGT concessions, on a strict interpretation of the legislation, they do not appear to be able to elect for the contribution of eligible proceeds to count towards the lifetime CGT cap. Members in these circumstances should pursue their own private binding ruling from the ATO to confirm their position.

In specie transfers to an SMSF and the small business CGT concessions

It is unclear whether in specie contributions of active assets, such as business real property, will qualify for the lifetime CGT cap where the super contribution is also the event that qualifies for the small business CGT concessions.

Historically, there have been private binding rulings that have denied, and allowed, an in specie contribution to be counted under the lifetime CGT cap in this situation. However, more recent private binding rulings tend to suggest that (in the case of the 15 year exemption and the small business retirement exemption for a person aged 55 or over) the ATO will permit an in specie contribution to count towards the lifetime CGT cap where the in specie contribution is also the CGT event that qualifies for the small business CGT concessions. For example, see private binding rulings 1051972132007, 1052086167213 and 1052080198078.

Where the contribution does not count against the CGT lifetime cap, it will be made as a non-concessional or concessional contribution, depending on whether a valid notice of intent is submitted and a tax-deduction claimed.

Note: In other circumstances, such as where the CGT event and the in specie contribution are separate events, in specie contributions may qualify for the CGT small business concessions and the lifetime CGT cap. See ATO ID 2010/217.

Members making in specie contributions to super should seek a private binding ruling from the ATO or professional taxation advice to ensure this contribution is eligible to count against their lifetime CGT cap.

Contributions relating to earnout arrangements

Earnout arrangements are a way of structuring the sale of a business to deal with uncertainty about its value. The contract for the sale of the business (or assets of the business) provides for an initial lump sum payment by the buyer, and a right (a look-through earnout right) to subsequent financial benefits that are contingent on the performance of the business for a specified period after the sale.

All of the financial benefits that can be provided under this right are to be provided over a period ending no later than five years after the end of the income year in which the CGT event occurs. This means the CGT event and the receipt of proceeds may occur in different financial years. These differing timeframes are accommodated in a number of ways:

- The two-year timeframe that a company or trust has to make a payment to a CGT concession stakeholder under the 15-year exemption may be extended to six months after the latest time a financial benefit becomes, or could become, due under a lookthrough earnout right.
- An individual under the age of 55, claiming the retirement exemption, may also have until the time they receive the proceeds under an earnout arrangement to contribute the amount to superannuation.
- Where an earnout arrangement is involved, a super fund may be able to accept a contribution of an amount which qualifies for the 15-year exemption or retirement exemption where it would otherwise have not been able to accept the contribution.

In these situations, the fund may be able to accept the contribution, where the member was eligible to make a contribution in the financial year in which the CGT event occurred, but not in the actual year of contribution (when proceeds are received). For example, if the member is already aged 75 or over[35] when the proceeds are received, and is therefore not otherwise eligible to make the contribution, they are eligible to contribute if they instead were eligible to contribute in the financial year in which the CGT event occurred.

When contributing amounts subject to an earnout arrangement, where normal contribution rules cannot be met, a trustee may accept the contribution, if the amount:

- counts towards and does not exceed the member's lifetime CGT cap amount, and
- qualifies for either the 15-year exemption (or proceeds that would have qualified for the 15-year exemption but the asset was a pre-CGT asset, or there was no capital gain or the asset was sold early due to permanent incapacity), or qualifies for the retirement exemption, and

35 And the 28 day period after the end the month in which they reached age 75 has elapsed.

- the capital proceeds from the relevant CGT event were, or could have been, affected by one or more financial benefits received under a look-through earnout right, and
- the member making the contribution would have been eligible to make the contribution had the contribution been made in the financial year in which the CGT event happened.

Partnership integrity changes

For CGT events that occur on or after 8 May 2018, an additional condition applies to some partners in order to satisfy the basic conditions for small business CGT relief.

Where a CGT event occurring on or after this date involves the creation, transfer, variation or ending of a right or interest to either income or capital of the partnership, or an amount calculated by reference to a partner's entitlement to income or capital of a partnership, the right or interest must be a membership interest:

- immediately before the CGT event (where the CGT event involves ending the right or interest), or
- immediately after the CGT event (in other cases).

A membership interest in a partnership is an interest that makes the holder of the interest a partner in the partnership.

4.6 Recontribution of COVID-19 early release superannuation amounts

Eligible members could make one or (in many cases) two withdrawals of up to $10,000 each of their preserved super benefits between 20 April 2020 and 31 December 2020 under the COVID-19 early release of super provisions. These withdrawals are known as 'COVID-19 early release superannuation amounts'.

From 1 July 2021 to 30 June 2030, members can recontribute COVID-19 early release superannuation amounts they have withdrawn. The recontributed amounts do not count towards the member's non-concessional contributions cap.

To qualify as a recontribution of COVID-19 early release superannuation amounts:

- The contribution must be a contribution made by the member for the member.
- The member must have withdrawn one or two COVID-19 early release superannuation amounts.
- The member's total recontribution must not exceed their total COVID-19 early release superannuation amounts.
- The member must choose for the contribution to be a COVID-19 re-contribution in the approved form (Notice of re-contribution of COVID-19 early release amounts form), and provide the form to their superannuation fund at or before the time the contribution is made.

Members cannot claim a tax-deduction for the recontribution of a COVID-19 early release superannuation amount.

5 Total superannuation balance

A member's total superannuation balance measures the total value of a member's superannuation accumulation and income stream interests in both accumulation and pension phase at the end of the previous financial year: see section 5.3.

A member's total superannuation balance is used to determine eligibility for a range of superannuation measures: see section 5.1.

5.1 Superannuation measures impacted by total superannuation balance

The measurement of a member's total superannuation balance at 30 June of the previous financial year is relevant for the following superannuation measures:

Non-concessional cap	Where a member's total superannuation balance is greater than or equal to $2 million at 30 June, their non-concessional contributions cap in the following financial year will be nil. Where a member's total superannuation balance is $1.76 million or more at 30 June of the previous financial year, the amount they can contribute under the bring-forward rule is restricted. See section 3.2 for more detail on non-concessional caps.
Government co-contribution	In addition to the other eligibility criteria, a member's total superannuation balance at 30 June of the previous financial year must be less than $2 million to be eligible for the Government co-contribution. See section 3.5 for more information on the Government co-contribution.
Tax offset for spouse contributions	In addition to the other eligibility criteria, a receiving spouse's total superannuation balance at 30 June of the previous financial year must be less than $2 million for the contributing spouse to be eligible for a tax offset for spouse contributions. See section 3.5 for more information on the tax offset for spouse contributions.
SMSFs: ability to use segregated method	SMSFs and small APRA funds will not be able to use the segregated assets method to calculate exempt current pension income for an income year if: • at any time during the year, at least one superannuation interest is in retirement phase, and • just before the income year, a member with an interest in the fund has a total superannuation balance that exceeds $1.6 million and they are a retirement phase recipient of an income stream (from any fund). See the FirstTech SMSF Guide for more information.
Concessional contribution carry-forward	A member's total superannuation balance at 30 June of the previous financial year must be less than $500,000 to be eligible to use any unused concessional cap amounts from the previous five financial years. Unused concessional cap amounts may accrue, regardless of a member's total superannuation balance. See section 2.2 for more information on the concessional contribution carry-forward.
Work test exemption	In addition to the other eligibility criteria, a member's total superannuation balance at 30 June of the previous financial year must be less than $300,000 to be eligible to use the work test exemption. See section 2.5 for more information on the work test exemption.

Government proposal: Additional 15% 'Division 296' tax on earnings for TSB over $3 million

The Government has proposed introducing a new 15% tax on the portion of a member's earnings that are attributable to their total superannuation balance above $3 million. Under the proposal, a member's earnings will be calculated based on the difference in their total superannuation balance from one year to the next, with adjustments made for contributions and withdrawals made during the year.

The tax is proposed to apply from the 2025–26 financial year, and would be levied on members personally. Members could then choose to pay the tax from their own pocket, or elect to have it released from super. As part of this proposal, the way a member's total superannuation balance is calculated (for all purposes) would change from 30 June 2025. For further information, see section 5.3.

At the time of writing, the Bill to implement this measure had lapsed due to the calling of the federal election and would need to be reintroduced and pass both houses of parliament to become law. Please contact FirstTech for further information. FirstTech will also release a comprehensive article for advisers if the proposal becomes law.

5.2 Difference between total superannuation balance and transfer balance cap

Broadly, the transfer balance cap (see section 21) operates by measuring the value of a member's transfer balance account on a daily basis. The transfer balance account broadly measures the commencing value of retirement phase income streams. The transfer balance cap is aimed at limiting the amount a member can transfer to the retirement phase where earnings are tax free. The transfer balance account will generally change with the commencement or commutation of retirement phase income streams.

The total superannuation balance differs from the transfer balance cap, as it measures the 30 June value of a member's superannuation interest in the accumulation phase, the retirement phase and any in-transit rollovers.

As a result, a member's total superannuation balance will generally change each year due to the effect of investment returns, contributions and lump sum payments.

5.3 Total superannuation balance

A member's 'total superannuation balance', measured at 30 June each year, is the sum of:

- accumulation phase values (see section 5.4): the total value of superannuation interests that are not in the retirement phase
- retirement phase values (see section 5.5): the value of a member's transfer balance account (but not less than nil), adjusted for any structured settlement contributions and the current value of account based income streams
- rollover superannuation benefits (see section 5.6): the amount of any superannuation benefits not reflected in accumulation phase or retirement phase as they have been rolled over and are in transit between funds
- the value of any outstanding limited recourse borrowing arrangement (LRBA) amounts (only applies to some SMSF/Small APRA Fund members – see section 5.7),

reduced by the sum of any structured settlement contributions (see section 5.8).

Definition of total superannuation balance proposed to change from 30 June 2025

As part of its proposal to introduce an additional 'Division 296 tax' on superannuation earnings corresponding to balances over $3 million from the 2025–26 financial year, the Government has proposed amending the definition of total superannuation balance from 30 June 2025. Importantly, this new definition would apply for all (not just for Division 296 tax) purposes.

The proposed definition would no longer use the transfer balance account value for non-account-based retirement phase interests to calculate total superannuation balance, and would instead use the total superannuation balance value of all superannuation interests (excluding those in foreign funds).

The total superannuation balance value of a super interest is calculated using either the value or method specified in Regulations, or otherwise the total super benefits payable from the interest if the member could, and did, voluntarily cause the interest to cease (e.g. the withdrawal benefit).

It is expected that accumulation accounts and account based income streams will continue to be valued as normal, while regulations will specify how to value accruing defined benefit interests and non-account-based income streams for these purposes. Importantly, it is expected that non-account-based income stream values will change each year, instead of their value being fixed as applies under current rules.

At the time of writing, the Bill to implement this measure had lapsed due to the calling of the federal election and would need to be reintroduced and pass both houses of parliament to become law. Please contact FirstTech for further information. FirstTech will also release a comprehensive article for advisers if the proposal becomes law.

Note that rollovers in transit (see section 5.6), certain outstanding LRBA amounts (see section 5.7) and structured settlement contributions (see section 5.8) would continue to be included or excluded when determining a member's total superannuation balance under these proposed rules, consistent with current rules. However, for the purposes of Division 296 tax only, outstanding LRBA amounts that would otherwise count towards a member's total superannuation balance are disregarded.

5.4 Accumulation phase value

Accumulation phase interests include any superannuation interests that are not in retirement phase.

Accumulation phase interests include:

- accumulation accounts
- deferred income streams where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release
- transition to retirement income streams where the recipient is not a reversionary beneficiary and has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release
- non-commutable allocated income streams where the recipient is not a reversionary beneficiary and has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release
- accruing defined benefit interests with a withdrawal value (see further details below).

The value of an accumulation phase interest (i.e. the accumulation phase value) is:

- if the regulations specify a way of valuing the interest, that value, or
- the amount of superannuation benefits that would become payable if the member voluntarily ceased the interest at that time.

For accumulation accounts and account based income streams not in retirement phase (e.g. transition to retirement income streams that have not converted to the retirement phase), the value will generally be the account balance at 30 June.

For accruing defined benefit interests, where a withdrawal value (lump sum equivalent) can be calculated, it is included in the accumulation phase value. Advisers should contact the defined benefit fund to determine the accumulation phase value at 30 June.

Example: Accumulation phase value

Vince wants to determine his total superannuation balance on 30 June in a financial year. He has not met a full condition of release. He has two superannuation interests in a large super fund:

- accumulation account (balance $400,000 at 30 June)
- transition to retirement pension (balance $300,000 at 30 June).

As the transition to retirement pension is not a retirement phase income stream, the account balance at 30 June will be included in Vince's accumulation phase value.

The value of Vince's accumulation phase value at 30 June is:

$400,000 + $300,000 = $700,000

Vince's 'total superannuation balance' is the sum of:

1 accumulation phase values: $700,000
2 retirement phase values: nil
3 rollover superannuation benefits: nil
4 the value of an outstanding limited recourse borrowing arrangement (LRBA) amount: nil.

Therefore the value of Vince's total superannuation balance at 30 June is $700,000.

Reserves – accumulation phase value

Where a fund, such as an SMSF, maintains reserves, the amount held in those reserves will not be included in the value of a member's total super balance under the existing rules. This is because amounts held in a reserve do not form part of a member's interest in a fund.

However, the ATO has released SMSF Regulator's Bulletin SMSFRB 2018/1, where it outlines concerns regarding the use of reserves to manipulate a person's total superannuation balance and other caps, and that it expects SMSFs to only maintain reserves in very limited circumstances.

For further information regarding the use of reserves within an SMSF, see the FirstTech SMSF Guide.

SMSFs – availability of the accumulation phase value

Where a client is a member of a SMSF, they may not know the value of their accumulation or retirement phase income streams until several months after the end of the financial year when the fund's annual return is completed.

In this case, members may have to delay making contributions until it is confirmed that the member's total superannuation balance is below the required threshold.

As the valuation of assets is important when determining total superannuation balance, trustees should follow the ATO Guide to valuing SMSF assets, available at www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-administration-and-reporting/guide-to-valuing-smsf-assets

5.5 Retirement phase value

The retirement phase value of a member's total superannuation balance is the balance of a member's transfer balance account, adjusted to reflect the current value of an interest in an account-based income stream at 30 June (see further information below).

The following retirement phase income streams are included in the balance of a member's transfer balance account:

- account based income streams
- 'capped defined benefit income streams' (special value used – see section 21.8)
- deferred superannuation income streams that are retirement phase income streams (see section 5.9)
- transition to retirement income streams that are retirement phase income streams (see section 16.6)
- superannuation income streams that are not account based or capped defined benefit income streams, and
- death benefit income streams, including reversionary income streams (special rules apply – see section 5.10).

Valuations for transfer balance account purposes are determined:

- on 30 June 2017, for income streams commenced prior to 1 July 2017, or
- on the starting day for those income streams commencing on or after 1 July 2017.

Superannuation income streams (other than account based income streams) retain the value attributed to the transfer balance account.

See section 21 for further information about how the transfer balance cap operates.

Example: Retirement phase value

George commenced a lifetime pension on 1 December 2016. On 1 July 2017, the lifetime pension had an annual income entitlement for transfer balance cap purposes of $30,000 (annualised first income payment).

As the lifetime pension met the definition of a capped defined benefit income stream, the transfer balance account credit at 1 July 2017 is:

Annual entitlement × 16

$30,000 × 16 = $480,000

George's total superannuation balance at 30 June 2025 is the sum of:

1. accumulation phase values: nil
2. retirement phase values: $480,000
3. rollover superannuation benefits: nil
4. the value of an outstanding limited recourse borrowing arrangement (LRBA) amount: nil

Therefore the value of George's total superannuation balance at 30 June 2025 is $480,000.

Note: Only account based income streams are revalued each 30 June when determining a member's total superannuation balance; all other retirement phase income streams are not revalued, regardless of future indexation of annual pension payments. Continuing on with this example, if George's lifetime pension had increased to $35,000 by 1 July 2025, his transfer balance account on 30 June 2025 remains at $480,000, assuming everything else stays the same.

Adjustment for account based income streams

When determining the retirement phase value of a member's total superannuation balance, the balance of a member's transfer balance account is adjusted to reflect the actual value of an interest in an account-based income stream.

Account based income streams include allocated income streams, account based income streams and market linked income streams (i.e. term allocated pensions).

Under the rules, the following transfer balance account credits and debits that have occurred in relation to an account based income stream are disregarded so as to reduce the effective value of that income stream in their transfer balance account back to zero:

- **Credit:** commencement of a retirement phase income stream
- **Debit:** commutation of a retirement phase income stream
- **Debit:** an event that reduces the member's superannuation interest (e.g. fraud or dishonesty, bankruptcy)
- **Debit:** payment split (divorce or relationship breakdown)
- **Debit:** superannuation income streams that fail to comply with the standards
- **Debit:** superannuation income stream that fails to comply with a commutation authority.

While most credits and debits in relation to account based income streams are disregarded, the following credits and debits are not disregarded:

- **Credit:** excess transfer balance earnings
- **Debit:** structured settlement contributions (see further information below)
- **Debit:** non-commutable excess transfer balance

Once the relevant credits and debits for any account based income streams are disregarded, the value of the transfer balance account is then increased by the total amount of superannuation benefits that would become payable if the member ceased any account-based income streams (i.e. the account balance(s)).

Example: Account based income streams

Jen commenced an account based income stream on 1 July 2017 with a starting balance of $500,000. On 1 December 2017, she commuted $100,000 of her account based income stream as a lump sum withdrawal. She has no other retirement phase income streams, funds in accumulation phase, rollover superannuation benefits or outstanding LRBA amounts.

Jen's transfer balance account balance is:

Credit	Commencement of retirement phase income stream	$500,000
Debit	Partial commutation of retirement phase income stream	($100,000)
Balance		**$400,000**

On 30 June 2025, Jen's account based pension has a current balance of $425,000.

In this case, the value of previous credits and debits in Jen's transfer balance account for her account based pension would be disregarded – effectively reducing the value of her account based pension in her transfer balance account back to zero.

The current market value of Jen's account based pension is then credited to her transfer balance account for total superannuation balance purposes.

Jen's total superannuation balance at 30 June 2025 is the sum of:

1 accumulation phase values: nil
2 retirement phase values: $425,000
3 rollover superannuation benefits: nil
4 the value of an outstanding limited recourse borrowing arrangement (LRBA) amount: nil.

As a result, the value of Jen's total superannuation balance on 30 June 2025 is $425,000.

Example: Account based income streams

Pauline commenced an account based income stream on 1 May 2018 with a starting balance of $2,000,000. As her transfer balance cap was $1,600,000, she has an excess transfer balance of $400,000.

On 1 June 2018, she commutes $500,000 of her account based income stream as a lump sum withdrawal. As she exceeded her transfer balance cap for 30 days, excess transfer balance earnings of $3,036 (assuming an earning rate of 9.2%) accrue.

At 30 June 2025, the account balance of the account based pension is $1,510,000.

She has no other retirement phase income streams, funds in accumulation phase, rollover superannuation benefits or outstanding LRBA amounts.

Pauline's transfer balance account balance is:

Credit	Commencement of retirement phase income stream	$2,000,000
Credit	Excess transfer balance earnings	$3,036
Debit	Partial commutation of retirement phase income stream	($500,000)
Balance		**$1,503,036**

In this case, the value of the credit for commencing the account based pension ($2,000,000) and the debit for partial commutation ($500,000) are disregarded.

However, the credit for excess transfer balance earnings ($3,036) is not disregarded.

The current market value of Pauline's account based pension is then credited to her transfer balance account for total superannuation balance purposes ($1,510,000).

Pauline's total superannuation balance at 30 June 2025 is the sum of:

1 accumulation phase values: nil
2 retirement phase values: $1,513,036
3 rollover superannuation benefits: nil
4 the value of an outstanding limited recourse borrowing arrangement (LRBA) amount: nil.

As a result the value of Pauline's total superannuation balance on 30 June 2025 is $1,513,036.

Adjustments also apply to term allocated pensions that are capped defined benefit income streams

As discussed above, when determining the retirement phase value of a member's total superannuation balance, the balance of the member's transfer balance account, adjusted to reflect the current value of account based income streams, is measured. This includes where the account based income stream is a term allocated pension that is a capped defined benefit income stream.

Capped defined benefit income streams are included in the 'retirement phase value' of total superannuation balance as they are included in a member's transfer balance account.

The special value of a capped defined benefit income stream is credited to a member's transfer balance account either:

- on 1 July 2017, for capped defined benefit income streams existing on 30 June 2017, or
- on commencement for income streams commenced on or after 1 July 2017.

Therefore where a member has a capped defined benefit income stream, it is generally the commencement value for transfer balance cap purposes that counts towards a member's total superannuation balance.

However, a member's transfer balance account is adjusted for total superannuation balance purposes where the member has a capped defined benefit income stream that is a term allocated pension. The special value of a term allocated pension is adjusted for the purposes of measuring the member's total superannuation balance each 30 June.

Effectively, the account balance of the term allocated pension is used in the calculation of total superannuation balance each 30 June, and any existing credits or debits for a term allocated pension (other than debits for structured settlement contributions or debits for non-commutable excess transfer balances) are disregarded.

Where the member holds other types of capped defined benefit income streams, the transfer balance account is not adjusted for the purposes of total superannuation balance calculations.

5.6 Rollover superannuation benefits

A rollover superannuation benefit is included in a member's total superannuation balance on 30 June if it is paid at or before that time, and received by a superannuation fund after that time, and not reflected in the accumulation phase value or retirement phase value.

5.7 Outstanding LRBA amounts

Where an SMSF or small APRA fund has an outstanding limited recourse borrowing arrangement in place, a member's share of the outstanding loan balance (known as their LRBA amount) will count towards their total superannuation balance where:

- the loan arose under a contract entered into on or after 1 July 2018, and
- either
  - the member has satisfied an eligible condition of release (i.e. retirement, terminal medical condition, permanent incapacity or reaching age 65), or
  - the LRBA lender is an associate of the fund.

Where required to be included in a member's total superannuation balance, their LRBA amount is calculated as:

Outstanding loan balance × value of the member's interests in the fund supported by the asset subject to the LRBA/value of the total interests in the fund supported by the asset subject to the LRBA

A member will not have LRBA amounts where the loan contract was entered into prior to 1 July 2018. Where a pre-1 July 2018 loan is refinanced on or after 1 July 2018, it will continue to be considered a pre-1 July 2018 loan for these purposes, provided the refinanced loan does not increase the value of the borrowing and the loan continues to be secured by the same asset.

For more information about the inclusion of LRBA amounts in a member's total superannuation balance, see the FirstTech SMSF Guide.

5.8 Adjustment for structured settlement contributions

A structured settlement contribution is a contribution to a complying superannuation fund that arises from the settlement of a personal injury claim where two legally qualified medical practitioners have certified that because of a personal injury, it is unlikely the member can ever be gainfully employed in a capacity for which they are reasonably qualified or trained.

A contribution qualifies as a structured settlement contribution if it:

- meets the requirements of section 292-95 of the ITAA 1997, or
- would have met the requirements of the above section (apart from certain timeframes), but was made prior to the introduction of contributions cap rules on 10 May 2006.

When calculating total super balance, any structured settlement contributions are removed.

If the member does not have a transfer balance account, this simply involves reducing the calculated total superannuation balance by the value of any structured settlement contributions.

However, if the member has a transfer balance account, that account (which is normally already reduced by the value of structured settlement contributions) is calculated without including structured settlement contribution debits. The member's calculated total superannuation balance is then reduced by the value of any structured settlement contributions.

As well as being excluded from the total superannuation balance, structured settlement contributions are exempt from the non-concessional contributions cap.

Structured settlement contribution: transitional rules

For transfer balance cap purposes, transitional rules apply where a structured settlement contribution was made prior to 1 July 2017 and the member had a retirement phase interest on 1 July 2017. In this case, an alternative debit rule is applied to the amount that is debited to their transfer balance account. If the transfer balance account credits for the total values of the retirement phase superannuation interests they had on 1 July 2017 are more than the amount of the structured settlement contribution, the debit will be equal to the total of the credit. This is to ensure that there is no disadvantage in the situation where the value of a member's retirement phase superannuation interests on 1 July 2017 is greater than the amount of the original structured settlement contribution.

However, note that for total superannuation balance purposes, any transitional structured settlement contribution value does not apply. This is because in calculating a member's total superannuation balance, any transfer balance debit for a structured settlement contribution (e.g. alternative debit calculated under the transitional rules) is ignored, and their total superannuation balance is then reduced by the actual value of their structured settlement contribution.

5.9 Special rules for deferred superannuation income streams

The value of deferred superannuation income streams, such as deferred lifetime annuities, is counted for total superannuation balance purposes. Whether the value counts toward the retirement phase or accumulation phase component depends on whether the member has met one of the following conditions of release:

- retirement
- reaching age 65
- permanent incapacity
- terminal medical condition.

Where the deferred superannuation income stream has not yet become payable and the member has not met a specified condition of release, it is included in the accumulation phase value. As no regulations have been released regarding the accumulation phase value of a deferred superannuation income stream, the accumulation phase value at a time is the total amount of superannuation benefits that would become payable if the member voluntarily caused the interest to cease at that time.

Where the member has met a specified condition of release, the deferred superannuation income stream is included in the retirement phase value. In that case, the value of the income stream included in the member's transfer balance account is used. The value of a deferred superannuation income stream for transfer balance account credit purposes is the greater of:

- the total amount of the superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time
- the sum of each amount of consideration paid for the interest and associated earnings calculated in accordance with the regulations.

5.10 Total superannuation balance treatment of reversionary income streams

For total superannuation balance purposes, the value of a member's retirement phase income streams is the balance of their transfer balance account, adjusted for the current value of account based income streams.

Non-account based reversionary income streams

Where a pension other than an account based income stream (e.g. a lifetime annuity) reverts to a reversionary beneficiary, the value won't be counted towards the reversionary beneficiary's total superannuation balance until the income stream is credited to their transfer balance account (e.g. 12 months after death).

Account based reversionary income streams

Where an account based income stream reverts to a reversionary beneficiary, the total superannuation balance rules require the current value of any account based income streams to be included regardless of whether there has been a credit for that income stream in the member's transfer balance account. Therefore, the current value of the reversionary income stream counts towards the beneficiary's total superannuation balance from the first relevant calculation time after death – which is the next 30 June.

While a reversionary account based pension recipient has 12 months from the date of death to sort out their transfer balance cap situation, the pension balance starts to count towards their total superannuation balance effectively from the next 30 June following the date of death.

Reversionary account based pension recipients may need to take action before/consider the impact of the reversionary income stream from 30 June following the date of death.

Example

Mark and Sophie each commenced $900,000 account based pensions on 1 August 2020 and nominated each other as a reversionary beneficiary. Mark dies on 1 December 2024 (at which time his account based pension balance is $950,000) and his pension reverts automatically to Sophie.

Mark's pension starts to count towards Sophie's total superannuation balance from the first relevant calculation time after death – which is 30 June 2025, even though Sophie's transfer balance account will not be credited with the value at the date of death ($950,000) until 1 December 2025.

Assuming that at 30 June 2025, Sophie's own pension balance is $1 million and the reversionary pension balance is $1.1 million (and Sophie has no other superannuation interests), Sophie's total superannuation balance at 30 June 2025 is $2.1 million. This would then impact her eligibility to make non-concessional contributions in 2025–26. (see section 5.1).

6 Taxation of superannuation funds

Section 6 focuses on the taxation of superannuation funds relating to accumulation interests. For details about the taxation of superannuation funds relating to superannuation income streams, refer to section 20.

6.1 Outline of the taxation of complying superannuation funds

Superannuation funds are essentially subject to the same taxation principles as any other taxpayer. However, the *Income Tax Assessment Act 1997* and the *Income Tax Rates Act 1986* also contain a number of provisions that modify some tax rules that apply to superannuation funds. These modifications include:

- amounts that are included in a superannuation fund's assessable income
- deductions that are available to superannuation funds
- the tax rates that apply to a superannuation fund's taxable income.

6.2 Assessable income

The assessable income of complying superannuation funds will generally include amounts of ordinary and statutory income such as interest, dividends (including franking credits), rent, trust distributions and realised capital gains.

In addition, the tax rules also specifically include and exclude certain contributions and rollovers from a complying superannuation fund's assessable income, as shown in Table 6.1.

Table 6.1 Assessable and non-assessable contributions and rollovers

Assessable contributions/rollovers	Non-assessable contributions/rollovers
Employer contributions including superannuation guarantee and salary sacrifice	Personal contributions where the member has not provided a valid deduction notice to the trustee (includes amounts remitted to the fund from the member's after-tax salary by an employer)
Personal contributions where the member has submitted a valid notice of intent to claim a tax deduction under section 290-170 of ITAA 1997	Eligible spouse contributions
Contributions made by a third party other than by a member's spouse or on behalf of a child	Government co-contributions
Amounts transferred from a foreign superannuation fund that the member has elected to be assessable to the fund (commonly the amount of earnings since the member became an Australian tax resident)	Contributions on behalf of a child that are not made by the child's employer

Assessable contributions/rollovers	Non-assessable contributions/rollovers
Payments of superannuation guarantee shortfall amounts from the ATO	Taxable component – taxed element and tax-free component of a rollover
An amount of taxable component (untaxed element) up to the untaxed plan cap included in a rollover to a fund[36]	Amounts transferred from a foreign superannuation fund where no election was made by the member
	Amounts contributed that qualified under the small business retirement or 15-year exemption (including amounts contributed on behalf of the member by a third party)
	Downsizer contributions

Assessable capital gains

Where a complying superannuation fund has realised capital gains and capital losses (including unused losses from previous years), it can use the losses to reduce its capital gains in the same way as an individual taxpayer.

After applying any losses, any remaining capital gains on CGT assets made by a complying superannuation fund are included in the fund's assessable income. However, a 33⅓% discount applies where the fund has held the CGT asset for longer than 12 months, so where a CGT asset held for longer than 12 months is sold, only two-thirds of the capital gain is assessable.

For assets acquired prior to 21 September 1999, a complying superannuation fund may instead choose to use the indexed cost base method for calculating the capital gain, in which case the CGT discount mentioned above will not apply.

Where a complying superannuation fund holds an asset that was acquired prior to 1 July 1988, it will be deemed for CGT purposes to have acquired the asset on 30 June 1988. This means that complying superannuation funds do not have any pre-CGT assets that are ignored for CGT purposes. For capital gains purposes, the cost base of a 30 June 1988 asset is the greater of its market value at 30 June 1988 and its cost base at 30 June 1988.

Exemption of certain insurance proceeds from assessable income

Under ITAA 1997, any capital gain or loss made by the trustee of a complying superannuation fund on a lump sum life insurance policy or a policy of insurance against an individual suffering an illness or injury is disregarded and therefore not included in assessable income. This allows a complying superannuation fund to receive life insurance, terminal illness insurance and TPD insurance proceeds tax free.

36 Excludes untaxed element (created as a result of a death benefit containing insurance proceeds) that forms part of a death benefit rollover. Note however that the ATO has advised that there is no requirement for the transferring fund to calculate any untaxed element in the first place in this situation.

Income protection insurance held on a member's behalf through super is not assessable income of a complying superannuation fund, and the fund trustee cannot claim a tax deduction for proceeds paid to a member.

For further information about insurance within super, see section 11.

6.3 Deductions

Taxpayers (including complying superannuation funds) are generally able to claim expenditure as a deduction where:

- it was incurred in the course of gaining or producing assessable income
- it was necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income
- it relates to the cost of managing their tax affairs.

Where investment-related expenditure is incurred by a complying superannuation fund in the course of gaining or producing both assessable income and non-assessable income (because the fund has some members with accumulation interests and some members with retirement phase income stream interests), only a portion of the expense is tax deductible. Refer to section 20 for further information about the taxation of superannuation funds with retirement phase income streams.

There are also tax deductions specifically available to complying superannuation funds in relation to insurance discussed below.

Insurance premiums

A complying superannuation fund can claim a tax deduction for the cost of premiums paid for insurance cover used to provide:

- death benefits
- terminal illness benefits
- disability superannuation benefits, or
- temporary disability benefits paid in the form of an income stream.

This generally allows a complying superannuation fund to claim a tax deduction for premiums paid for life insurance (including terminal illness), TPD insurance and income protection insurance.

However, premiums paid on some TPD and income protection policies taken out prior to 1 July 2014 may not be fully tax deductible. A tax deduction applies to the extent that the policy is for a liability of the fund to pay the member/LPR/dependants a death, terminal illness or disability super benefit (including temporary disability benefit). In addition, premiums paid for pre-1 July 2014 trauma insurance policies are not tax-deductible. For further information about pre-1 July 2014 insurance policies within super, refer to section 11.

Future service deduction

Instead of claiming a tax deduction for insurance premiums during a financial year, a fund trustee can elect instead to claim a tax deduction for the future service portion of eligible benefits (consisting at least partially of insurance proceeds) that it pays out, including:

- a superannuation lump sum death or disability benefit
- a superannuation income stream death or disability benefit
- a series of income protection payments.

A trustee can choose to apply the future service deduction instead of claiming a tax deduction for insurance premiums in any financial year (even if deductions have been claimed for premiums in previous years). However, once they make this choice, it is generally irrevocable and applies in all future years.

Where insurance proceeds are paid out as a death or disability benefit, the trustee can only claim this future service deduction if the benefit is paid as a consequence of the member terminating employment. In practice, this requirement may render the deduction difficult to claim in most cases.

For further information about the future service deduction, see section 11.

6.4 Superannuation tax rates

A complying superannuation fund's taxable income (assessable income less deductions) is taxed at 15% in most cases.

An exception applies where the fund receives a non-arm's length component of its taxable income, which is taxed at 45% instead. For complying super funds excluding SMSFs and small APRA funds, this component is any non-arm's length income, less deductions attributable to that income. For these funds, non-arm's length income includes:

- income derived from a scheme where the parties are not dealing with each other at arm's length, and the amount of income is greater than would have been the case had the parties been dealing at arm's length in relation to the scheme
- non-arm's length dividends paid by a private company
- distributions from a discretionary or non-fixed trust
- distributions from a unit trust where the income is derived under a scheme where the parties are not dealing at arm's length and the amount of income is greater than would have been the case had the parties been dealing with each other on an arm's length basis.

Different non-arm's length income rules apply to SMSFs and small APRA funds. For further information, see section 5.7 of the FirstTech SMSF guide.

A non-complying superannuation fund is instead subject to 45% tax on its entire taxable income.

Applying franking credits to reduce tax

A complying superannuation fund can also use franking (imputation) credits received, as a result of the fund receiving franked dividends, to reduce its income tax liability.

Where a complying superannuation fund's franking credits exceed its income tax liability during an income year, the fund receives a cash refund equal to its excess franking credits (with the benefit of this refund applied by the fund across its membership on a fair and reasonable basis). In practice, this net refund situation occurs in many SMSFs, and some large superannuation wraps that have a higher proportion of members with retirement phase interests.

Taxation of super funds vs other investment structures

Table 6.2 provides a summary of the taxation of superannuation funds compared with other investment structures.

Table 6.2

Structure	Tax rate
Complying superannuation fund	15% **Note 1:** Due to an assessable income exemption, earnings within retirement phase income streams are effectively tax-free. Refer to section 20 for further information. **Note 2:** Where the fund's taxable income has a non-arm's length component, that component is instead taxed at 45%.
Non-complying superannuation fund	45%
Company	25% if the company is a 'base rate entity' 30% for other companies **Note:** Refer to the FirstTech Pocket Guide for further information about company tax rates.
Individual/ partnership	Individual or each partner's marginal rate of tax.
Discretionary trust	Where the trustee distributes all income to each entitled beneficiary, tax is payable on the beneficiary's total assessable income, including the trust distributions, at each beneficiary's marginal tax rate.

Government proposal: Additional 15% 'Division 296' tax on earnings for TSB over $3 million

The Government has proposed introducing a new 15% tax on the portion of a member's earnings that are attributable to their total superannuation balance above $3 million. Under the proposal, a member's earnings will be calculated based on the difference in their total superannuation balance from one year to the next, with adjustments made for contributions and withdrawals made during the year.

The tax is proposed to apply from the 2025–26 financial year, and would be levied on members personally. Members could then choose to pay the tax from their own pocket, or elect to have it released from super. As part of this proposal, the way a member's total superannuation balance is calculated (for all purposes) would change from 30 June 2025. For further information, see section 5.3.

At the time of writing, the Bill to implement this measure had lapsed due to the calling of the federal election and would need to be reintroduced and pass both houses of parliament to become law. Please contact FirstTech for further information. FirstTech will also release a comprehensive article for advisers if the proposal becomes law.

6.5 Untaxed government superannuation funds

A limited number of government superannuation funds are exempt from taxation. These are commonly referred to as untaxed superannuation funds, and include:

- all constitutionally protected superannuation funds
- unfunded public sector superannuation schemes.

Constitutionally protected superannuation funds

Constitutionally protected superannuation funds include some state government superannuation funds. They may be funded or unfunded.

A constitutionally protected fund is exempt from income tax applying to its contributions and earnings for constitutional reasons.

Unfunded public sector superannuation schemes

Unfunded public sector superannuation schemes include some state and federal government superannuation funds.

Fully unfunded public sector superannuation schemes do not receive contributions or have assets to earn income or capital gains, and as such are not liable for income tax.

Partially funded public sector super schemes do not pay tax in respect of unfunded liabilities, but normally pay tax on assessable contributions and earnings in respect of funded liabilities. However, public sector schemes can also choose to elect to not pay tax on funded employer contributions (additional tax is instead paid at the time benefits are paid to the member). Other funded income amounts, such as income, capital gains or personal concessional contributions, are assessable in the same way as for a taxed non-government scheme.

Other modifications for untaxed superannuation funds

To compensate for the fact that otherwise assessable contributions and earnings of an untaxed superannuation fund are exempt from tax, the taxable component of benefits paid from these funds consists of an untaxed element which may be subject to higher tax rates. Refer to section 9 for further information.

There are also modifications to contributions cap rules and Division 293 tax rules for members of some untaxed superannuation funds. Refer to section 2 for further information.

7 Superannuation rollovers and transfers

7.1 Compulsory rollover and transfer of super benefits

Under the superannuation regulations, a member of a regulated super fund or approved deposit fund can request that all or part of their withdrawal benefit be rolled over to another regulated super fund (or approved deposit fund or retirement savings account provider). However, this does not apply to members of:

- unfunded public sector super schemes
- a defined benefit super interest where the member is an employee of the employer-sponsored fund, or
- benefits paid as a pension (other than an account based pension, allocated pension or term allocated pension).

When rolling over, a fund must also comply with the superannuation data and payment standards. This generally requires the sending fund to send both the rollover monies and the data relating to the rollover electronically. Therefore, a fund that is subject to the data and payment standards cannot process a rollover by sending a physical cheque and rollover benefit statement to the receiving fund.

However, this does not apply in relation to a rollover involving the in-specie transfer of an asset from one fund to another, or in relation to a member transferring out of a closed superannuation product. A closed product is defined as a product that does not receive any contributions or rollovers, whether from an existing member or any other person, but that may rollover or transfer a member's withdrawal benefit to another superannuation entity.[37]

Requesting a rollover or transfer

A member can request a rollover by either:

- contacting their existing fund to arrange the transfer, or
- requesting a rollover through the Super section of ATO Online Services (accessed via MyGov) or via the paper based ATO request form[38]

Where a member wishes to make a rollover request via the ATO, they will need to transfer their entire account balance and cannot request only part of their benefit be rolled over from one fund to another. This is because the ATO process involves closing the member's existing super account. If the member only wishes to transfer part of their account balance, they will need to contact their existing super fund to confirm the process and what information is required.

37 Clause 6 of the Superannuation Data and Payment Standards 2012

38 Available via the ATO website (NAT 75359)

Tip

It is important to remember that requesting a rollover does not affect where a member's employer contributions will be made. If a member is eligible for choice and they want to redirect where their employer contributions are made, they will need to give their employer a completed Standard Choice Form (NAT 13080).

Rollover time limits

Under the superannuation data and payment standards, a fund is generally required to rollover or transfer a member's benefit as soon as practicable and normally within three business days of the fund receiving the request. However, under these rules different timeframes can apply where they are completed as a non-standard transaction, such as where a member has made an investment choice in respect of the benefit and where any part of the member's benefit is an illiquid investment[39].

APRA has also confirmed that a large fund would generally not breach the three-business day rollover requirement where:

- there is an inexplicable mismatch between information on the application form and the fund's data or in any of the electronic services provided by the ATO, or
- a suspicious matter has been referred to the ATO Illegal Early Release group which remains under investigation.

Requests for further information

If the trustee of the fund has not received all the required information (in the ATO form) to process the rollover, it may refuse to roll over. However, the trustee must:

- within five business days after receiving the request, ask the member for this information, and
- make reasonable further enquiries of the member to obtain this information if the trustee has not received the information within 10 business days after making the request.

Rollovers to an SMSF – fund must use SMSF verification service

Prior to rolling a member's benefits from a large fund to an SMSF, the large fund will be required to check the fund and member details via the ATO SMSF verification service (SVS). The SVS is a web based service administered by the ATO that allows authorised entities (such as large APRA funds and SMSFs) to verify an SMSF's details prior to rolling over any benefits to an SMSF via SuperStream.

39 See SIS Regulation 6.34A for more information on non-standard rollovers and transfers

The SVS will verify the following:

- the ABN in the request is registered as an SMSF
- SMSF status (complying or regulated)
- that the TFN of the individual is associated with the SMSF, and is not compromised
- no verified date of death exists for the individual/SMSF member associated with the SMSF
- SMSF bank details held by the ATO
- Electronic Service Address (ESA) held by the ATO.

Where a fund receives a verified response from the ATO it can proceed with the rollover as per request.

However, where any of the fund or member details do not match the ATO's records, or the member's TFN is not associated with the SMSF or is compromised, the ATO will send a non-verified response that will confirm whether it's a fund or member detail that does not match. However, for privacy and security reasons, the ATO will not specify which specific detail does not match.

In this situation, the large fund will then generally block the rollover request and will direct the member to contact the ATO to take the required corrective action. Once the member has identified and resolved the relevant data mismatch issue, they will then need to re-initiate their rollover request with the large fund.

It is therefore important to ensure both the rollover fund and the ATO hold current up-to-date information for both the member and the SMSF prior to requesting a rollover to avoid any delays.

FirstTech comment: SuperStream required for SMSF rollovers

SMSFs are required to pay and receive all rollovers to and from other complying funds electronically and in accordance with SuperStream payment standards (excluding in-specie rollovers involving the transfer of an asset). For further information about SuperStream rollover requirements, refer to the FirstTech SMSF Guide.

Trustee not required to transfer in some cases

The trustee of a super fund or ADF is not required to comply with a rollover request from a member where:

- the nominated super fund or RSA will not accept the amount
- the amount to be rolled over is only part of the member's account balance and the rollover will reduce the account balance to less than $6,000, or
- a previous rollover has occurred in the last 12 months.

ASIC has demonstrated[40] that it will commence civil penalty proceedings against a superannuation fund trustees if it believes the trustee has misled or misrepresented a member's ability to transfer their superannuation out of the fund.

Exit fees and rollovers

From 1 July 2019, the Government has banned exit fees on all superannuation accounts, reducing the costs of transferring super for members.

An exit fee is defined as a fee, other than a buy - sell spread, that relates to the disposal of all or part of a member's interests in a superannuation entity.[41]

Therefore, a trustee will not be permitted to charge an exit fee (excluding a buy-sell spread) as part of processing a rollover request.

7.2 Spouse contribution splitting – transferring recent contributions

Super contribution splitting allows your clients to transfer concessional contributions made during the year to their spouse's super account, either in the same or another fund. Contributions splitting cannot be made to a member's spouse who is aged 60 to 64 and satisfies the retirement condition of release, or who is aged 65 or over.

The split will generate a contributions-splitting super benefit which is a 100% taxable component when it is withdrawn from the originating spouse's account. The amount is fully preserved in the receiving spouse's account. Spouse contribution splitting is not compulsory, with each fund deciding if and when to offer splitting. It is important to check with each fund to determine whether your clients will be able to participate in spouse contribution splitting.

Benefits of splitting contributions with a spouse

Spouse contribution splitting may provide a number of benefits for a couple, including:

- equalising balances to make best use of both partner's transfer balance cap, maximising the amount invested in tax-free retirement phase income streams
- optimising one or both member's total superannuation balance to:
    - access a higher non-concessional contributions cap
    - qualify for a Government co-contribution
    - qualify for a tax offset for spouse contributions
    - allow an SMSF to use the segregated assets method when calculating exempt current pension income
    - allow access to the concessional contribution cap carry forward rules.

40 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-034mr-asic-commences-civil-penalty-proceedings-against-rest-for-misleading-and-deceptive-representations-to-members/

41 Section 99BA of the SIS Act

- boosting Centrelink entitlements by transferring funds into a younger spouse's accumulation account if they are under age pension age.

What can be split?

Only splittable contributions up to the maximum amount may be split under this measure. Splitting laws only apply to accumulation accounts and defined benefit interests that are not part of a defined benefit component.

Splittable contributions

Splittable contributions include:

- contributions to a regulated super fund on or after 1 January 2006
- allocated surplus contribution amounts that are allocated on or after 1 January 2006.

Splittable contributions do not include:

- amounts that would form part of the contributions segment (part of the tax free component) of the super interest (e.g. non-concessional contributions)
- rollover super benefits
- amounts that have previously been split
- super lump sums paid from a foreign super fund
- contributions by the Commonwealth, a State or a Territory to a public sector super scheme in relation to a benefit that accrued in a financial year that commenced before 1 July 2005.

There are effectively two types of splittable contributions:

- taxed splittable contributions are contributions that are included in the assessable income of a super fund and allocated surplus contribution amounts (e.g. super guarantee and salary sacrifice contributions).
- untaxed splittable employer contributions are contributions made by the Commonwealth, a state or a territory to a public sector super scheme that are not included in the assessable income of the fund.

Contributions caps

A contributions splitting super benefit only counts toward the originating spouse's concessional cap at the time of the original contribution. It does not count towards any cap when it is split across to the receiving spouse.

What can't be split?

Splitting laws also do not apply to accounts that are subject to payment splits or payment flags under a marriage breakdown.

Maximum splittable amounts

The maximum amount of contributions made in a particular financial year that can be split depends on the type of splittable contribution.

Type of splittable contribution	Maximum splittable amount
Taxed splittable contributions e.g. salary sacrifice and SG contributions	The lesser of: • 85% of the concessional contributions for that financial year, and • the concessional contributions cap[42] for that financial year
Untaxed splittable employer contributions e.g. contributions by the Commonwealth, a state or a territory	100% of the concessional contributions cap[42] for that financial year

FirstTech comment: Maximum splittable amount and the carry forward concessional contribution rules

When determining the maximum splittable amount for a member for a financial year, it should be noted that the member's concessional contribution cap includes any unused concessional cap amounts from the previous five financial years that they are eligible to carry forward and apply in that year under the carry forward concessional contribution provisions. For example, this could potentially allow a member that had a total super balance of less than $500,000 just before the start of a financial year to both make concessional contributions in excess of the general concessional cap in that year and then to also split an amount of those higher concessional contributions to their spouse. For more information on the carry forward concessional contributions cap rules, please see section 2.2 of this guide.

Applying to split contributions

A member must apply to their fund to split contributions, specifying the amount and type of contributions to be split, along with their spouse's personal and super account details.

To be eligible to split contributions, the member's spouse must be either:

- under preservation age at the time of the split request, or
- between preservation age and age 64. In this case, they must declare that they do not satisfy the 'retirement' condition of release at the time the split request is made.

Contributions splitting cannot be made to a member's spouse age 65 or over.

42 If an individual has unused concessional cap amounts from previous years and is eligible to carry them forward to the current year, their concessional contributions cap will be higher than the basic concessional cap. To learn more about this topic, refer to section 2.2.

When can contributions be split?

Contributions can generally be split after the conclusion of the financial year in which the contribution is made and only in that financial year. This means that contributions made between 1 July 2024 and 30 June 2025 can be split from 1 July 2025 until 30 June 2026. However, if the member intends to roll over or withdraw their entire super balance before the end of the financial year, they can also apply to split their contributions within that same financial year so that the split occurs prior to the rollover or withdrawal.

A further timing issue arises for members wishing to claim a personal tax deduction for their contributions. These members must lodge their valid notice (see section 2.5) with the fund and have it acknowledged in writing before they apply to split. This ensures that the correct taxation status of the contributions is determined prior to the split.

7.3 Relationship breakdown – transferring super to another spouse

The *Family Law Act 1975* (in particular Part VIIIB) stipulates that interests in super, RSAs and ADFs are to be included in the definition of 'property' and can be divided on marriage breakdown. Eligible de facto couples who separate on or after 1 March 2009 are also included.

Separating Western Australian de facto couples were were previously unable to split superannuation under the *Family Law Act 1975*. However, a new Part VIIIC of the Act was created from 28 September 2022 to provide for super splitting for separating Western Australian de facto couples.[43]

A rollover of super benefits under the super and divorce laws is referred to as a family law super payment for tax purposes. It is not included in the assessable income of the receiving fund.

A family law super payment is treated as a super benefit of the non-member (receiving) spouse, but not the member (originating) spouse. The definition of spouse includes relationships registered under particular State or Territory laws or couples who live together on a genuine domestic basis (including same sex couples).

Two common ways of deciding how the superannuation of a separating couple will be split are:

- superannuation agreements, and
- court orders.

43 This change only provides for splitting of superannuation assets and not other aspects of property splitting for separated Western Australian de facto couples (which continue to be dealt with by state law).

Superannuation agreements/binding financial agreements

A superannuation agreement forms part of a binding financial agreement. Binding financial agreements were introduced to allow separating couples who can reach agreement on a property split to do so without the delay, cost and the emotional toll of going to court. These agreements can be made before, during or after a relationship, and set out how the property of a couple, including their respective superannuation interests, will be divided in the event that the couple separate.

Binding financial agreements will be legally binding on a couple if both members have a copy, have received independent legal advice and have signed the agreement. These agreements can only be overturned by a court in rare circumstances.

Court orders

Where a binding financial agreement does not exist, a court order from the Family Court will generally be required to allow property (including superannuation) to be divided. There are two types of court order:

- consent orders where a separating couple have come to an agreement on how their property should be divided (but they do not have a binding financial agreement); they can apply to the court to issue a consent order. This ratifies the agreement between the two parties and makes it binding
- financial orders where a separating couple cannot come to an agreement on how their property should be split; the court can issue a financial order to divide the couple's assets based on the circumstances of the case.

Splitting superannuation upon relationship breakdown

When transferring the superannuation of one member of a separating couple (the member spouse) to the other member (the non-member spouse), one of two methods may be used.

Splitting the member's interest

Where the member spouse's super balance is in an accumulation account or in an account-based or term allocated pension, there is the opportunity to immediately allocate the non-member spouse's entitlement to them. This may include:

- opening a new account within the fund for the non-member spouse
- rolling over their entitlement to another complying fund of their choosing, or
- paying the entitlement to them directly (if a relevant condition of release has been met).

The non-member spouse is able to choose which option will apply to them, and the fund must comply with their choice, except where this is not possible (e.g. their chosen fund cannot accept rollovers). Where the non-member spouse has not made a choice, the fund trustee generally has the option of:

- creating a new interest within the fund on their behalf, or
- rolling over the non-member spouse's entitlement to the ATO as a trustee voluntary payment under unclaimed super money laws.

Splitting payments from the fund

Where the member spouse's super balance is a defined benefit interest, it generally cannot split until benefits become payable from the fund. This may, for example, occur when the member spouse reaches retirement and a lump sum or pension becomes payable. Lump sums (including commutations of a defined benefit pension) that become payable can then be:

- directed to a new account within the fund for the non-member spouse
- rolled over to another complying fund, or
- cashed out (subject to a condition of release being met).

Pension payments, however, must be paid directly to the non-member spouse.

Process required for splitting a super interest

The procedure that must be followed and the evidence required by a super fund in order to instigate the splitting of a superannuation interest or payments depends on a number of factors.

Once the super fund has received the required evidence, it must notify both members of the separating couple within 28 days. The non-member spouse then has a further period of 28 days (or longer if allowed by the fund) to nominate whether they wish to retain, roll over or cash out their entitlement.

Flagging a super interest prior to a split

A separating couple can agree on, or a court can order, a payment flag to be placed on a member's superannuation interest. This does not trigger a splitting of benefits but instead prevents the trustee from allowing most withdrawals from the interest.

A payment flag might be an appropriate precautionary measure where:

- the couple have separated but a property settlement has not yet been reached, or
- the superannuation interest cannot be split until retirement (e.g. where the member's interest is in a defined benefit fund).

An existing payment flag can be lifted by agreement of the separating couple or by the court, allowing a superannuation interest or payment split to occur.

A payment flag cannot be placed on an interest already being used to pay a pension (e.g. an account based pension or a defined benefit pension).

Tax components and preservation

Any superannuation interest transferred to a spouse upon relationship breakdown must be made proportionally from tax components and preservation status.

FirstTech comment: Improved visibility of super for property settlement proceedings

Processes already exist for parties to a property settlement to gain information about their spouse / former spouse's superannuation directly from super funds.

From 1 April 2022, where a client is part of a current family law proceeding in the Federal Circuit and Family Court of Australia (or in some cases the Family Court of WA), they (or their legal representative) may apply to the Court to request superannuation information held by the ATO about their spouse / former spouse.

This change can help to reduce the time, cost and complexity for parties seeking information about their former partner's superannuation, and aid visibility where a third party does not fully disclose all superannuation assets.

7.4 When money must be transferred to the ATO

Twice a year, on 31 December and 30 June (the 'Unclaimed Money Days') superannuation providers must determine whether any of their member accounts are 'unclaimed super' under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act) and, if so, transfer the relevant amounts to the ATO by 30 April or 31 October respectively (the 'Scheduled Statement Days'). Individuals may then claim back their superannuation from the ATO at any time, plus – since 1 July 2013 – interest.

Effective for half-year periods from 1 January 2018, superannuation providers no longer have to provide biannual lost member statements to the ATO, but instead report information, via the Member Account Attribution Service (MAAS). Minimum reporting requirements will still be twice yearly, although funds can choose to report more frequently. In addition, rollover information must be provided under SuperStream standards for the unclaimed super money transferred to the ATO. The standards may require more information than required in the Member Information Statement. For example, the ATO Rollover User Guide requires preservation components as mandatory fields.

From 1 July 2019, as part of the protecting your super package of reforms a new category of superannuation accounts (inactive low balance accounts) must be transferred to the ATO. See '6. Inactive low balance accounts' below for more information.

From 29 March 2021, super providers may also make Trustee Voluntary Payments (TVPs) to the ATO under the SUMLM Act. See' 7. Trustee voluntary payments' below for more information. All remaining balances of Eligible Rollovers Funds also had to be transferred to the ATO by 31 January 2022 under Part 3C of the SUMLM Act.

What is unclaimed super?

Under the SUMLM Act, there are seven categories of members whose superannuation may be deemed unclaimed as detailed below.

1. Member age over 65

An amount payable to a member age 65 or over is taken to be unclaimed money if:

- the fund has not received an amount in respect of the member within the last two years, and
- after the end of a period of five years since the fund last had contact with the member, the fund has been unable to contact the member again after making reasonable efforts.

2. Non-member spouse

An amount payable to a non-member spouse is taken to be unclaimed money if:

- a payment split applies to a member's splittable payment, and
- as a result, the non-member spouse is entitled to be paid an amount, and
- after making reasonable efforts and after a reasonable period has passed, the fund concerned is unable to ensure that the non-member spouse receives the amount.

3. Deceased member

An amount payable in respect of a member is taken to be unclaimed money if:

- the member has died, and
- the fund determines that a benefit (other than an income stream) is immediately payable in respect of the member, and
- the fund has not received an amount in respect of the member within the last two years, and
- after making reasonable efforts and after a reasonable period has passed, the fund is unable to ensure that the benefit is received by the person who is entitled to receive the benefit.

4. Former temporary resident

A former temporary resident's benefit becomes unclaimed super if:

- the member held an eligible temporary visa that has ceased to be in effect and the member left Australia after starting to hold the visa, and
- the member is not currently the holder of a temporary visa, a permanent visa or a prescribed visa, and
- the fund was notified by the ATO (written notice) to transfer the unclaimed super account, and
- the member is neither an Australian nor a New Zealand citizen and has not made a valid application for a permanent visa, and
- at least six months has passed since the later of:
  - the visa ceasing to be in effect
  - the member leaving Australia.

5. Small or insoluble lost member accounts

A lost member account of a fund is taken to be unclaimed super if:

- it does not relate to a defined benefit interest, and
- the member is a 'lost member' (see below), and either
  - the balance is less than $6,000 (**small lost member account**), or
  - the fund has not received an amount in respect of the member within the last 12 months and the fund is satisfied that it will never be possible to pay an amount to the member (**insoluble lost member account**).

The ATO has indicated that, as a general rule, if the fund has or can reasonably obtain (e.g. from an employer who previously contributed) at least two complete pieces of quality information about the member, this could enable them to determine and verify the member's identity and therefore pay an amount to the member. However, the decision as to whether sufficient information is held is ultimately up to the fund.

Definition of lost member

A member is taken to be a lost member if they are either **uncontactable** or **inactive**:

Uncontactable lost member

A member will be considered uncontactable if:

- either the fund has never had an address (electronic or non-electronic) for the member, or the fund has made one or more attempts to send written communications to the member at the member's last known address, and the fund believes, on reasonable grounds, that the member can no longer be contacted at any address known to the fund, and
- the member has not contacted the fund within the last 12 months, and
- the member has not accessed details about their interest in the fund from any electronic facility of the fund (e.g. by logging into fund's website) within the last 12 months, and
- the fund has not received a contribution or rollover in respect of the member within the last 12 months.

Inactive lost member

A member will be considered inactive if:

- the individual joined the fund as a standard employer-sponsored member more than two years ago, and
- the fund has not received a contribution or rollover in respect of the member within the last five years.

How to prevent becoming a lost member

A member can be permanently excluded from becoming a lost member in the following circumstances:

- an inactive member indicating by positive act (e.g. deferring a benefit in the fund) that they wish to continue to be a member of the fund
- a member contacting the fund at any time after they joined and indicating that they wish to continue being a member of the fund
- the member being a member of a self-managed super fund.

Importantly, while the above actions will prevent a member from being deemed a lost member, they will not necessarily prevent one of the other categories of unclaimed money from applying to the account (i.e. unclaimed money categories), which do not require the member to have met the definition of a lost member.

6. Inactive low-balance accounts

A super account is an inactive low-balance account if all of the following criteria are met on an unclaimed money day:

- no contribution or rollover has been received for a continuous period of 16 months
- the account balance is less than $6,000
- the member has not met a prescribed condition of release[44]
- the account is not a defined benefit account
- there is no insurance on the account
- the fund is not an SMSF or small APRA fund.

How to prevent an account becoming an inactive low-balance account

An inactive low-balance account held by a regulated super fund is deemed to be active if any of the following have occurred within the last 16 months:

- the member changed their investment options
- the member changed their insurance coverage
- the member made or amended a binding beneficiary nomination[45]
- the member provides a written election notice to their superannuation fund that their account is not an inactive low-balance account
- the member makes a contribution or rolls over an amount to the fund.

7. Trustee voluntary payments

A superannuation provider may pay the ATO any amount it holds on behalf of a member, former member or non-member spouse if it reasonably believes paying the amount to the ATO is in the best interests of the member, former member or non-member spouse.

The most likely use of TVPs for super funds will be where they would have previously transferred the amount to an eligible rollover fund. Super funds have been unable to transfer amounts to eligible rollover funds since 1 May 2021 and eligible rollover funds have since transferred all existing benefits to the ATO by 31 January 2022.

44 The prescribed conditions of release are retirement, death, terminal medical condition, permanent incapacity, reaching age 65 and reaching preservation age.

45 In its Unclaimed superannuation money protocol, the ATO indicates that both valid binding nominations and non-lapsing nominations are considered binding beneficiary nominations for this purpose.

What are the implications of a member's super becoming unclaimed money?

Many accounts that are transferred to the ATO are small balances, which may benefit from being transferred, as fees and insurance premiums are no longer incurred and the ATO can automatically consolidate amounts it holds on the member's behalf with any active accounts a member may have (see next section).

The biggest risk to members is that the fund will cancel any existing insurance coverage on transfer to the ATO. Should the member later seek to apply for the same level of cover, due to their increased age and potential changes in medical history, they may not be offered a policy and/or be subject to higher premiums and/or exclusions.

Additionally, a member's benefits will no longer be invested in line with their previous investment choice/default option, causing them to miss out on the potential for future capital growth and earnings. The ATO's payment of interest at the rate of CPI has ensured members' balances will not go backwards in real terms; however even the most defensive investment strategies in complying super funds would be expected to outperform CPI over the medium to long term.

Automatic consolidation of super by the ATO

The ATO is permitted to pay amounts held on behalf of a member to an active account of the member, where the reunited account balance will be $6,000 or more. Those amounts are made up of amounts paid to the ATO as unclaimed money, inactive low-balance accounts and lost member accounts.

In addition to the requirement that the reunited account balance will be $6,000 or more, the fund receiving the reunited amount must have received a contribution or rollover for the member within the previous financial year or the days in the current financial year before the ATO makes the payment to the fund. This is to ensure that the account for the person is considered active.

Hierarchy of factors

Where a member has more than one active account, the ATO must consider the following factors in determining into which account to pay the amounts:

- First, the ATO pays the amount to a fund that the ATO has made a payment to during the current financial year for the person.
- Second, the ATO pays the amount to the fund that received the most recent contribution during the previous or current financial year, based on the contribution information reported by funds to the ATO.
- Third, the amount is paid to the fund that had the largest account balance for the member at the end of the previous financial year.
- Finally, the ATO has the discretion to determine the fund that the amount is to be paid to.

These changes do not replace the existing consolidation processes which remain available to members.

Searching for lost super

Individuals can check their super using ATO online services through myGov or by completing the 'Searching for lost super' form (NAT 2476) on the ATO website.

The myGov website can assist members in quickly searching for and locating:

- active accounts
- inactive accounts (no contributions made during the past 12 months)
- lost accounts
- pension accounts
- ATO-held super (e.g. unclaimed super).

SuperMatch is a similar system that can be used by super funds (with a member's consent) to locate and consolidate multiple superannuation accounts on the member's behalf.

Further information about these facilities can be found at www.ato.gov.au

8 Preservation and conditions of release

8.1 Preservation

Benefits are generally preserved (i.e. not accessible) in super until a condition of release has been met. Where a trustee of a regulated super fund or an ADF is reasonably satisfied that a member has met a condition of release with a nil cashing restriction, the member's preserved benefits and restricted non-preserved benefits in the fund at that time become unrestricted non-preserved benefits (i.e. accessible).

The preservation rules below are the minimum standards required. The governing rules of a super fund may impose stricter rules.

Preserved amounts

The preserved component of a member's benefit may comprise one or more of the following:

- preserved amounts which are fixed dollar amounts as at 30 June 1999
- contributions from 1 July 1999
- rolled over preserved amounts
- ETP rollovers from 1 July 2004 to 30 June 2007
- directed termination payments from 1 July 2007 to 30 June 2012
- all fund earnings from 1 July 1999 (excluding earnings in retirement phase income streams).

Restricted non-preserved (RNP) amounts

The RNP component of a member's benefit may comprise one or more of the following:

- RNP amounts which are fixed-dollar amounts as at 30 June 1999 (generally voluntary employer and undeducted contributions made before 1 July 1999. These amounts are not indexed and any earnings on these benefits are preserved)
- transferred or rolled over RNP amounts (subject to the rules of the receiving fund or RSA).

RNP amounts do not apply to any contributions made after 30 June 1999.

To access restricted non-preserved amounts, a condition of release must be met. In addition to the standard conditions of release with a nil cashing restriction (e.g. retirement), an additional condition of release is available. To meet this additional condition of release, members must terminate gainful employment with an employer who has contributed to the same super fund prior to the member's termination of employment. Upon meeting this condition of release, the RNP benefits become unrestricted non-preserved.

Unrestricted non-preserved (UNP) amounts

If a condition of release with a nil cashing restriction is satisfied, the benefits accrued at that time will become UNP amounts and can be accessed at any time. The benefits can be taken in cash, or as a pension or rolled over to commence an annuity. However, any further benefits that accrue in accumulation phase after the time that the condition of release was satisfied will be preserved benefits until a further condition of release with nil cashing restrictions has been satisfied.[46]

If UNP amounts are rolled over to another super fund or RSA, they will generally continue to remain unrestricted subject to the rules of that super fund or RSA.

Priority of preservation components upon withdrawal

Where a member has satisfied a condition of release with a nil cashing restriction, all of their benefits in the fund will become unrestricted non-preserved. Where a member has instead satisfied a condition of release with a cashing restriction, their benefits may consist of preserved benefits, restricted non-preserved benefits and/or unrestricted non-preserved benefits. Where this is the case, any benefits that are cashed must be taken from:

- unrestricted non-preserved benefits, then
- restricted non-preserved benefits, then
- preserved benefits.

Cashing refers to the payment of benefits from the super system. For details of how benefits may be treated where a transition to retirement pension is commenced, see section 16.2.

46 Excludes where a member has reached age 65, as they will continually satisfy this condition of release at all times in the future.

8.2 Preservation age

2024–25 marked the end of the gradual increase in preservation age from 55 to 60.

Any member who reaches age 60 in 2024–25 or a future financial year has a preservation age of 60.

Older members have a preservation age from 55 to 59 as shown in the following table (which they have already reached in a previous financial year).

Date of birth	Preservation age	Financial year preservation age reached
Before 1 July 1960	55	2014–15 or earlier
From 1 July 1960 to 30 June 1961	56	2016–17
From 1 July 1961 to 30 June 1962	57	2018–19
From 1 July 1962 to 30 June 1963	58	2020–21
From 1 July 1963 to 30 June 1964	59	2022–23
On or after 1 July 1964	60	2024–25 or later

8.3 Conditions of release with 'nil' cashing restrictions

Summary table

Retirement on or after preservation age
Attaining age 65
Death
Permanent incapacity
Termination of gainful employment (restricted non-preserved benefits only)
Terminal medical condition
Termination of gainful employment with a standard employer-sponsor of the regulated super fund on or after 1 July 1997 where the member's preserved benefits in the fund at the time of the termination are less than $200
Being a lost member who is found, and the value of whose benefit in the fund, when released, is less than $200
Severe financial hardship – Test 2 (see section 8.10)

8.4 Retirement condition of release

The retirement condition of release is somewhat simplified from 1 July 2024. This is due to preservation age, which has been gradually increasing, now reaching age 60 (that is, anyone who reaches their preservation age on or after 1 July 2024 has a preservation age of 60).

In the case of a member who has reached age 60, the retirement condition of release is satisfied where either:

- an arrangement under which they were gainfully employed has come to an end after they reached age 60, or
- an arrangement under which they were gainfully employed has come to an end (this can be at any time in the past), and the trustee is reasonably satisfied that the member intends never to again become gainfully employed for 10 hours or more each week.

In previous financial years, the retirement condition of release was also satisfied where a member had reached preservation age but was under age 60, an arrangement under which they were gainfully employed had come to an end and the trustee was reasonably satisfied that the person intended never to again become gainfully employed for 10 hours or more each week. However, from 1 July 2024 this separate 'under 60' definition is no longer relevant as:

- preservation age has effectively increased to 60 (see above), and
- anyone who had previously reached a preservation age of less than 60 has since reached age 60

Retirement condition of release frequently asked questions

Question 1: A member has reached age 60 (their preservation age) and intends to reduce their working hours to less than 10 per week. Their current employment arrangement is the only job they have ever had. Will they meet the retirement condition of release?

Answer: No. The member must satisfy two conditions to meet the retirement condition of release:

- they have ceased a gainful employment, and
- they intend not to become gainfully employed for 10 or more hours per week in the future.

Although the member has reduced their work hours, they have not ceased a gainful employment arrangement and therefore do not meet the retirement condition of release.

Question 2: A member has reached age 60 (their preservation age) and intends to reduce their working hours to less than 10 each week. They have changed jobs numerous times throughout their career. Will they meet the retirement condition of release?

Answer: Yes. The retirement condition of release can be satisfied where a member aged 60 has ceased to be gainfully employed and the trustee is satisfied they intend never to again become gainfully employed for 10 or more hours per week. There are no superannuation law requirements governing how recently the cessation must have occurred , and this can occur at any time, including prior to their preservation age.[47]

However, it would be prudent for the member to retain evidence that they were previously gainfully employed to assist in substantiating that they satisfy this condition of release. For example, this could include copies of old payslips, tax returns (that show employment income), a termination letter from their employer or copies of old employment contracts.

Question 3: A member has reached age 60 (their preservation age) but has never before been gainfully employed. Can they meet the retirement condition of release?

Answer: No. While there are two ways of meeting a retirement condition of release, a key requirement to both is that the member ceases a gainful employment arrangement.

In the member's situation, this is not currently possible and they would therefore need to rely on a different condition of release in order to access preserved and restricted non-preserved super benefits (e.g. reaching age 65).

Question 4: A member reached their preservation age of 59 a couple of years ago and met the retirement condition of release at that time (including making a declaration that they intended not to become gainfully employed for 10 or more hours per week in the future) and converted their entire super benefits into an account based pension. However, due to a change of circumstances, they have now decided to go back to full-time work. Will their account based pension become preserved again?

Answer: No. Once the retirement condition of release has been met, all benefits accrued by the member at that point become unrestricted non-preserved. This condition of release is satisfied by the fund trustee looking at the member's intention regarding future work at that point in time (a declaration by the member is generally required).

47 This has been confirmed by APRA in paragraph 66 of APRA former Superannuation Circular I.C.2 (September 2006). While the Circular is no longer current, there is no indication that APRA's view has changed since that time. This has also been confirmed by the ATO in Guidance Note GN 2019/1.

If a member made a genuine declaration that they intended not to be gainfully employed for 10 or more hours per week but, due to a change in circumstances that was unanticipated at the time of making the declaration, they start working for 10 or more hours per week, their account based pension will remain unrestricted non-preserved and fully accessible. However, any new contributions and super benefits accrued since they met the condition of release will be preserved until a new condition of release has been satisfied.

Question 5: A member is a self-employed sole trader who has just reached age 60 (their preservation age). Their self-employment involves contracting to provide services to many different businesses and they often pay others to assist in the delivery of these services. They have just finished a contract to provide services to one particular business and are not undertaking any work at present. Can they meet the retirement condition of release on the basis that they have ceased a gainful employment arrangement?

Answer: No. For members who are genuinely self-employed, a gainful employment arrangement involves their entire self-employment arrangement. Each instance where services are provided is simply part of their overall arrangement and, therefore, the member will not cease a gainful employment arrangement each time the provision of services to a particular business comes to an end.

For a self-employed member who has already reached age 60, the retirement condition of release will be met when their entire self-employment arrangement ends (e.g. their business is wound up). Note this assumes the member cannot satisfy the retirement condition of release another way (i.e. they have previously ceased a different gainful employment arrangement and can now declare that they intend to never again become gainfully employed for 10 or more hours each week).

Question 6: A member is a self-employed sole trader age 60. Their self-employment involves contracting principally to provide their labour to many different businesses and they are paid based on hours worked. They have just finished providing contracting to one particular business and are not undertaking any work at present. Can they meet the retirement condition of release?

Answer: Because the member is involved in contracts that principally involve them providing their labour and being paid for hours worked, it is likely that (unlike the previous question) each contract they enter into with a different business would be viewed as a separate gainful employment arrangement and they would be considered an employee of each business for SG purposes. It is, therefore, likely that the member would meet the retirement condition of release when one contract ends, even if they intend to continue contracting to other businesses.

Question 7: A member has reached age 60 and has two employment arrangements – one full-time position and a part-time weekend job. Will they meet the retirement condition of release by ceasing one of these arrangements?

Answer: Yes. Where a member has reached age 60, they meet the retirement condition of release simply by ceasing a gainful employment arrangement after reaching age 60. The fact that they might have other employment arrangements that continue is not relevant. The member could therefore meet the retirement condition of release, for example by simply ceasing the part-time weekend job. Note that while this action would cause all superannuation benefits that accrued up to that point to become unrestricted non-preserved, any future contributions and earnings related to the member's continuing employment would be preserved until a further condition of release is satisfied.

Question 8: A member has reached age 60 and is employed as a salesperson. They have been offered a promotion within the company to sales manager. Would this change in position mean that they will satisfy the retirement condition of release?

Answer: While the member's employment arrangement at the company is changing, there is an agreement or understanding at that time that they will continue to be gainfully employed by the company. The member is therefore unlikely to have ceased a gainful employment arrangement (even though it has changed) and therefore would likely not satisfy the retirement condition of release.

Question 9: A member has reached age 60 and is employed as a salesperson. As a lifestyle change, they agreed with their employer to change to a part-time administration position at significantly reduced pay. Would this change in position mean that they will satisfy the retirement condition of release?

Answer: As with the previous question, while the member's role at the company is changing, there is an agreement or understanding at the time that they will continue to be gainfully employed by the company in the future. The member is, therefore, unlikely to have ceased a gainful employment arrangement and would likely not satisfy the retirement condition of release.

Question 10: A member has reached age 60 and is employed as an IT consultant. To provide flexibility for both themselves and their employer, they have decided to terminate their employment as a full-time employee and immediately rehire them as a contractor. Will this change mean that the member will satisfy the retirement condition of release?

Answer: While the member's contract has certainly ended, there is at that time an agreement or understanding that they will continue to provide services to the company for gain or reward. The member is therefore unlikely to have ceased a gainful employment arrangement and would likely not satisfy the retirement condition of release.

Question11: A member is age 60 and works full-time. However, they are going on one year of unpaid leave. Will they meet the retirement condition of release because they are not going to receive any salary or wages during the unpaid leave period?

Answer: While the member may not be receiving salary, wages or other payments during the time they are away from work on unpaid leave, there has been no end to their overall employment arrangement, which involves working for gain or reward. They would therefore not meet the retirement condition of release.

Question 12: A member is age 60 and is a director of a private company. Will they meet the retirement condition of release if they resign their directorship?

Answer: The answer to this question depends on whether resigning from being a director of company constitutes cessation of a gainful employment arrangement. While a director of a company is not considered to be an employee for common law purposes, section 15A of the SIS Act expands the meaning of 'employee' for superannuation purposes to include company directors who are entitled to payment for the performance of their duties. Therefore, if the member is entitled to receive, and does actually receive, payment or reward for the performance of the directorship duties and that arrangement has now come to an end, the member would satisfy the retirement condition of release. Note, a director is generally not entitled to be paid for their services unless specifically permitted under the company's constitution or it has been approved in a shareholder resolution. Practically speaking, the member should have clear evidence that they have received payment as well as the cessation of the directorship.

ATO case study on whether gainful employment has ceased

The ATO has published the following case study on its website to assist trustees when deciding whether a member's gainful employment arrangement has ceased.

Case study scenario

Charlie is age 57 and a beneficiary of the Crackle discretionary trust (Crackle). Crackle carries on a smash repairs business. Charlie has been an employee of Crackle for nearly 20 years. For the 2016 income year, Charlie ceases his employment with Crackle. He is paid out any accumulated leave entitlements owed to him.

Charlie no longer has an employment contract with either Crackle or any other entity (related party or arm's length). However, after Charlie's employment has ceased, he continues to perform substantive duties for Crackle (much the same as when he was an employee). Charlie receives distributions of trust income from Crackle.

The ATO's comments

The ATO's view is that where a business is operated through a family trust or private company, they may need to have a closer look at the arrangement before they can determine whether the retirement condition of release is satisfied. Any evidence indicating that the individual is still performing substantive duties could indicate there is an ongoing relationship between the two. It would be unusual for a private business to allow someone who is not employed or contracted to assist in running the business, without an agreement or understanding in place.

In this case study, if Charlie's work lead to increased turnover for the business, resulting in larger trust distributions or a disproportionate increase in dividends, the Commissioner could take a view that the arrangement under which Charlie was gainfully employed has not come to an end as he is still receiving gain or reward from distributions from the Crackle Discretionary Trust.

8.5 Permanent incapacity

Definition of permanent incapacity

Permanent incapacity, in relation to a member, means ill health (whether physical or mental), where the trustee is reasonably satisfied that the member is unlikely, because of the ill health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

To be reasonably satisfied, a trustee will usually request medical evidence in the form of two doctors' certificates to that effect. This is to also satisfy the requirement for the payment of a disability super benefit (see section 9.4).

The SIS definition of permanent incapacity above is sometimes referred to as an 'any occupation' definition of permanent incapacity because it relates to gainful employment 'for which the member is reasonably qualified by education, training or experience'.

It is important to note that it is not a requirement of the permanent incapacity condition of release that the client ceases a gainful employment arrangement. Prior to 1 July 2007 this was a requirement however it was removed. This was an important change as it allows clients who have never worked to meet the permanent incapacity condition of release.

Total and permanent disability (TPD) insurance

A product disclosure statement (PDS) will usually state a definition of TPD for insurance purposes (for the actual wording of the definition, refer to the insurance contract). An insurer will determine the definition of TPD which may be an 'any occupation' or 'own occupation' definition.

Any occupation versus own occupation insurance definitions of TPD

An insurer generally defines TPD in one of two ways:

- Any occupation – the insurer may define TPD as circumstances which leave a person unable to engage in gainful employment in any occupation for which the member is reasonably qualified by education, training or experience (any occupation). The probability of an insurance payout under this definition is lower than an own occupation definition, but is more compatible with the SIS permanent incapacity condition of release.
- Own occupation – the insurer may define TPD as various circumstances which leave a person unable to work again in their own occupation they held just prior to total and permanent disablement. The probability of an insurance payout under this definition is higher than an any occupation definition, but is less compatible with the SIS condition of release.

If TPD insurance is held in super, regardless of whether a person has met the insurer's definition of TPD, it will be the SIS definition of permanent incapacity which must be met to release the proceeds from super. The SIS definition of permanent incapacity is an any occupation definition. This means that if a member has satisfied an own occupation definition of TPD, the insurer may pay the insured benefit into the member's superannuation account, but the trustee may not be able to cash out the benefit if the member does not satisfy the broader SIS definition of permanent incapacity as it is an any occupation definition.

> **Note**
>
> From 1 July 2014, new personal insurance policies within super are only allowed to the extent that they align with the death, terminal illness, permanent incapacity or temporary incapacity condition of release. Refer to section 11 for further details.

8.6 Termination of gainful employment (restricted non-preserved amounts)

There are no cashing restrictions for restricted non-preserved benefits where a member terminates gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the regulated super fund in relation to the member.

8.7 Terminal medical condition

A 'terminal medical condition' exists in relation to a person at a particular time if the following circumstances exist:

- Two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period that ends not more than 24 months after the date of certification.
- At least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person, and
- For each of the certificates, the certification period has not ended.

For more information on the tax treatment of terminal medical condition payments, refer to section 9.3.

Terminal illness condition of release frequently asked question

Question: My client is terminally ill and satisfies the 'terminal medical condition' condition of release. Is she restricted to withdrawing her super benefits as a lump sum?

Answer: No. The 'terminal medical condition' condition of release is a full condition of release that converts all of a member's benefits to unrestricted non-preserved benefits. Your client can therefore choose to take a lump sum, income stream or a combination. However, it is important to check with the trustee of the member's super fund as they may impose additional restrictions.

It is important to note that from a tax perspective, there is a difference in the tax concessions available. Lump sum super withdrawals for terminally ill members are specifically excluded from being taxed (regardless of the member's age), whereas income streams are subject to normal super income stream taxation.

8.8 Conditions of release with cashing restrictions

Summary table

Former temporary residents departing Australia
Severe financial hardship (trustee decision) – Test 1 (see section 8.10)
Compassionate grounds (application to the ATO)
Termination of gainful employment (preserved amounts)
Temporary incapacity
Attaining preservation age (transition to retirement – see section 16 for further details)
A release authority is given to the fund by the member or by the ATO. The amount released may be no more than the amount specified in the release authority.

8.9 Temporary residents and conditions of release

Where a member is a current or former temporary resident (and is not an Australian citizen or permanent resident, or New Zealand citizen, or the holder of a Subclass 405 Investor Retirement visa or a Subclass 410 Retirement visa), they can only satisfy one of the following conditions of release:

- former temporary resident departing Australia
- unclaimed money payments
- death
- terminal medical condition
- permanent incapacity
- temporary incapacity
- where the trustee is given a release authority (e.g. for the release of excess contributions)
- any other condition of release satisfied prior to 1 April 2009.

Different tax treatment may also apply to withdrawals by temporary residents; for example, the withdrawal of benefits by a former temporary resident departing Australia is taxed as a Departing Australia Super Payment.

See section 13.3 for information about the conditions of release and taxation of benefits that apply to temporary residents.

8.10 Severe financial hardship

A person's severe financial hardship status is assessed by the fund trustee or RSA provider. There are two tests, either of which can be met to qualify under severe financial hardship. Persons who have reached their preservation age plus 39 weeks and have been receiving income support for more than 39 weeks can use either Test 1 or Test 2.

Test 1

Based on written evidence provided by a Commonwealth department or agency:

- the person has received Commonwealth income support payments for a continuous period of at least 26 weeks
- the person was in receipt of those payments at the time of application, and
- the person is unable to meet reasonable and immediate family living expenses.[48]

48 This requirement is a subjective test assessed by the fund trustee. APRA has issued guidelines to all trustees on what may be considered to be 'reasonable and immediate family living expenses'.

Test 2

The person has reached preservation age plus 39 weeks and:

- based on written evidence provided by a Commonwealth department or agency, the person has received Commonwealth income support payments for a cumulative period of 39 weeks after the person has reached their preservation age
- is not gainfully employed on either a part-time or a full-time basis on the date of the application.

> **Note**
>
> Examples of Commonwealth income support payments include JobSeeker Payment and Disability Support Pension. It excludes Youth Allowance where the recipient is in full-time study, Austudy and Family Tax Benefit payments.

Cashing restrictions for severe financial hardship

If a person meets the tests for severe financial hardship, the amount they can access from super is restricted as follows:

- for a person qualifying under Test 1 – the amount released from super in each 12-month period must be a single lump sum not less than $1,000 and not more than $10,000, and
- for a person qualifying under Test 2 – there are no cashing restrictions.

Taxation of payments made under severe financial hardship

The payments made under the severe financial hardship Test 1, and Test 2 (assuming the withdrawal is paid as a lump sum), condition of release, are subject to the normal superannuation lump sum tax. See section 9.2 for further detail.

Severe financial hardship condition of release frequently asked questions

Question 1: A member (age 50) has been in receipt of JobSeeker Payment for the past 26 continuous weeks. However, they have ample cash reserves and are not struggling to meet their daily living expenses. Can they access some of their superannuation benefits under the severe financial hardship condition of release?

Answer: No. For a member aged under preservation age plus 39 weeks, one of the requirements in satisfying the severe financial hardship condition of release is that a member must be unable to meet reasonable and immediate family living expenses.

While this condition of release allows payments of up to $10,000 per 12-month period, benefits would likely only be released by a fund to the extent that they are required to meet reasonable and immediate family living expenses. The member would therefore be unlikely to qualify for a release of benefits under the severe financial hardship condition of release.

Question 2: A member (age 61) has been in receipt of JobSeeker Payment for the past year. However, they have ample cash reserves and are not struggling to meet their daily living expenses. Can they access some of their superannuation benefits under the severe financial hardship condition of release?

Answer: Yes. For members who are at least preservation age plus 39 weeks, the severe financial hardship condition of release is simply met by the member receiving an eligible Commonwealth income support payment for a total of 39 weeks since reaching preservation age, as well as not being employed for 10 or more hours per week when applying to access benefits. Unlike for younger members, there is no requirement in this situation to be unable to meet certain family living expenses. Where a member who has reached preservation age plus 39 weeks satisfies Test 2 of the severe financial hardship condition of release, all benefits become unrestricted non-preserved.

8.11 Compassionate grounds

A person may apply to the Australian Taxation Office (ATO) for a determination that an amount of preserved or restricted non-preserved superannuation benefits may be released on the grounds that it is required for one of the following unpaid expenses:

- medical treatment or medical transport for the person or a dependant, or
- a payment on a loan to prevent foreclosure of a mortgage on the person's principal place of residence, or
- to modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability, or
- expenses associated with the person's palliative care, in the case of impending death, or
- expenses associated with a dependant's:
    - palliative care, in the case of impending death, or
    - death, or
    - funeral, or
    - burial.

If the money is required for medical treatment, the person must provide the ATO with medical certificates from two registered medical practitioners (at least one of whom must be a specialist) certifying that:

- the medical treatment is necessary to:
  - treat a life threatening illness or injury, or
  - alleviate acute or chronic pain, or
  - alleviate an acute or chronic mental disturbance, and
- the treatment is not readily available to the person, or the dependant, through the public health system.

In all cases, when applying for early release of super on compassionate grounds, the individual must be able to demonstrate and satisfy the ATO that they do not have the financial capacity to meet the relevant expenses.

To apply for the release of super benefits on specified compassionate grounds:

1 Check whether the superannuation fund trustee allows for the release of super benefits on compassionate grounds.

2 Apply directly to the ATO via myGov. If a member is unable to apply online, they may contact the ATO to request an application form.

3 If the application is approved, the ATO will notify the member by sending a message to their myGov inbox, and will notify the member's superannuation fund directly.

4 Apply to the super fund to release the funds by providing a copy of the ATO approval letter and any other documentation the trustee requires. Note that although the ATO must be satisfied that an application meets the criteria for early release of super, the final decision to pay out the benefit must be made by the trustee of the super fund.

5 Pay expenses with the released amount and keep receipts as evidence.

Accessing super to repay borrowed amounts for eligible expenses

Where a client or their dependant borrowed money to pay for an eligible expense, and doesn't have the capacity to repay the borrowed amount, the client may be eligible for a release of super under compassionate grounds to repay the borrowed amount.

For this purpose, a borrowed amount is a debt that was incurred to pay an eligible expense where a balance is outstanding and has a requirement to be repaid. Examples could include amounts borrowed from family and friends, amounts borrowed from a commercial lender, credit card debts and amounts owed to 'pay later' services.

The ATO will consider approving the release of benefits on compassionate grounds where the client satisfies all of the following conditions:

- The client otherwise satisfies all of the eligibility conditions to access their super on compassionate grounds.
- The client or their dependant borrowed money for the purposes of paying for the expense.
- The borrowed amount was used to pay for the expense.
- The borrowed amount remains outstanding in part or full.
- The client doesn't have the financial capacity to repay the outstanding balance of the borrowed amount in accordance with the terms agreed to.

For further information about release of benefits on compassionate grounds to repay borrowed amounts, see the ATO page 'Access on compassionate grounds – what you need to know' at www.ato.gov.au.

Cashing restrictions under compassionate grounds

The amount released from super for someone meeting the compassionate grounds condition of release must be:

- a single lump sum, not exceeding an amount that is reasonably required, and
- in the case of preventing foreclosure on a mortgage on a principal home, the amount released in each 12-month period must not exceed three months of repayments plus 12 months of interest.

FirstTech understands that the ATO determination generally specifies the net amount approved for release, with any tax withheld or fees deducted separately from the member's account. It is unclear if this approach will always apply in the case of a release to prevent foreclosure on the mortgage of a principal home (due to the statutory limit on the amount that can be released).

Compassionate grounds condition of release frequently asked questions

Question 1: A member (age 45) is unable to meet their daily living expenses and wishes to access some of their preserved super benefits. However, they cannot satisfy the severe financial hardship condition of release as they have not received an eligible Commonwealth income support payment. Can they access their super benefits under the compassionate grounds condition of release?

Answer: The compassionate grounds condition of release (applied for directly to the ATO) can only allow preserved superannuation benefits to be accessed in very limited circumstances, including:

- to pay for medical treatment or transport for a member or their dependant
- to enable loan repayments to prevent foreclosure of a member's principal place of residence
- to pay for modifications to a member's home or vehicle to accommodate the needs of a member or dependant with a severe disability, or
- to pay for costs associated with a member's palliative care, or a member or dependant's death, funeral or burial.

Assuming the expenses that the member is unable to pay are general living expenses, it is unlikely that they will be able to access super benefits under this condition of release.

Question 2: A member's principal home is at risk of foreclosure because they are unable to continue meeting minimum mortgage repayments. Will they be able to access enough benefits under the compassionate grounds condition of release to pay off their mortgage?

Answer: No. The compassionate grounds condition of release allows access to preserved super benefits to prevent foreclosure on a principal home. However, the amount of benefits that can be released is limited to three months of repayments and 12 months of interest for the existing loan in each 12-month period.

The member may, therefore, be able to apply to have some benefits released to enable continued repayments, but will not be able to access benefits to enable complete repayment of the loan.

8.12 Termination of gainful employment (preserved amounts)

Preserved amounts must be taken as a non-commutable life pension or non-commutable life annuity where a member has terminated gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the regulated super fund in relation to the member.

There are no cashing restrictions for restricted non-preserved benefits under this condition of release (refer to section 8.3).

8.13 Temporary incapacity

A superannuation fund may pay a benefit to a member suffering temporary incapacity. This condition of release is commonly applied to Salary Continuance Insurance (SCI) held within superannuation. Benefits released under this condition of release cannot include a member's member financed benefits or mandated employer financed benefits. Temporary incapacity is where the member:

- has ceased to be gainfully employed, or
- has temporarily ceased to receive income under a continuing gainful employment arrangement, and
- is suffering physical or mental ill health that caused the member to cease to be gainfully employed, and
- is not permanently incapacitated.

Consequently, the temporary incapacity condition of release does not generally apply to a member's accrued benefits, but instead is the mechanism which allows fund trustees to release salary continuance payments to eligible members.

Cashing restrictions for temporary incapacity

The amount of super released under temporary incapacity must be taken as an income stream (with specific restrictions) cashed from the regulated super fund for:

- the purpose of continuing (in whole or part) the gain or reward which the member was receiving before the temporary incapacity, and
- a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity.

For policies taken out prior to 1 July 2014, this condition of release may not be satisfied even though the member is successful in claiming on their SCI policy (e.g. if the member was on unpaid leave or unemployed immediately prior to temporary incapacity).

This could result in the insurance proceeds being trapped in the superannuation fund and unable to be paid directly to the member. This issue should not arise for new policies taken out on or after 1 July 2014, as new policies within super are only allowed to the extent that they align with the death, terminal illness, permanent incapacity or temporary incapacity condition of release. Refer to section 11 for further details.

Income stream restrictions under temporary incapacity

For the purposes of accessing super under temporary incapacity, the income stream must meet all of the following requirements:

- cannot be commuted
- is paid at least monthly
- does not have a residual capital value
- the total amount paid each month is fixed or varies during any period of 12 months by no more than:
  - 5% pa or
  - consumer price index (CPI).

Temporary incapacity condition of release frequently asked question

> Question 1: My client has taken out an income protection insurance policy through his super fund prior to 1 July 2014. As well as replacing salary, this policy also provides for an additional lump sum rehabilitation benefit to be paid by the insurer. Will my client be able to withdraw any rehabilitation benefit received by the fund?

Answer: The temporary incapacity condition of release only allows for the payment of a non-commutable income stream to continue (in whole or part) the income the member was receiving prior to becoming incapacitated. The lump sum withdrawal of an additional rehabilitation benefit would not comply with this condition of release and it is likely that such a benefit could not be withdrawn by the member.

8.14 First home super saver (FHSS) scheme

Overview

From 1 July 2017, individuals can make voluntary concessional and non-concessional contributions into super and have them released to help pay for their first home.

The key benefit of saving for a deposit using the FHSS scheme is concessional taxation.

People saving for their first home are able to make the following voluntary contributions under the FHSS scheme:

- non-concessional contributions
- personal deductible contributions
- salary sacrifice (and any other non-mandated employer contributions).

To be eligible to request an FHSS determination from the ATO (the first step in releasing superannuation under the FHSS scheme), the member must:

- be age 18 or over, and
- never have held any of the following (unless the ATO determines the member has suffered a financial hardship):
  - a legal interest in an estate in fee simple in real property in Australia
    - Note: This is the most common type of real property ownership in Australia and transfers to a purchaser on registration of their interest in real property with the relevant land title office following settlement of a property sale contract.
  - certain long-term leasehold of land in Australia
  - a company title interest in land in Australia, and
- have not previously requested a release of super benefits under the FHSS scheme (there are some limited exceptions, see 'Revoking and amending FHSS scheme determinations and release requests' later in this section).

This eligibility criteria ensures that funds are used to purchase a member's first home. If the member has previously owned property, including investment property, commercial property or vacant land, they will not be eligible to use the scheme (unless the ATO determines the member has suffered a financial hardship).

Financial hardship provision

The member may still be eligible, even if they have previously owned property in Australia, if the ATO determines that they have suffered a financial hardship that resulted in a loss of ownership of all property interests. The types of events that could result in the loss of property interests include:

- bankruptcy
- divorce, separation from a de facto partner or a relationship breakdown
- loss of employment
- illness
- being affected by a natural disaster
- being eligible for early access to superannuation.

The member can apply online via their myGov account linked to the ATO service, or by completing a FHSS scheme – hardship application form.

Interestingly, if buying a property with another person, the member is not precluded from using FHSS scheme if the other person has previously owned property.

Eligible contributions

Contributions that can be released under the scheme are limited to $15,000 in any one financial year and $50,000 across all years.

The following types of voluntary superannuation contributions made since 1 July 2017 qualify:

- personal non-concessional contributions
- personal tax deductible contributions
- salary sacrifice (and any other non-mandated employer contributions).

Note that superannuation guarantee, contributions required by legislation or fund rules, spouse contributions, child contributions, structured settlements or small business CGT contributions do not qualify. Contributions that have been split to a spouse, do not qualify to be released under the FHSS scheme by the receiving spouse. These amounts are technically rollovers and not contributions in respect of the receiving spouse. Also, any type of contributions made to a constitutionally protected fund (CPF) or defined benefit interest are not eligible for release under the FHSS Scheme.

The rules are designed so that members are only able to access additional voluntary contributions (and associated earnings), not their existing superannuation benefits.

Contributions made under the scheme are subject to the member's concessional and non-concessional contributions caps and are taxed in the normal way:

- Concessional contributions are taxed at 15% (low income earners may be eligible for LISTO, high income earners may pay Division 293 tax).
- Non-concessional contributions are not taxed.

While non-concessional contributions may qualify for the Government co-contribution and concessional contributions may qualify for LISTO, these Government contributions will not be able to be accessed to assist with purchasing a first home. However, they may increase a member's superannuation for retirement.

Maximum FHSS releasable amount

Members may apply to the ATO for a determination of their 'FHSS maximum release amount'.

The 'FHSS maximum release amount' is calculated as:

- 85% of concessional contributions (salary sacrifice or personal deductible contributions)
- 100% of non-concessional contributions
- associated earnings (calculated daily using the shortfall interest charge (SIC); as a guide, the SIC rate for the July to September quarter of the 2025–26 financial year is 6.78% p.a.

Order of contributions

In working out which contributions are to be counted towards an individual's FHSS releasable amount, the ATO applies ordering rules stated below:

- A first-in, first-out rule – this means that contributions an individual makes in an earlier financial year are counted before contributions in a later financial year.
- A simultaneous contributions rule – this means that if an individual makes an eligible concessional contribution and an eligible non-concessional contribution at the same time (e.g. in the same payroll process), the non-concessional contributions are taken to be made first.
- A personal contributions rule – if an individual makes personal contributions within a financial year and a deduction is claimed for some or all of the contributions, the resulting non-concessional contributions (if any) are taken to be made before any eligible concessional contributions (i.e. personal deductible contributions). It is important to note that this personal contributions ordering rule does not apply to voluntary employer contributions such as salary sacrifice. In this case, the contributions are counted in the order in which they are made (i.e. the first-in, first-out rule applies).

Example

Hanna makes monthly member contributions of $3,000 to her superannuation fund ($36,000 in total in a financial year). No other contributions are made on her behalf.

At the end of the financial year, Hanna lodges a notice of intent and claims a deduction for $25,000. Essentially Hanna has made non-concessional contributions of $11,000 and concessional contributions of $25,000.

Under the $15,000 FHSS scheme annual limit, for the purposes of determining Hanna's FHSS releasable contribution amount, the following order applies:

- non-concessional contributions of $11,000 (first three contributions $9,000 and $2,000 of the fourth contribution)
- concessional contributions of $4,000 ($1,000 of the fourth contribution and the fifth contribution).

Hanna is entitled to release $14,400 (plus associated earnings) under the FHSS scheme, which is comprised of $11,000 non-concessional contributions and $3,400 of concessional contributions (85% of $4,000).

Calculation of associated earnings amount

Associated earnings are calculated by the ATO on contributions that count towards an individual's FHSS releasable contributions amount. Associated earnings are calculated for each contribution on a daily basis using a notional earnings rate.

The associated earnings amount is calculated by multiplying the sum of the FHSS releasable contributions (i.e. 85% of concessional contributions and 100% of non-concessional contributions) by the shortfall interest charge (SIC) rate compounded on a daily basis. The SIC is essentially the 90-day Bank Accepted Bill rate with an uplift factor of 3%, refer to the ATO website for current rates. As a guide, SIC for the July to September quarter of the 2025–26 financial year is 6.78% p.a.

If separate contributions are made over a period of time, separate earnings calculations will be required for each contribution to reflect the different earnings period.

The period for which associated earnings is calculated starts:

a if the contributions are made in the 2017–18 financial year – on 1 July 2017

b if the contributions are made on or after 1 July 2018 – on the first day of the month in which the contributions are made,

and ends on the day the FHSS determination is made for which the associated earnings are being worked out.

Taxation of amounts released under FHSS scheme

The amount of concessional contributions (after the 15% contributions tax has been applied) and associated earnings released under the FHSS scheme is included in the individual's assessable income in the income year in which the request to release was made.

This amount is taxed at the individual's marginal tax rate and the individual is entitled to a tax offset of 30% on the FHSS assessable amount. This tax offset cannot be refunded, transferred or carried forward. Any non-concessional contributions released are non-assessable non-exempt (NANE) income and do not form part of a member's assessable income.

For withholding purposes, the ATO estimates the individual's tax rate based on information they have on the individual's expected marginal tax rate (e.g. recent notices of assessment, employer PAYG information). There would be no withholding if a member's marginal tax rate was estimated to be less than 30%. If the ATO does not have sufficient information to estimate the member's marginal tax rate, they will withhold 17% tax (i.e. maximum tax rate less 30%). Note, withholding tax is not a final tax; the amount withheld will not always match the exact amount of tax that is payable in respect of an individual's assessable FHSS releasable amount. Any discrepancy will be reconciled via the lodgment of the tax return.

Example

Ethan made $10,000 of voluntary personal deductible contributions and $5,000 of voluntary non-concessional contributions and has applied for a determination of his maximum release amount.

Ethan's maximum release amount of $14,000 is made up of:

- $5,000 of non-concessional contributions
- $8,500 of personal deductible contributions (85% of $10,000)
- $500 of associated earnings on the $13,500.

If the ATO releases this maximum amount to Ethan, $9,000 ($8,500 + $500) will be included in his assessable income and a 30% ($2,700) non-refundable tax offset will apply. Upon release, the ATO will withhold the estimated tax payable on the $9,000 based on Ethan's marginal tax rate less 30%.

Where a member chooses to release less than the maximum releasable amount, the amount of concessional contributions and associated earnings are reduced by the amount that the member chooses not to release. However, the assessable amount can only be reduced to nil.

Exclusion of FHSS release amount in various income tests

Concessional contributions and associated earnings released under the FHSS scheme form part of the member's assessable income. To avoid unintended consequences, legislation was amended to specifically disregard an individual's assessable FHSS released amounts in determining their income for the following purposes:

Type of income	Purpose
Adjusted taxable income – family assistance payment laws	• Family tax benefit A and B • Child care subsidy • Low income superannuation tax offset • Youth Allowance
Adjusted taxable income – child support payments	• Parental income for determining child support payments
Repayment income	• Repayment threshold for HELP debts • Repayment threshold for Financial Supplement Debt
Income threshold	• Non-commercial loss rules • Tax offset for Medicare levy surcharge • Employee share schemes • Spouse contribution tax offset
Income for surcharge purposes	• Medicare levy surcharge • Medicare levy surcharge on reportable fringe benefits • Division 293 tax • *Private Health Insurance Act 2007* – premium reduction income tiers
Combined parental income	• Parental income test for Youth Allowance
Adjusted taxable income – social security and veterans entitlements	• Commonwealth Seniors Health Card
Total income	• Government co-contribution

Releasing amounts under the FHSS scheme

Individuals can make a request to the ATO for an FHSS determination and subsequently release eligible voluntary contributions from super.

Summary of the FHSS scheme release process

Individual makes voluntary contributions into super (subject to maximum limits)

▼

Individual requests one or more FHSS determinations from ATO before holding a legal interest in a property, unless financial hardship provision applies.

▼

Individual requests ATO to issue release authority (only one request permitted) within 60 days after receiving an FHSS determination

▼

Super fund remits release amount to ATO

▼

ATO withholds tax and pays individual

▼

During the period starting 90 days prior to, and ending 12 months after the individual makes a valid request to the ATO to issue a release authority, they enter into a contract to purchase or construct their first home.

This means that:

- If the individual requests the release of money from their super first, they have 12 months to enter into a contract to purchase or construct their first home.
- If the individual enters into a contract to purchase or construct their first home and they have not yet requested the release of money from their super, they have 90 days from signing the contract to make the request.

▼

Individual must notify the ATO within 90 days after entering the contract

To initiate the release process, individuals request a first home super saver determination (FHSS determination) from the ATO. In response, the ATO identifies a maximum release amount that can be released from superannuation based on the individual's past contributions and associated earnings.

> **Note**
>
> Individuals looking to claim a tax deduction on voluntary personal contributions should ensure they submit the notice of intent to claim a deduction form in respect of the contribution, and have it acknowledged by the fund prior to seeking an FHSS determination.
>
> The process for requesting an FHSS determination will include a requirement for members to advise the ATO of any NOIs they have lodged and any acknowledgement of such notices they have received. Members will also be required to confirm they will not claim further deductions in respect of their contributions.
>
> If an individual claims a deduction after requesting an FHSS determination, they may be subject to penalties for making a false and misleading statement under Division 284 of Schedule 1 of the *Taxation Administration Act 1953*.

An individual can seek multiple FHSS determinations prior to purchasing their first home as they may wish to know how much can be withdrawn or whether to make further contributions.

When an individual is ready to release funds from their super under the FHSS scheme, they have 60 days after receiving a FHSS determination to request the ATO issue a release authority for their superannuation interest.

There is no requirement that the FHSS release amount is released from the same superannuation interest that the contributions were made into and members can request release from multiple super funds. It is also possible for an individual to elect to have a lesser amount released than the maximum release amount specified in the determination.

Upon receipt of a release authority, the superannuation provider generally has 10 business days to release the amount to the ATO. The proportioning rule does not apply to amounts paid by the super provider in response to release authorities issued by the ATO.

Revoking and amending FHSS scheme determinations and release requests

In most cases:

- an individual can only request a release under the FHSS scheme once
- a request for a FHSS release authority is irrevocable, and
- no further FHSS determinations can be requested after a release has been requested.

However, under changes that commenced from 15 September 2024 (and applying retrospectively to FHSS determinations and release requests made on or after 1 July 2018), individuals can generally amend or revoke FHSS determination and release requests provided an FHSS scheme amount has not yet been paid to them. An FHSS scheme amount is effectively considered to be paid to a person if the ATO has begun the process of paying the amount to the person, even though they may not have received the amount yet.

Any amended requests for FHSS determinations or releases must still comply with the underlying criteria and policy intention of the scheme. For example, someone who now owns a home cannot submit an amended request for an FHSS determination and then have an amount released to them under the scheme.

Under the above changes, where a super fund has already paid an amount to the ATO under the scheme that has not yet been released to a person, and due to the revocation or amendment, the amount is no longer payable, the ATO can return the amount to the super fund (or in rare cases pay it to the individual or their LPR where a full condition of release has been satisfied). Amounts returned to a super fund in this situation:

- Are not included in the fund's assessable income (or the person's assessable income).
- Do no count towards any of a person's contributions caps.
- Have the same tax component proportions as the released amount (ensuring that returned amounts are subject to the same taxation treatment as if they had never been released to the ATO).

Obligations relating to amounts released under FHSS scheme

An individual who has amounts released from super under the FHSS scheme will need to notify the ATO that they have satisfied the following conditions:

- They have entered into a contract to purchase or construct a residential premises in Australia within a specified time period. This time period starts 90 days before the day the individual requests release of money from their super, and ends 12 months after the day the release request is made. The ATO may extend the period to enter into a contract by another 12 months. A residential premises is defined as land or a building that is occupied as a residence, or that is intended to be occupied. It does not include motorhomes or houseboats.
- The price for the purchase or construction must be at least the amount released.
- The individual has occupied or intends to occupy the property as soon as practicable.
- The individual intends to occupy the property for at least six months of the first 12 months that it is practicable to occupy it.

Individuals must notify the ATO in the approved form within 90 days of entering into the contract to purchase or construct a residential property (unless an extension is allowed by the ATO).

If an individual fails to comply with the above conditions, they are required to make a non-concessional contribution into super and notify the ATO. Failure to do so will result in them incurring FHSS tax (see FHSS tax below).

Recontributing amounts if no purchase

The total amount of non-concessional contributions must be at least equal to the assessable FHSS released amount less any amounts that were withheld by the Commissioner.

Assessable FHSS released amounts are the individual's eligible concessional contributions (after 15% contribution tax discount) and associated earnings. Amounts relating to non-concessional contributions are not required to be recontributed. In addition, any such recontribution as a non-concessional contribution must be done within an individual's non-concessional contributions cap. The individual is not able to claim a deduction for the non-concessional contributions.

The individual must make the contribution and notify the ATO within 12 months of the first amount released under the FHSS scheme, or such longer period allowed by the Commissioner.

FHSS tax

If an amount is released from an individual's superannuation fund under the FHSS scheme, the individual is liable for FHSS tax if they do not, within a particular period, do either of the following:

- enter into a contract to purchase or construct a residential premises, and notify the ATO of that contract
- make one or more non-concessional contributions (at least equal to the assessable FHSS released amount), and notify the ATO of the contribution.

The FHSS tax is equal to 20% of an individual's assessable FHSS released amounts. This is a flat rate of tax and is unrelated to the individual's marginal tax rate. The FHSS tax is due and payable at the end of 21 days after the Commissioner gives the individual a notice of the assessment of the tax. Individuals who fail to pay an amount of assessed FHSS tax are liable to the general interest charge for each day in the period over which the amount is due but unpaid.

Example

Julio makes a non-concessional contribution of $15,000 in the first year and salary sacrifice of $15,000 in the second year. He then requests a release of his contributions and earnings under the FHSS scheme. As Julio is on the top marginal tax rate, the ATO will withhold tax of $2,399, which is 17% on $14,107 (being 85% of $15,000 and associated earnings of $1,357).

After two years, Julio has therefore released $26,708 to put towards a deposit on a first home ($15,000 + (85% × $15,000) + $1,357) - $2,399.

Unfortunately, Julio keeps missing out at auctions and does not enter into a purchase contract within the required timeframe. To avoid incurring FHSS tax, shortly before the expiration of the 12 month period, Julio must make a non-concessional contribution of $11,708 (assessable contribution less amount withheld by the ATO) into his super fund and notify the ATO accordingly.

Failure to do so would result in Julio having to pay FHSS tax of $2,821 (20% of assessable FHSS amount of $14,107).

Previously unsuccessful applicants may now qualify due to transitional rules

Changes to the FHSS scheme from 15 September 2024 allows some previously unsuccessful applicants to now have an amount released under the FHSS scheme during a three-year transitional window ending 14 September 2027.

FirstTech understands that one of the main situations where clients may be eligible for a release under these transitional rules is where they received an FHSS determination prior to 15 September 2024 prior to becoming the legal owner of their first home (or any other property), but after entering into a contract to purchase their first home and were therefore not eligible for the scheme under the rules that existed prior to 15 September 2024.

The ATO has indicated that it will contact previously unsuccessful applicants who are now eligible for the scheme to confirm whether they still want to request a release of benefits under the scheme. Eligible clients do not need to contact the ATO.

Further information about these transitional rules can be found on the ATO page 'Previous unsuccessful first home super saver requests' at www.ato.gov.au.

8.15 Compulsory cashing – death

A member's benefits in a regulated superannuation fund must be cashed as soon as practicable after the member dies. It is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing. Refer to section 10 for information about the cashing of death benefits.

8.16 In specie payments

A lump sum payment may be in the form of cash or in specie, subject to the particular fund's governing rules. An in specie payment is made with fund assets (e.g. shares) rather than money. When making an in specie payment, trustees must be able to substantiate the value of the relevant asset or assets for both SIS and taxation purposes.

Payments that cannot be paid in specie are payments that relate to:

- a former temporary resident
- severe financial hardship
- compassionate grounds, or
- a pension or annuity.

Source: APRA former Superannuation Circular I.C.2 (September 2006). While the Circular is no longer current, there is no indication that APRA's view has changed since that time.

Where an SMSF trustee holds a collectible or personal use asset (e.g. artwork, wine, motor vehicles) that it wishes to transfer to a related party as an in specie payment, the asset must be valued at market value by a qualified independent valuer and transferred at that value. For further details, refer to the FirstTech SMSF Guide.

9 Taxation of super lump sum member benefits

Section 9 discusses the taxation of lump sum member benefits paid from superannuation accumulation interests. This section also applies (except where specified) to lump sums paid due to the commutation of superannuation income streams.

For details of the taxation of lump sum death benefits, refer to section 10.9.

For details about the tax treatment of payments from superannuation income streams, refer to section 22 (member benefits) and section 23 (death benefit income streams).

9.1 Summary of taxation of super lump sums (member benefits, taxable component)

Age	Taxable component Taxed element	Max tax rate	Taxable component Untaxed element	Max tax rate
60 and above	Non-assessable non-exempt income (NANE)	0%	First $1.865 million (untaxed plan cap) assessable income	15%
			Balance over $1.865 million (untaxed plan cap) assessable income	45%
Below 60	Whole component assessable income	20%	First $1.865 million (untaxed plan cap) assessable income	30%
			Balance over $1.865 million (untaxed plan cap) assessable income	45%

Note: Rates of 45% shown above are specified flat rates rather than maximum rates.

Note: For all non-zero tax rates, Medicare levy may also apply.

Refer to section 8.14 for taxation of withdrawals under the FHSS scheme.

9.2 Taxation of super lump sums (member benefits)

Taxation of tax free component

In all cases, regardless of age, the tax free component of a super lump sum is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

The taxable component of a super lump sum may be either a taxed element or an untaxed element. Each element has a different tax treatment as detailed below.

Taxable component (taxed element)

The default position is that the taxable component is a wholly taxed element.

A taxed super fund will generally not have super member benefits that have an untaxed element. Where an untaxed element is received by a taxed super fund, the receiving fund will deduct 15% tax on receipt of the funds, converting the amount to a taxed element.

The tax treatment of the taxable component (taxed element) of superannuation lump sums is as follows:

Age	Taxable component (taxed element)	Maximum tax rate
60 and above	Non-assessable non-exempt income (NANE)	Nil
Below 60	Whole amount assessable income	20%

Note: For all non-zero tax rates, Medicare levy may also apply.

Taxable component (untaxed element)

Specific provisions provide for limited situations where there is an untaxed element. Where a super benefit contains an untaxed element, that amount has not been subject to fund tax (up to 15%). For this reason, higher tax rates are applied to untaxed elements as follows:

Age	Taxable component (untaxed element)	Maximum tax rate
60 and above	First $1.865 million (untaxed plan cap) assessable income	15%
	Balance over $1.865 million (untaxed plan cap) assessable income	45%
Below 60	First $1.865 million (untaxed plan cap) assessable income	30%
	Balance over $1.865 million (untaxed plan cap) assessable income	45%

Note: Rates of 45% shown above are specified flat rates rather than maximum rates.

Note: For all non-zero tax rates, Medicare levy may also apply.

Situations where there is an untaxed element

- Super benefits paid from untaxed super schemes contain an untaxed element where no contributions and earnings tax have been paid. These schemes are generally run by the Australian Government and state or territory governments. These generally apply to public servants, and fall into two broad categories: public sector super schemes and constitutionally protected funds.
- Where a super benefit is paid from a super fund that came into operation on or before 5 September 2006, the trustees of certain untaxed super schemes may give the recipient written notice specifying an amount as the untaxed element.
- Small super account payments.
- Superannuation holding account payments and SG shortfall amounts paid by the Commissioner of Taxation to the individual.

Tax offset on taxable component (taxed and untaxed elements)

For people age 60 or over:

- any taxable component (taxed element) is not assessable income
- any taxable component (untaxed element) is assessable income.

For people under age 60:

- the entire taxable component (taxed element and untaxed element) of a superannuation lump sum is assessable income.

Where the taxable component is assessable, a tax offset is available to ensure that the maximum rate of tax paid does not exceed the rates in the previous tables.

FirstTech comment: Assessable lump sums may impact Government benefits and concessions

While any assessable taxable component of a lump sum withdrawal may qualify for concessional maximum tax rates, as they are included in a member's assessable income for tax purposes, these amounts may impact their situation by reducing any Government benefits and offsets that are based on assessable or taxable income.

Benefits and offsets that may be impacted include:

- Family tax benefit A and B
- Child Care Subsidy
- Government co-contribution and low income super tax offset
- Low income tax offset
- Seniors and pensioners tax offset
- Commonwealth Seniors Health Card
- Carer Allowance
- Child support assessments
- Parental leave pay
- Spouse contribution tax offset
- HELP debt repayments.

In addition, these assessable amounts will count as income for Division 293 tax purposes (see section 2.5 for further information).

Withholding tax on super lump sums

A super provider withholds tax at the maximum tax rates in the previous tables. Tax withheld is credited against tax debts, so if a person is on a lower marginal tax rate than the rates at which tax is withheld, they may be entitled to a refund when they lodge their tax return.

Low rate cap

The low rate cap ($235,000 in 2023–24) historically allowed a certain amount of the taxable component of a superannuation lump sum member benefit to be taxed at 0% (taxed element) or a maximum of 15% (untaxed element) where the recipient had reached preservation age but had not yet reached age 60.

However, since 1 July 2024 the low rate cap is no longer relevant for super withdrawal purposes as:

- Any member who hadn't already reached preservation age prior to that date will have a preservation age of 60
- Any member who had previously reached a lower preservation age will since have reached age 60.

Untaxed plan cap

The untaxed plan cap for 2025–26 is $1.865 million.

The untaxed plan cap applies to members of untaxed super plans. The cap is measured on a per plan basis. The untaxed plan cap amount for each super plan is reduced by the total amount of each untaxed element of a super lump sum that a person has received, including rollovers (except internal rollovers).

Untaxed elements in excess of the untaxed plan cap paid as super lump sums are taxed at the highest marginal tax rate of 45% (Medicare levy may also apply).

Indexation of untaxed plan cap

The untaxed plan cap is indexed annually to AWOTE, in $5,000 increments. That is, the indexation has to be at least $5,000 before the cap will rise.

Effect of super lump sums on other assessable income

The tax free component is not included in assessable income. Different rules apply to the taxable component depending on whether the element is taxed or untaxed and the age of the person. The untaxed element of a super lump sum will be included in a person's assessable income, whereas the taxed element will only be included for people under age 60. Super lump sums are considered to be in the top slice of a person's total assessable income. Therefore, super lump sums will not push other assessable income into a higher than normal tax bracket.

The explanatory memorandum accompanying the Taxation Laws Amendment (Superannuation) Bill 1989 stated: 'Any potential rebatable amounts are presumed to form the top slice of taxable income and to fall within that slice in the order, working from the highest to the lowest'.

9.3 Taxation of lump sum terminal medical condition payments

Members with a terminal medical condition who withdraw superannuation lump sums while under age 60 are not subject to tax on that lump sum.

A payee will be taken to be assessed as suffering from a terminal medical condition if two medical practitioners (at least one of these is a specialist) certify that the member is suffering from an illness, or has incurred an injury, that is likely to result in the death of the person within a certification period of not more than 24 months (and for each of the certificates, the certification period has not ended). A superannuation condition of release also applies where a terminal medical condition exists. See section 8.7 for more information.

> **Note**
>
> Once a member has been assessed as having a terminal medical condition, their superannuation benefits may be cashed as a lump sum or income stream. However, it is important to check with the trustee of the client's super fund as they may impose additional restrictions.
>
> While superannuation benefits may be cashed, they are not able to be rolled over.
>
> Where such a benefit is transferred between complying super funds, the transfer will be treated as having been cashed out as a lump sum and recontributed for tax and contributions cap purposes, and excess contributions (and associated tax implications) could arise.

9.4 Taxation of lump sum disability super benefits

A lump sum disability super benefit is a lump sum paid where:

- the benefit is paid to a person because he or she suffers from ill health (whether physical or mental), and
- two legally qualified medical practitioners have certified that, because of the ill health, it is unlikely that the person can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

Legally qualified medical practitioners

In ATO Interpretative Decision ID 2015/11, the ATO relies on the ordinary meaning of the term legally qualified medical practitioners and takes the view that this term refers to persons who have general or specialist registration with the Medical Board of Australia and are legally qualified under the relevant legislation to practice medicine in Australia.

A member must meet the permanent incapacity or an alternative condition of release in the SIS Regulations to receive a lump sum disability super benefit. If the lump sum disability super benefit potentially includes an insurance payout, the member must also meet the insurer's definition of total and permanent disability (TPD).

Lump sum disability super benefits are taxed in the same way as lump sum member benefits (see section 9.2) with an important modification.

Modification for lump sum disability benefits

If a person receives a lump sum disability super benefit, the tax free component of the benefit is increased for the future service benefit – broadly reflecting the period where they would have expected to have been gainfully employed.

Calculating the tax free component of a disability lump sum

The formula to calculate the tax free component of a disability lump sum is:

$$\text{existing tax free component} + \left[\text{amount of benefit} \times \frac{\text{days to retirement}}{\text{service days} + \text{days to retirement}} \right]$$

where:

Existing tax free component is the sum of the tax free component of the benefit worked out apart from using the disability formula.

Amount of benefit is the sum of the disability benefit being paid, including any insurance proceeds.

Days to retirement is the number of days from the day on which the person stopped being capable of being gainfully employed to his or her last retirement day (generally age 65).

Service days is the number of days in the service period for the lump sum. Service days is the number of days from the day the member joined the fund (or if a rollover amount was received by the fund with an earlier service period start date, that earlier start date), to the date on which the lump sum is paid. For an employer-sponsored fund, service days commence when the member's employment commenced, if that was prior to the commencement of their fund membership.

The balance of the disability lump sum super benefit is the **taxable component** of the benefit.

Note: When calculating the modified tax free component using this formula, the ATO has confirmed that any days that are included in both service days and days to retirement in the denominator are to be counted only once. Therefore, the denominator will always be equal to the number of days in the period from the start of the service period for the disability lump sum to the person's last retirement day. This ensures the proportion of tax free component included in a member's disability superannuation benefit payment will not change where a member either delays taking a benefit payment or takes their benefits as multiple smaller payments over an extended period of time.

FirstTech comment

Confirm lump sum disability super benefit modification with member's specific super fund

Notwithstanding the above information, there is some practical inconsistency between superannuation funds about how the lump sum disability super benefit modification formula is to be applied, as well as whether the modification can apply in certain circumstances, including:

- where a period of time has elapsed between the date medical certificates are provided to the fund and the date of the lump sum withdrawal
- where the lump sum is a commutation of an existing disability super benefit income stream.

It is therefore important to confirm with a member's specific superannuation fund whether and how the lump sum disability super benefit modification will apply in the member's specific situation.

Commencement of an account based pension

The commencement of an account based pension with the same super trustee does not constitute a lump sum payment allowing the trustee to increase the tax free component for someone who is permanently incapacitated. As a result, the tax free and taxable component of the account based pension at commencement will have the same components as the super interest that supports the pension. For more information, refer to the ATO ID 2009/125.

In contrast, a disability super benefit that is rolled to a new fund to commence an account based pension is a lump sum disability super benefit and will qualify for the increased tax free component.

Where the increased tax free component has already been applied to a lump sum disability super benefit, some super funds may not classify the rollover lump sum as a disability super benefit to qualify for another increased tax free component again when rolled over to another fund.

9.5 Taxation of salary continuance insurance benefits

See section 11.11.

9.6 Taxation of rollover super benefits

A super rollover benefit is generally a lump sum super benefit payment from a complying super plan or commutation of a super annuity that is paid to a complying super plan or to purchase a super annuity. These rollovers are made within the Australian super system.

Any tax free component or taxable component (taxed element) is not subject to tax when rolled over.

The taxable component (untaxed element) of a rollover super benefit (up to the untaxed plan cap) is assessable income of the fund and is taxed at 15% upon rollover. Untaxed elements above $1.865 million (excess untaxed rollover amounts) are taxed at 47%. This tax on excess untaxed rollover amounts is withheld by the paying fund. See section 9.2 for further information about the untaxed plan cap.

9.7 Determining the tax free and taxable proportions of super lump sums paid from accumulation interests

The tax free and taxable proportions of a super lump sum are determined by the tax free and taxable proportions of the superannuation interest from which it is paid.

The value of a superannuation (accumulation) interest and the taxable and tax free proportion of the interest are valued just before the lump sum is paid.

Once the tax free proportions and the taxable proportions are determined, they are applied to the lump sum being paid. Different timing applies to the calculation of tax free and taxable proportions of lump sums paid due to the commutation of a superannuation income stream. See section 22 for further details.

Example

Just prior to taking a lump sum payment of $10,000, the components of the member's super interest are as follows:

- $60,000 tax free, and
- $40,000 taxable component (taxed element).

The $100,000 super interest is 60% tax free and 40% taxable. The $10,000 lump sum payment will be 60% tax free and 40% taxable.

Note: If the member is age 60 or over, the taxable component will not be assessable income (not subject to tax).

Tax free component

The tax free component of a super interest is:

- the contributions segment, plus
- the crystallised segment (fixed at 30 June 2007).

Contributions segment

The contributions segment of a super interest consists of the contributions made after 30 June 2007, to the extent that they have not been and will not be included in the assessable income of the super provider, e.g. non-concessional contributions.

Other contributions not included in the assessable income of the fund can be found in sections 3.5 and 3.6, with the exception of excess concessional contributions (which are included in the assessable income of the fund).

Crystallised segment

The crystallised segment of a super interest is a fixed dollar figure. It is the 30 June 2007 value of the following pre-1 July 2007 components:

- concessional
- post-June 1994 invalidity
- undeducted contributions
- CGT exempt, and
- pre-July 1983.

Tax free component reduced where lump sum withdrawal occurs

The tax free component of a member's superannuation interest is reduced by the tax free component of any lump sum withdrawal. This reduction is applied as a priority to any crystallised segment (where available), then to the contributions segment (where there is no crystallised segment left to reduce).

Taxable component

The taxable component of a super interest is the value of the super interest, less the tax free component.

What is a superannuation interest?

For tax component purposes, a superannuation interest is generally defined as any of the following:

- an interest in a superannuation fund or approved deposit fund
- a retirement savings account
- an interest in a superannuation annuity.

However, the regulations modify the definition of superannuation interest as follows:

- All non-income stream interests that a member holds in an SMSF is treated as one superannuation interest.
- A superannuation income stream is always treated as a separate superannuation interest.
- Where a superannuation interest in a public sector superannuation scheme is partly funded from contributions and earnings and partly from other sources (e.g. government revenue), it is treated as two superannuation interests:
  - one consisting of the contributions and earnings
  - once consisting of the amount funded from other sources.

10 Super estate planning

Section 10 discusses general superannuation estate planning rules as well as the specific estate planning rules that apply to superannuation accumulation interests. It also discusses the tax treatment of lump sum death benefits.

For details about the specific estate planning rules that apply to superannuation income streams and the taxation of benefits paid from death benefit income streams, see section 23.

10.1 Death benefit payments

A super death benefit is a payment made upon the death of the member of a superannuation fund to one or more of the member's dependants or legal personal representative (LPR). For information about the tax treatment of lump sum death benefits, refer to section 10.9. For information about the tax treatment of death benefit income streams, refer to section 23.9.

10.2 Super not part of an estate

Super does not automatically form part of a person's estate. A member can, however, elect to include their super death benefit in their estate by completing a binding or non-lapsing death benefit nomination in favour of their LPR. In this way, the member can provide for the distribution of their super death benefit in accordance with their will.

Alternatively, and in the absence of any binding or non-lapsing nomination, the fund's default provisions apply, which may include the trustee exercising discretion, and a super death benefit may be paid to an eligible dependant or the member's LPR. Where paid to the LPR, the super death benefit will be paid in accordance with the deceased member's will or intestacy rules (if no Will exists).

Refer to section 10.4 for further information on the options available to members who do not wish their super death benefit to form part of their estate.

10.3 Compulsory cashing of benefits upon death

A member's benefits in a regulated super fund must be cashed as soon as practicable after the member dies.

Cashing

Cashing refers to the payment of a benefit from the super system. A benefit is cashed when the beneficiary accepts the money (or in the case of lump sums only, other assets representing the benefit), banks a cheque which is subsequently honoured or receives a credit by way of an electronic transfer from a fund in payment of benefits.

As soon as practicable

There is no legislative definition or APRA interpretation of how long as soon as practicable is for the purposes of compulsory cashing of super upon death.

Requirement for death benefits to remain cashed

Where a death benefit income stream commences to be paid, the ongoing requirement for death benefits to remain cashed prevents the death benefit income stream interest from:

- being rolled back to accumulation phase or to an income stream that is not in the retirement phase
- being mixed with the beneficiary's other superannuation interests (including at or before the commencement of the income stream).

For further information, see section 23.4.

10.4 Who can be paid a super death benefit?

The trustee can pay a super death benefit from a super fund to one or both of the following:

- the member's LPR, or
- one or more of the member's dependants.

A particular fund's trust deed may be more restrictive about who a death benefit can be paid to. Remember to check the trust deed to see if any restrictions apply to the fund you are dealing with.

If the member has died and the trustee, after making reasonable enquiries, has been unable to find either an LPR or a dependant of the member, the trustee may cash the member's benefits in favour of another individual, subject to the fund's governing rules. The trustee must make a decision in relation to the benefit that is fair and reasonable in all the circumstances of all parties who have, or are likely to have, an interest in the death benefit.

Interested parties who consider that the trustee's decision is unfair or unreasonable may have the matter dealt with by the Australian Financial Complaints Authority (AFCA). AFCA is not available to potential beneficiaries of SMSFs; however, general legal recourse is available. See www.afca.org.au for further information.

If the trustee is unable to find an appropriate beneficiary, the benefit must be dealt with under the unclaimed money provisions of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, administered by the ATO.

Who is a dependant (SIS)?

There are some differences in the definition of a dependant for super and tax purposes as shown in the Table 10.1. The super definition determines who can receive a super death benefit. The tax definition determines how a super death benefit will be taxed (i.e. as a dependant or non-dependant). For more information on dependants for tax purposes, refer to section 10.9.

Table 10.1 SIS and tax dependants

Dependant	Super	Tax
Spouse	Yes	Yes
Former spouse	No	Yes
Child under age 18	Yes	Yes
Child age 18 or over	Yes	No
Financial dependant (including dependent adult child)	Yes (full or partial)	Yes (full)
Interdependent relation	Yes	Yes
Individual who receives a superannuation lump sum because of the death of another person, if the deceased person died in the line of duty as a member of the Defence Force, Australian Federal Police, the police force of a state or territory; or a protective service officer	No	Yes

Spouse

A spouse is a dependant regardless of whether the spouse was financially dependent on the member. A spouse includes the person at death to whom the member was married, or with whom the member was living on a genuine domestic basis in a relationship as a couple, or in a relationship that is registered under a law of a state or territory (whether of the same sex or a different sex).

Former spouses are dependants for tax purposes but not for SIS purposes.

Child

This includes any person, regardless of age, who at the member's death was the member's natural, step, adopted, ex-nuptial or current spouse's child, or someone who is a child of the person within the meaning of the *Family Law Act 1975*.

A dependant for tax purposes does not include a child age 18 or over, unless the adult child was a financial dependant of the deceased parent or was in an interdependent relationship with the deceased parent.

A person ceases to be a stepchild of a member from the time the member's marriage to the child's natural parent ends via divorce. However, there is uncertainty about whether a person continues to be a stepchild of a member if the child's natural parent dies while still married to the member. For example, in ATO ID 2011/77, the ATO takes the view that a stepchild / step-parent relationship is severed when the marriage between the natural parent and the step-parent ends due to the death of the natural parent. In contrast, a more recent determination[49] and several court cases[50] suggest that this relationship continues on the death of the natural parent if the marital relationship was still in place at the time of their death. Given this uncertainty, clients whose superannuation death benefits may be paid to (or eligible to be paid to) a stepchild may wish to seek legal advice, and it may also be important to confirm which approach a client's specific superannuation fund is likely to apply.

Financial dependant

For both SIS and tax purposes, a dependant includes any person who was financially dependent on the member at the time of the member's death. However, the degree of financial dependency required varies for SIS and tax purposes.

From a SIS perspective, a potential beneficiary can qualify as a financial dependant if they were receiving financial support from the deceased member at the time of death. There is no requirement for the beneficiary to be fully dependent on that financial support, or for the beneficiary to need the financial support that was being provided by the deceased.

In contrast, for tax purposes the ATO has taken the view in a number of private rulings that a potential beneficiary would be a financial dependant if they were unable to meet their basic daily necessities (e.g. shelter, food, clothing) without the financial support which was being provided by the deceased member at the time of death. In the ATO's view, financial support that merely supplements a beneficiary's income and improves their quality of life would not qualify the beneficiary as a financial dependant.

It is therefore possible that some partially dependent beneficiaries may be a dependant for SIS purposes, while failing to qualify for a tax free death benefit for tax purposes.

49 [2019] SCTA 149 (1 September 2019).

50 For example, Scott-Mackenzie v Bail [2017] VSCA 108 (10 May 2017).

Interdependency relationships

A dependant includes a person who was in an interdependency relationship with the deceased member at the time of death. An interdependency relationship between two people is characterised by:

- a close personal relationship
- living together
- financial support
- domestic support
- personal care of a type and quality above the care and support that might be provided by a mere friend or flatmate.

An interdependency relationship may include a partner who does not meet the definition of a spouse.

An interdependency relationship may also exist where there is a close personal relationship between two people but:

- they cannot satisfy the other requirements above (e.g. living together, financial support, domestic support and personal care) because one or both of them suffer from a physical, intellectual or psychiatric disability, or
- they do not satisfy the other requirements above (e.g. living together, financial support, domestic support and personal care) because they are temporarily living apart, for example where one person is temporarily working overseas or serving a jail sentence.

Examples include an adult child residing with and caring for an elderly parent and sisters residing together.

In establishing whether such a relationship exists, all of the circumstances of the relationship are taken into account, including (where relevant):

- the duration of the relationship
- whether or not a sexual relationship exists
- the ownership, use and acquisition of property
- the degree of mutual commitment to a shared life
- the care and support of children
- the reputation and public aspects of the relationship (such as whether the relationship is publicly acknowledged)
- the degree of emotional support
- the extent to which the relationship is one of mere convenience
- any evidence suggesting that the parties intend the relationship to be permanent
- the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.

10.5 Form in which death benefits may be cashed

Superannuation death benefits may be cashed in any one or more of the following forms (per recipient):

- a single lump sum
- an interim lump sum (not exceeding the amount of the benefits ascertained at the date of death) and a final lump sum (not exceeding the balance of the benefits as ascertained in relation to the member's death)
- one or more pensions which are retirement phase income streams (subject to restrictions)
- rollover for the purchase of one or more annuities which are retirement phase income streams (subject to restrictions).

Restrictions on death benefit income streams

A deceased member's benefits may only be paid in the form of a retirement phase income stream to a dependent beneficiary of the member. A superannuation death benefit paid to a deceased member's LPR must be paid as a lump sum.

For further information about death benefit income streams, see section 23.

Additional eligibility requirements for children to receive death benefit income stream

In addition, a child of the deceased member can only receive a death benefit as a retirement phase income stream if, at the time of death, they:

- are under 18, or
- are under 25 and financially dependent on the member, or
- have a prescribed disability[51].

Where a child does not meet the above requirements, they must receive any superannuation death benefit as a lump sum.

Children who are eligible to, and do receive, a death benefit as a retirement phase income stream, must cash any remaining benefits as a (tax-free) lump sum on the earlier of:

- the day on which the annuity or pension is commuted, or the term of the annuity or pension expires, and
- the day on which the child attains age 25,

unless the child has a prescribed disability.

For further information about death benefit income streams paid to children, refer to section 23.6.

51 A prescribed disability is one attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments; is permanent or is likely to be permanent; and results in both a substantially reduced capacity of the person for communication, learning or mobility, and the need for ongoing support services.

Transfer balance cap restrictions on death benefit income streams

An eligible recipient's transfer balance cap may also restrict the amount of super death benefit that can practically be taken as an income stream. See section 23.7 for further information.

10.6 Can death benefits be paid in specie?

Yes, where permitted under the fund's governing rules, a lump sum payment may be in the form of cash or in specie. An in specie payment is made with fund assets (e.g. shares in a publicly listed company) rather than money. When making an in specie payment, trustees must be able to substantiate the value of the relevant asset or assets for both SIS and taxation purposes.

Death benefit pension payments cannot be paid in specie.

10.7 Death benefit nominations

The payment of a death benefit is ultimately a matter of trustee discretion, subject to the payment standards and the governing rules of the fund. The trustee's decision must be fair and reasonable.

Non-binding death benefit nomination

Some super funds may permit members to make death benefit nominations which are non-binding. In such cases, members simply provide trustees with guidance regarding their preferred death benefit recipients, with trustees making the eventual decision in the light of all the relevant circumstances.

Binding death benefit nomination

A trustee may instead provide greater certainty to members in making death benefit nominations by allowing the members to determine, with substantial certainty, the persons to whom death benefits would be paid. Provided the trust deed allows binding death benefit nominations and the regulations are complied with, a member's valid nomination binds the trustee.

Binding death benefit nomination notices, for APRA regulated superannuation funds, must:

- be signed and dated by the member
- be witnessed appropriately by two individuals who are not nominated beneficiaries of the member
- specify the proportion of the benefit to be paid to each nominated beneficiary
- only nominate beneficiaries who are either dependants or the legal personal representative of the deceased member's estate, and
- be sufficiently clear and unambiguous for the trustee to act upon.

Other important issues involved with binding death benefit nominations are:

- the nominated beneficiaries must be either dependants or the LPR at the date of the member's death
- the maximum term that an unchanged notice can remain in effect is three years
- there may be provision for the governing rules of the fund to fix a shorter term, and
- binding death benefit nominations will generally not specify the form of the super death benefit (i.e. lump sum or pension).

Non-lapsing death benefit nomination

As an alternative to a binding death nomination, some funds provide members with the ability to make a non-lapsing death benefit nomination.

A valid non-lapsing death benefit nomination notice will bind the trustee (in the same way as a binding death benefit nomination). To be valid, the trustee must consent to the nomination, all beneficiaries nominated must be SIS dependants (or the member's legal personal representative) and the nomination must also comply with any additional conditions specified in the trust deed.

Importantly, a non-lapsing death benefit nomination is not automatically subject to the range of specific superannuation law requirements that apply to binding death benefit nominations. Therefore, requirements including a three-year maximum term and witness signatures on the nomination may not apply.

It is important to note, however, that the governing rules of many funds will include certain requirements when making non-lapsing death benefit nominations (e.g. a fund could require the signatures of a certain number of witnesses).

Important

For the purposes of a family provision claim under NSW law, a distribution made to a beneficiary as a result of a non-binding, binding or non-lapsing death benefit nomination may not prevent the court from making a determination that a member's super death benefit should form part of the member's notional estate. This does not impact a trustee's ability to make a payment in accordance with a member's valid binding nomination; however, this may have implications for the recipients of those benefits. Members should seek their own legal advice before making a will or making a super death benefit nomination.

What happens where part of a nomination is not valid?

Where part of a binding death benefit nomination or non-lapsing death benefit nomination is not valid (e.g. 50% nomination to spouse and 50% nomination to non-financially dependent sibling), the super fund's governing rules and procedures will determine the required course of action by the trustee. This will vary from fund to fund and could include:

- the entire nomination being invalidated and either trustee discretion or the fund's default provisions applying to the whole death benefit
- the trustee remaining bound to pay the valid part of the nomination, with the remainder of the death benefit then subject to either trustee discretion or the fund's default provisions.

ASIC warning to advisers on binding death benefit nominations

In January 2018, ASIC put the financial advice sector on notice about meeting requirements for witnessing signatures, after finding issues with advisers failing to correctly witness binding death nomination forms for superannuation benefits.

ASIC became aware of a widespread practice among financial advisers of witnessing or having staff members witness member signatures on binding death nomination forms without being in the presence of the signatory. In other cases, forms were backdated. Each of these practices fails to comply with the law and may lead to the nominations being invalid.

See ASIC Media Release 18-015MR for more information.

SMSFs and death benefit nominations

The above discussion on binding death nominations and non-lapsing death benefit nominations does not generally apply to SMSFs. The legislation relating to binding death nominations specifically excludes SMSFs; therefore, neither these provisions nor those relating to non-lapsing death benefit nominations automatically apply to SMSFs.

It is therefore open to an SMSF to accept from a member a binding nomination that, for example, does not lapse or is not required to be witnessed. However, such a nomination must still nominate only the dependants or legal personal representative of the member and should specify the proportion of the benefit each is to receive and be in writing.

This principle has been confirmed by the ATO in SMSF Determination SMSFD 2008/3, and in a recent High Court judgment, *Hill v Zuda Pty Ltd as Trustee for the Holly Superannuation Fund & Ors* [2022] HCA 21.

Furthermore, the governing rules of the fund must make specific provision for a member of the SMSF to make a binding death benefit nomination. Consideration should be given to whether the rules should also make provision for administrative or procedural matters in relation to the binding nominations. For example, the rules may require the nomination to be made in a specific form or may in fact set a time limit on the validity of the binding nomination. Note that some SMSF trust deeds may directly or indirectly reference the legislation that relates to binding death nominations, in which case the requirements would apply to that fund. Refer to the FirstTech SMSF guide for further information.

10.8 Rollovers of super death benefits

From 1 July 2017, the taxation definition of a rollover superannuation benefit was amended to allow a superannuation lump sum death benefit to be rolled over where the beneficiary of a deceased member's superannuation interest is a dependant eligible to receive a death benefit income stream.

This change allows an eligible beneficiary to:

- roll over a death benefit entitlement to another superannuation fund for the commencement of a death benefit income stream
- commute and roll over an existing death benefit income stream to commence a new death benefit income stream.

It is important to note that due to the requirement for death benefits to remain cashed, any death benefit that is rolled over must be immediately used to commence a death benefit income stream. Rolled over death benefits cannot be left in accumulation phase or mixed with the beneficiary's other superannuation benefits. See section 23.4 for further information.

10.9 Taxation of superannuation lump sum death benefits

The tax free component of any lump sum death benefit payment is tax free.

The tax treatment of any taxable component depends on whether the recipient is a (tax) death benefits dependant and whether the taxable component consists of a taxed element or untaxed element.

Table 10.2 Taxation of taxable component of lump sum death benefits

Recipient	Taxable component (taxed element)	Taxable component (untaxed element)
Death benefits dependant	Non-assessable non-exempt income: No tax	Non-assessable non-exempt income: No tax
Non-death benefits dependant	Assessable income: Maximum tax rate of 15%.	Assessable income: Maximum tax rate of 30%

Note: For all non-zero tax rates, Medicare levy may also apply, except where paid to the deceased member's estate.

FirstTech comment: Assessable lump sums may impact Government benefits and concessions

While any taxable component of a death benefit lump sum received directly by a non-tax dependant may qualify for concessional maximum tax rates, as it is included in the beneficiary's assessable income for tax purposes, it may impact their situation by reducing any Government benefits and concessions that are based on assessable or taxable income.

Government benefits and concessions that may be impacted include:

- Family tax benefit A and B
- Child Care Subsidy
- Government co-contribution and low income super tax offset
- Low income tax offset
- Seniors and pensioners tax offset
- Commonwealth Seniors Health Card
- Carer Allowance
- Child support assessments
- Parental leave pay
- Spouse contribution tax offset
- HELP debt repayments.

In addition, these assessable amounts will count as income for Division 293 tax purposes (see section 2.5 for further information.

In contrast, the taxable component of a lump sum death benefit paid to a deceased member's LPR and then directed via the estate to a non-tax dependant is assessable to the estate, with the payment then received by the beneficiary non-assessable non-exempt income in their hands. These indirect payments therefore do not add to the assessable income of the beneficiary or impact their entitlement to the above benefits and offsets, or their liability to Division 293 tax.

Who is a (tax) death benefits dependant?

See section 10.4 for more details on dependants and a comparison of death benefits dependants for tax purposes and dependants for SIS purposes.

A death benefits dependant for tax purposes is:

- the deceased person's spouse or former spouse, or
- the deceased person's child, age less than 18, or
- any other person with whom the deceased person had an interdependency relationship just before he or she died, or
- any other person who was a dependant of the deceased person just before he or she died, or
- an individual who receives a superannuation lump sum because of the death of another person if the deceased person died in the line of duty as a member of the Defence Force, Australian Federal Police, police force of a state or territory; or a protective service officer.

Lump sum death benefits paid to a deceased member's estate

Where a death benefit is paid to a legal personal representative as executor of an estate, no tax is withheld by the trustee of the super fund. The tax treatment when received by the estate is as follows:

- To the extent that death benefits dependants will (or could be expected to) benefit from the death benefit, it is non-assessable non-exempt income of the estate and not taxed.
- To the extent that non-death benefit dependent beneficiaries will (or could be expected to) benefit from the death benefit, it is subject to the same taxation in the estate as a non-death benefit dependant would pay had they received the benefit directly. However, Medicare levy does not apply.

Superannuation death benefits paid to a deceased member's estate, which are then distributed to beneficiaries, are non-assessable non-exempt income in the hands of the beneficiaries and not required to be declared in the beneficiaries' tax returns.

Untaxed element for certain death benefit lump sums

A lump sum super death benefit that is sourced wholly or partly from insurance proceeds may include an untaxed element, even if the fund itself is subject to tax on contributions and earnings. If the fund claims a tax deduction either for life insurance premiums paid or for a future liability to pay benefits, then the taxable component of the death benefit may include an untaxed element.

Where the lump sum super death benefit is paid to a dependant, the inclusion of an untaxed element is irrelevant, as no tax will be payable on the benefit. However, where a non-dependant receives a death benefit that includes an untaxed element, a higher rate of tax applies to that part of the benefit.

Calculating the untaxed element of a death benefit lump sum

Untaxed element = taxable component - taxed element, where:

- **Taxed element** is (amount of lump sum super death benefit × service days/(service days + days to retirement)) - tax free component.
- **Days to retirement** is the number of days between the date of death and the deceased's last retirement date (generally age 65), and
- **Service days** is the number of days from the day the member joined the fund or, if a rollover amount was received by the fund with an earlier service period start date, that earlier start date, to the date of death. For an employer-sponsored fund, service days may commence when the member's employment commenced, if that was prior to the commencement of their fund membership.

If the calculated taxed element is negative (i.e. where the tax free component is large in relation to the total benefit), the taxed element in the fund is nil and the whole of the taxable component is an untaxed element.

Untaxed element generally nil where deceased member aged 65 or over

Due to the untaxed element formula above, where a member in a taxed superannuation fund was aged 65 or over at their date of death, the taxable component of their death benefit lump sum will generally contain no untaxed element.

Untaxed element calculation not required on death benefit rollover

While a death benefit lump sum that is rolled over could also technically have an untaxed element created as per the above formula, the ATO has confirmed[52] that the transferring fund is not required to calculate any untaxed element that arises for this reason.

This means that the taxable component of death benefit rollovers between taxed superannuation funds will consist only of taxed element.

Minimising the untaxed element

Because of the way that the untaxed element calculation operates, there are a number of ways that it can be minimised, depending on a member's situation.

Maximising a member's service period

The longer the existing service period of a member's superannuation interest, the less untaxed element their lump sum death benefit will contain.

52 See 'Death Benefit Rollover Statement' at www.ato.gov.au

The existing service period of a member's superannuation interest generally commences on the earlier of the date they joined the fund, or the date they commenced employment with an employer who has contributed to the fund. However, where a member has rolled money into the fund that has a longer existing service period, the start date of that service period must be used instead.

Members can therefore roll over super benefits with a longer existing service period to minimise their untaxed element.

Example

David is age 53. He set up an SMSF two years ago and is making both concessional and non-concessional contributions. He recently took out life cover of $1 million through his fund. In the event of his death, his super benefit will be paid to his adult daughter, Beth.

David also has a small industry super fund worth $500 that he set up 20 years ago, which he is considering consolidating into his SMSF. Let's look at how this rollover will impact on the untaxed element of his lump sum death benefit, assuming he dies in two years, with an existing SMSF balance of $200,000 (50% tax free).

	No rollover	Rollover
Service period (assuming 365 days per year)	Service days: 1,460 Days to retirement: 3,650	Service days: 8,030 Days to retirement: 3,650
Tax free component	$100,000	$100,000
Taxable component (taxed element)	$242,857	$725,000
Taxable component (untaxed element)	$857,143	$375,000
Total lump sum death benefit^	$1.2 million	$1.2 million
Tax and Medicare levy	$315,571	$243,250
Net death benefit	$884,429	$956,750

^ $500 rollover balance ignored due to small value.

We can see that Beth would receive a net death benefit that is $72,321 more as a result of David having rolled over his industry fund balance to his SMSF.

Impact on disability super benefit tax free component

It is important to note that where a member holds life and TPD cover through super, the above strategy of maximising a member's existing service period will reduce the tax free uplift calculation that applies to a lump sum disability super benefit they receive. For further information about the taxation of disability super benefits, see section 9.4.

Keeping large after tax contributions separate

Under the untaxed element calculation, a member who adds large amounts of tax free component to the superannuation interest that holds their insurance will in most cases convert an amount of what would have otherwise been a taxed element to an untaxed element. Members considering making large non-concessional contributions should therefore consider making these to a separate superannuation interest from the interest holding their life insurance.

Example

Sharon is age 50 and has a current super balance of $100,000 (50% tax free component) in a fund she set up 10 years ago. She has life insurance of $1 million within the fund. In the event of her death, her super benefit will be paid to her adult daughter, Emily.

Sharon now wants to make a non-concessional contribution of $300,000 using the bring-forward rule. Assuming she passed away immediately after her contribution, let's compare the impact on her untaxed element of either making the non-concessional contribution to her existing super interest or to a separate superannuation interest.

Existing super interest	Contribute to same interest	Contribute to new interest
Service period (assuming 365 days per year)	Service days: 3,650 Days to retirement: 5,475	Service days: 3,650 Days to retirement: 5,475
Tax free component	$350,000	$50,000
Taxable component (taxed element)	$210,000	$390,000
Taxable component (untaxed element)	$840,000	$660,000
Total lump sum death benefit	$1.4 million	$1.1 million
Tax and Medicare levy	$304,500	$277,500
Net death benefit	$1,095,500	$822,500

Total death benefits	Contribute to same interest	Contribute to new interest
Net death benefit existing super interest	$1,095,500	$822,500
Net death benefit new super interest (all tax free component)	Nil	$300,000
Total net death benefit	$1,095,500	$1,122,500

By ensuring that her $300,000 non-concessional contribution is made to a new super interest, Sharon has allowed Emily to receive a $27,000 higher overall death benefit.

11 Insurance in super

11.1 Types of insurance which may be held in super

Insurance cover is usually provided pursuant to an insurance policy negotiated between the trustee of the super fund and an insurer.

Insurance may be available through a personal super product, or through a group arrangement, such as an employer super master trust, or an industry or corporate super scheme. The taxation implications of an insurance payout through super will vary depending on the type of insurance, and are covered later in this section.

Note that this guide does not deal with situations where insurance has been taken out by super fund trustees that involves proceeds being paid somewhere other than for a specific member's benefit (e.g. to a fund reserve). Different rules and tax treatment may apply in those situations.

For further information, refer to the FirstTech SMSF guide.

The situation before 1 July 2014

Prior to 1 July 2014, members of complying super funds were generally able to take out a range of life and disability insurance policies issued by a life insurance company within their fund. These included:

- life insurance including terminal illness insurance
- total and permanent disability (TPD) insurance (both any and own occupation definitions)
- income protection insurance, including policies with a range of ancillary benefits
- trauma insurance.

The only requirement was that a trustee needed to ensure the acquisition of the policy would not cause the fund to breach the acquisition from related party rules and would be permitted under the sole purpose test and the fund's governing rules.

1 July 2014 changes to allowable insurance through super

New rules came into effect on 1 July 2014 that aimed to ensure that where members hold insurance policies within super, they are able to access the insurance proceeds from their fund in the event of a claim.

The rules prohibit the trustee of a super fund from providing insurance cover to a member unless the terms and conditions of the insurance policy align with one of the following conditions of release:

- death (including a terminal medical condition)
- permanent incapacity, or
- temporary incapacity.

The Government confirmed that the insurance policy definitions do not need to adopt the condition of release definitions, as specified in the SIS Regulations, but must be consistent with those definitions and insured benefits must be able to be released to members in the event of a claim.

The impact these changes had on the types of insurance that can be held via super are summarised in the following sections.

11.2 Total and permanent disability (TPD) insurance

Permanent incapacity, under the SIS conditions of release, means ill health (whether physical or mental), where the trustee is reasonably satisfied that the member is unlikely, because of the ill heath, to engage in gainful employment for which the member is reasonably qualified by education, training or experience (see section 8.5 for more information on the permanent incapacity condition of release).

An insurer generally defines total and permanent disability as:

- any occupation – circumstances which leave a person unable to engage in gainful employment in any occupation for which the member is reasonably qualified by education, training or experience, or
- own occupation – circumstances which leave a person unable to work again in their own occupation they held just prior to TPD.

The SIS definition of permanent incapacity is an any occupation definition.

Super funds are generally prohibited from taking out own occupation TPD policies on behalf of their members from 1 July 2014, as a benefit may become payable under the policy, despite the fact that the member may still be able to engage in some other employment for which they were qualified by education, training or experience, and therefore would not qualify to have the payment released from superannuation.

Any-occupation TPD policies that provide additional ancillary lump sum benefits, such as loss of limbs or sight benefits, without requiring the member to also satisfy the permanent incapacity requirement, are also not able to be provided through superannuation.

11.3 Income protection insurance

Under the temporary incapacity condition of release (see section 8.13 for more information on this condition of release), a benefit may only be paid in the form of a non-commutable income stream paid for the purpose of continuing (in whole or part) the gain or reward which the member was receiving immediately before the temporary incapacity.

Super funds are therefore generally prohibited from taking out income protection policies for their members where the policy terms and conditions provide any ancillary lump sum benefits, such as redundancy, crisis, rehabilitation, specific injury or home care benefits.

In addition, to satisfy the definition of temporary incapacity in the SIS Regulations, a member must:

- have ceased to be gainfully employed due to ill health, or
- have temporarily ceased to receive any gain or reward under a continuing employment arrangement due to ill health.

Income protection policies offered within the superannuation environment must therefore require the member to be gainfully employed (including self-employed) at the time of suffering the incapacity. For example, a trustee is prohibited from taking out an income protection policy that would provide benefits in respect of a member who was not gainfully employed at the time of suffering the invalidity.

The 1 July 2014 changes also mean that income protection policies that pay a partial benefit where a member only reduced their hours of work due to incapacity, rather than ceasing them completely, cannot be offered within the superannuation environment.

However, it is important to note that a policy that provided a partial benefit to a member who returned to work on a part-time basis after first completely ceasing to work is permitted.

11.4 Trauma insurance

Trauma insurance policies within the super environment are generally prohibited from 1 July 2014 as their terms and conditions do not align with one of the specified conditions of release.

11.5 Grandfathering of pre-1 July 2014 insurance policies

The 1 July 2014 rules do not apply to existing policies taken out in respect of a member prior to 1 July 2014. Therefore, members are generally able to continue cover under an existing policy after 1 July 2014, where they were covered under that policy prior to 1 July 2014. This applies regardless of the type of cover or benefits provided.

Under the grandfathering rules, the Government has also confirmed that a member is able to vary the level of cover under a grandfathered policy. For example, a super fund may allow a member to increase or decrease the level of cover held under a grandfathered policy after 1 July 2014 without affecting its grandfathered status.

However, it is not clear whether other significant changes, such as converting an existing income protection policy from an indemnity to an agreed level of cover, would continue to be covered under the grandfathering rules.

11.6 Pre-1 July 2014 insurance considerations

Pre-1 July 2014 'own occupation' TPD insurance

An own occupation TPD insurance policy will generally provide a lump sum benefit in the event that the insured member is unable to work again in the occupation they held just prior to becoming permanently disabled. With the permanent incapacity condition of release requiring that a member be unable to work again in any occupation that they are qualified for by education, training or experience, there is a real risk that in the event of a claim, the member will satisfy the insurer's definition but not the permanent incapacity condition of release.

For members who would not meet an alternative condition of release in the event of a claim (e.g. retirement after preservation age), particularly where part or all of any TPD insurance proceeds will be required as a lump sum in the event of incapacity, advisers should consider recommending holding own occupation TPD cover outside the super environment.

Pre-1 July 2014 income protection insurance

In the event of a claim for income protection insurance, a member will generally meet the temporary incapacity condition of release, which is broad enough to encompass most income protection policy definitions.

However, it is important to note that any additional ancillary lump sum benefits, such as redundancy, crisis, rehabilitation, specific injury or home care benefits, will likely not be accessible from super in the event of a claim under the temporary incapacity condition of release, which only allows for the payment of a non-commutable income stream for the purpose of continuing (in whole or part) the gain or reward which the member was receiving immediately before their incapacity.

Pre-1 July 2014 trauma insurance

Trauma insurance proceeds are payable to the trustee (and form part of a member's overall benefit in the fund) if an insured member suffers a medical condition or other trauma event covered under the policy.

Even prior to the 1 July 2014 changes, trauma insurance had not been widely used within the superannuation environment because of questions around whether the offering of such insurance is in line with the sole purpose test. However, SMSF Determination SMSFD 2010/1 clarifies this matter for SMSFs. A trustee of a SMSF can purchase a trauma insurance policy and still satisfy the sole purpose test provided:

- any benefits payable under the policy are payable to the trustee and will form part of the fund's assets until the member satisfied a condition of release, and
- the purchase of the policy is not made to secure a benefit for another person, such as a fund member or their relative.

There is also no specific trauma condition of release and, where a member holds trauma cover through super and a benefit is paid to the trustee, they would therefore need to satisfy another condition of release, such as permanent incapacity or retirement, to access their benefits. This will in some cases lead to members being unable to access trauma insurance benefits that have been paid into their superannuation account.

11.7 Taxation of insurance premiums

The following table compares the deductibility of insurance premiums for different types of insurance, when owned and funded personally, compared to policies that are owned by a super fund trustee to provide insurance for members.

Insurance type	Tax treatment of premiums	
	Policy owned and funded by insured individual outside super	Policy owned by super trustee
Life cover (including terminal illness)	Not deductible[53]	Deductible to the fund[54]
TPD cover	Not deductible[53]	Any occupation cover: generally fully deductible to the fund[54] Own occupation cover: Proportion of premium used to fund any occupation component generally deductible to the fund.[54] Remainder not deductible to the fund.
Income protection	Generally deductible to the policy owner	Deductible to the fund[54]
Trauma cover	Not deductible[53]	Not deductible to the fund

Alternative – future service deduction

Instead of claiming a tax deduction for insurance premiums during a financial year, a fund trustee can elect instead to claim a tax deduction for the future service portion of eligible benefits (consisting at least partially of insurance proceeds) that it pays out, including:

- a superannuation lump sum death or disability benefit
- a superannuation income stream death or disability benefit
- a series of income protection payments.

If made, this election applies to all fund members. The tax deduction available is calculated as follows:

53 Excludes situations where cover is held for a revenue purpose or where cover is owned by the individual but paid by the employer, and the employer may obtain a tax deduction but may be subject to FBT.

54 Deduction applies to the extent that the policy is for a liability of the fund to pay the member/LPR/dependants a death, terminal illness or disability super benefit (including temporary disability benefit).

Benefit amount × future service days/total service days, where:

- **Benefit amount** is the total value of the super lump sum or pension commenced, or in the case of income protection benefits, the amount of payments during the year.
- **Future service days** is the number of days from the date of termination of employment (or inability to be gainfully employed) to the member's last retirement date.
- **Total service days** is the existing service period of the superannuation benefit plus future service days.

A trustee can elect to apply the future service deduction instead of claiming a tax deduction for insurance premiums in any financial year (even if deductions have been claimed for premiums in previous years). However, once this election is made, it is generally irrevocable and applies in all future years. In practice, this alternative may only be relevant in an SMSF or SAF.

Where insurance proceeds are paid out as a death or disability benefit, the trustee can only claim this future service deduction if the benefit is paid as a consequence of the member terminating employment. In practice, this requirement may render the deduction difficult to claim in most cases. See the FirstTech SMSF Guide for further details.

This requirement does not apply where the future service deduction is claimed as a result of income protection benefits being paid from the fund.

11.8 Taxation of insurance benefits

Taxation of insurance proceeds received by trustees

Exemptions apply to ensure that insurance proceeds for cover held on a member's behalf through super are not assessable income, or an assessable capital gain of, a super fund trustee who receives them.

Life insurance, TPD insurance and trauma insurance held on a member's behalf through super are all capital in nature and proceeds are therefore not ordinary assessable income. In addition, any capital gain that would apply where these proceeds are paid to a fund trustee is ignored.

Income protection insurance held on a member's behalf through super is not assessable income of the fund, and the fund trustee cannot claim a tax deduction for proceeds paid to a member.

Tax components and insurance proceeds

Where life insurance, TPD insurance or trauma insurance proceeds are received by a trustee in respect of a member, the tax components that the proceeds take are determined by the superannuation interest into which they are allocated and the type of insurance held.

Where a member has multiple interests in a fund, insurance proceeds must be allocated to the same interest from which the premiums paid for the insurance have been deducted.

Insurance proceeds paid into accumulation

If paid into an accumulation account (in a taxed super fund), life insurance, TPD insurance or trauma insurance proceeds will initially be allocated to the taxable component (taxed element).

TPD or trauma proceeds paid into an interest supporting a pension

If TPD or trauma proceeds are paid into a superannuation interest supporting a member's existing pension, they will be allocated according to the existing proportions of taxable and tax free components of the pension interest.

Life insurance proceeds paid into an interest supporting a pension

Reversionary

Where life insurance proceeds are paid into a deceased pensioner's account, proceeds will be allocated according to the existing proportions of the pension interest if the existing pension automatically reverts to a dependant.

Non-reversionary

Where the deceased instead has an existing pension that is not automatically reversionary, life insurance proceeds will form part of the taxable component. For further details see section 22.11 *Determining the tax-free and taxable proportions of payments from death benefit income streams*.

Tax components may be modified

Importantly, these tax components may be modified where a lump sum death or disability benefit is paid or rolled over. For further details, see the following sections:

- section 10.9 *Taxation of superannuation lump sum death benefits*
- section 9.4 *Taxation of lump sum disability super benefits*.

Income protection/salary continuance proceeds

Income protection/salary continuance insurance proceeds do not generally form part of a member's balance and are not allocated to one or more tax components. When paid out to a member under the temporary incapacity condition of release, income protection proceeds are not considered a superannuation benefit.

See section 11.11 for more information on income protection/salary continuance.

Taxation of insurance proceeds paid from super

For specific taxation rates on insurance benefits paid from super, see the following sections:

- section 10.9 *Taxation of superannuation lump sum death benefits*
- section 9.4 *Taxation of lump sum disability super benefits*
- section 11.11 *Income protection/salary continuance insurance comparison*.

11.9 Insurance premiums and contributions caps

Contributions that are made to super in order to fund insurance premiums will count toward relevant contributions caps. This includes contributions made to standalone insurance offerings held within a superannuation environment.

Contributions made by an employer, or personal concessional contributions, will count toward a member's concessional contributions cap, while after-tax contributions used to fund premiums will count toward a member's non-concessional contributions cap.

Self-insurance generally prohibited from 1 July 2013

Historically, a fund's current or contingent liability to provide death or disability insurance was often provided – at least in part – by the assets of the fund. Since 1 July 2013, super funds have been prohibited from self-insuring, with two exceptions:

- Super funds that self-insure at 1 July 2013 were allowed to continue self-insuring until 1 July 2016. From that date, death or disability benefits could only be provided to members if they are fully supported by an insurance policy.
- Super funds that self-insure at 1 July 2013 are generally able to continue to self-insure for defined benefit fund members.

11.10 Tax treatment of group insurance

Group insurance is available either through a super policy or a non-super policy owned by an employer. Each alternative has various implications that should be understood to ensure that the cover suits the needs of both employer and employees.

All insurance types

	Super policy	Non-super policy
Ownership	The policy is owned by the trustee of the super fund.	The policy is owned by the employer.
Lives insured	The lives insured are members of the super fund.	The contract of insurance is between the insurer and the employer. Employees are listed as the lives insured. There may be a separate contract between the employee and employer requiring the employer to provide insurance cover as a condition of employment.
Claims	When a claim is approved, the insurer pays the proceeds to the trustee (who then distributes them accordingly).	When a claim is approved, any proceeds are paid to the employer, who in turn pays the employee and/or the employee's dependants.

Life insurance

	Super policy	Non-super policy
Payment of insurance premium	Tax deductible to super fund Contributions made to fund insurance premiums are subject to the member's relevant contributions cap[1] Fringe benefits tax (FBT) not payable	Tax deductible to employer No caps on premiums FBT not payable[2]
Receipt of insurance proceeds	Non-assessable to the super fund	Assessable as income to the employer
Payment of lump sum benefits	Made by the super fund to the member's dependants[3] or estate Non-deductible to the super fund Payments to tax dependants[3] (directly or via the estate) are not subject to tax Payments to tax non-dependants[3] are subject to super benefits tax of either 15%[5] or 30%[5]	Made by the employer to the employee's beneficiaries or estate Tax deductible to the employer Payments to tax dependants[3] (directly or via the estate) are not subject to tax up to $260,000[4], with the remainder taxed at the highest marginal tax rate (Medicare levy may also apply) Payments to tax non-dependants[3] are taxed at 30%[5] up to $260,000[4], with the remainder taxed at the highest marginal tax rate (Medicare levy may also apply)

TPD insurance

	Super policy	Non-super policy
Payment of insurance premium	Tax deductible to super fund[6] Contributions made to fund insurance premiums are subject to the member's relevant contributions cap[1] FBT not payable	Tax deductible to employer No caps on premiums FBT not payable[2]
Receipt of insurance proceeds	Non-assessable to the super fund	Assessable as income to the employer
Payment of lump sum benefits	Made by the super fund to the member Non-deductible to the super fund Benefit payment may include an increased tax free component Taxable component not subject to tax if member age 60 or more Taxable component subject to super benefits tax if member under age 60	Made by the employer to the employee upon terminating employment due to invalidity Tax deductible to the employer Benefit payment may include an increased tax free component Taxable component under \$260,000[4] taxed at 15%[5] or 30%[5], depending on age of employee Taxable component over \$260,000[4] taxed at highest marginal tax rate (Medicare levy may also apply)

1 Concessional and non-concessional contributions are subject to caps: see sections 2.2 and 3.2.

2 FBT is not payable on insurance premiums paid by the employer provided the employee is not a party to the insurance contract.

3 For SIS dependants and tax dependants, see section 10.4.

4 Employment Termination Payment (ETP) cap is $260,000 for 2025–26.

5 Maximum tax rate. Medicare levy may also apply.

6 TPD insurance premiums are deductible only to the extent the TPD policy has the necessary connection to a liability of a fund to provide disability superannuation benefits. Refer to Tax Ruling TR 2012/6 for further information.

11.11 Income protection/salary continuance insurance comparison

The following table compares income protection/salary continuance insurance (SCI) held within superannuation to cover held outside superannuation.

	Super	Non-super	
	SCI with benefit period up to age 65	SCI (employer owns policy)	SCI (employee owns policy)
Deductibility of insurance premium	Premium fully tax deductible to fund trustee provided that the benefits payable under the terms of the insurance policy comply with the requirements[1] of the SIS Act.	Premium deductible to the employer as an expense incurred in the course of running a business.	Premium deductible to the employee as an expense incurred in deriving assessable income.
FBT on insurance premium	FBT does not apply to super contributions made by the employer to pay for the premium.	FBT does not apply provided the employee does not have rights or entitlements to benefits under the contract.	FBT does not apply (not an employment benefit)
Capacity to make benefit payment to beneficiary	Fund's trust deed, sole purpose test and conditions of release and cashing restrictions[1]	A contract, such as an employment contract, between the employer and the employee covering the circumstances in which SCI proceeds will be paid to the employee.	Part of the contract of insurance
Assessment of insurance proceeds to policy owner	Non-assessable to fund trustee. Assessable to member receiving the payments.	Assessable to employer	Assessable to employee – see taxation of SCI benefit payments below
Deductibility of benefit payment from policy owner to beneficiary	Non-deductible to fund trustee	Deductible to employer	Not applicable
Taxation of SCI benefit payments	SCI benefit payments are not super benefits for tax purposes and are assessed as ordinary income and taxed at marginal income tax rates in the hands of the employee. No 15% tax offset is available.		

1 These requirements, expressed in the SIS temporary incapacity condition of release and cashing restrictions, are that the benefit must be paid as a non-commutable income stream for the purpose of continuing the gain or reward the member was receiving before the incapacity, for a period not exceeding the period of incapacity. See section 8.13.

11.12 Insurance may be prohibited/cancelled due to inactivity, age or low balance

Insurance prohibited due to inactivity

Trustees of a MySuper or choice fund are prohibited from providing insurance where:

- the member's account has been inactive for a continuous period of 16 months or more, and
- the member has not made a valid written election to obtain or maintain insurance.

For the purposes of this measure, a member's account is inactive if the super fund has not received a contribution or rollover in respect of the member. If a fund receives an amount in respect of the member, the period of inactivity is reset.

A trustee of a super fund is required to notify a member once their account has been inactive for 9, 12 and 15 months, giving the member an opportunity to take steps to maintain their insurance cover if they wish.

Despite these rules, a member's right to be covered by insurance is unaffected until the end of the period for which premiums have been charged, or the expiry date of the fixed term of the member's existing insurance contract.

If a member does not provide a written instruction to maintain insurance, their cover will no longer be provided after the later of 16 months of inactivity or the expiry of a period of cover for which the member has paid or the expiry date of the fixed term of the member's existing insurance contract.

If the provision of insurance in an inactive account ceases, and the account has a balance of less than $6,000, the account may be considered an inactive low-balance account which must be sent to the ATO (see section 7.4).

Electing to obtain or maintain insurance in an inactive account

To obtain or maintain insurance cover, members with accounts that become inactive for a continuous period of 16 months will have to either:

- contribute or roll over an amount to their superannuation account prior to 16 months of inactivity to reset the inactivity period, or
- submit a valid election in writing to their super fund prior to 16 months of inactivity.

If the member with an inactive account for 16 months does nothing, their insurance will be cancelled.

Contributing or rolling over an amount will only rectify inactivity for a maximum of 16 months, when the account would again become inactive if no further contributions or rollovers have been received.

Alternatively, if the member submits a valid written election to their fund, this only has to be done once. The election will apply even if the member's account is inactive for a continuous period of 16 months in the future.

Note that where a member makes an election to obtain/maintain insurance in an inactive account, this is not considered to also be an election to obtain or maintain insurance due to a low balance or being under age 25 (see below).

When these rules do not apply

The rules prohibiting the provision of insurance for inactive members do not apply to:

- SMSFs or small APRA funds
- defined benefit members
- Australian Defence Force (ADF) Super members (or a person who would have been an ADF Super member if they had not exercised choice)
- members whose employer makes contributions to a fund on their behalf in addition to superannuation guarantee obligations, which cover the full costs of the member's insurance premiums.

Insurance prohibited due to balance under $6,000

Trustees of a MySuper or choice fund are prohibited from providing insurance in respect of a member who:

- has an account balance less than $6,000, and their account balance has not been $6,000 or more any time since 1 November 2019, and
- has not made a valid written election to obtain or maintain insurance.

Despite these rules, a member's right to be covered by insurance is unaffected until the end of the period for which premiums have been charged, or the expiry date of the fixed term of the member's existing insurance contract.

Electing to maintain/obtain insurance (low balance election)

A member can make a written election to their fund to obtain or maintain insurance even if their account balance is less than $6,000. This election only needs to be made once.

Where a member makes an election to obtain or maintain insurance where their account balance is less than $6,000, they are deemed to have also made an election to obtain or maintain insurance while under age 25 (see below). However, an election to obtain or maintain insurance where a member's balance is below $6,000 is not considered to be an election to obtain or maintain insurance during periods of inactivity.

FirstTech understands that where a member with a balance of less than $6,000 has chosen to take out insurance cover within their superannuation account prior to 1 November 2019, this is deemed to be an election to obtain or maintain insurance for these purposes. In addition, where the member has made an election to maintain or obtain insurance under the inactive account provisions prior to 1 November 2019, FirstTech understands that this could also be considered a low balance election. However, advisers should confirm with their client's particular super fund that insurance will be retained in these circumstances.

When these rules do not apply

The rules prohibiting the provision of insurance for members with balances less than $6,000 do not apply to:

- SMSFs or small APRA funds
- defined benefit members
- Australian Defence Force (ADF) Super members (or a person who would have been an ADF Super member if they had not exercised choice)
- members whose employer makes contributions to a fund on their behalf in addition to superannuation guarantee obligations, which cover the full costs of the member's insurance premiums
- members for whom a dangerous occupation exception applies.

Insurance prohibited for certain members under age 25

Trustees of a MySuper or choice fund are prohibited from providing insurance in respect of a member who:

- is under age 25 and began to hold the superannuation account on or after 1 April 2020, and
- has not made a valid written election to obtain or maintain insurance.

Electing to maintain/obtain insurance (under 25 election)

A member can make a written election to their fund to obtain or maintain insurance even if they are under age 25. They only need to make this election once.

Where a member makes an election to obtain or maintain insurance where they are under age 25, they are deemed to have also made an election to obtain or maintain insurance where their balance is below $6,000 (see above). However, an election to obtain or maintain insurance where a member is under age 25 is not considered to be an election to obtain or maintain insurance during periods of inactivity.

When these rules do not apply

The rules prohibiting the provision of insurance for members under age 25 do not apply to:

- SMSFs or small APRA funds
- defined benefit members
- Australian Defence Force (ADF) Super members (or a person who would have been an ADF Super member if they had not exercised choice)
- members whose employer makes contributions to a fund on their behalf in addition to superannuation guarantee obligations, which cover the full costs of the member's insurance premiums
- members for whom a dangerous occupation exception applies.

12 Employer super issues

Substantial changes proposed to SG rules from 1 July 2026 (payday super)

The Government has announced a range of changes to superannuation guarantee (SG) rules as part of its proposed payday super reforms. The changes are generally proposed to commence from 1 July 2026, and include:

- Aligning pay cycles and SG contribution timing by requiring employers to pay SG contributions generally within 7 days of paying qualifying earnings to an employee.
- Changing the calculation of the maximum contributions base, and applying it on a financial year, rather than quarterly, basis.
- Aligning the definition of earnings for SG and SG charge purposes.
- Updating penalties for late or missed SG payments.
- Closing the small business superannuation clearing house.

At the time of writing, exposure draft legislation had been released for consultation, but the proposed changes had not been introduced into Parliament or become law.

12.1 Superannuation guarantee

The superannuation guarantee (SG) is the minimum quarterly employer super contribution that is necessary for an employer to avoid paying the superannuation guarantee charge (SGC). Employers are generally entitled to claim a tax deduction for the SG support that they provide to employees (see section 2.5).

Who does it apply to?

Generally employers are those who:

- exercise some control over how, when and where work is done
- are responsible for the payment of wages or salary, or
- have the power to dismiss or hire.

It includes employers who are tax-exempt organisations and family companies and trusts that pay salary and wages.

Who is an employee for SG purposes?

Under section 12 of the *Superannuation Guarantee Administration Act 1992* (SGAA), an employee includes those who fall within the ordinary meaning of an employee, as well as those who:

- are paid for performing duties as the director of a company
- are working under a contract that is wholly or principally for labour
- are paid to perform or present as an artist, musician, entertainer or sportsperson, or
- are members of State or Federal Parliament or the NT or ACT Legislative Assembly.

A director is not automatically a company's employee. To be an employee for SG purposes, directors must be entitled to payment for their services. However, the ATO considers that non-paid directors are employees if they:

- meet the definition of employee in the SGAA, or
- are engaged in producing the employer's assessable income, or
- are an Australian resident who is engaged in the business of the employer.

Contractors are generally considered employees for SG purposes if the contract is wholly or principally for labour. In Taxation Ruling TR 2023/4, the ATO indicates that a contract will be considered wholly and principally for labour (and the contractor is therefore an employee for SG purposes) where the contractor:

- is remunerated (wholly or principally) for their labour or skills, and
- must perform the contractual work personally (i.e. there is no right of delegation), and
- is not paid to achieve a result.

For further information about the ATO's views on the treatment of contractors, refer to Appendix 2 of TR 2023/4. In 2024, the ATO withdrew its previous ruling on the definition of employee for SG purposes (SGR 2005/1) and incorporated its updated view into Appendix 2 of TR 2023/4, available at www.ato.gov.au/law. While Appendix 2 of TR 2023/4 is not binding on the Commissioner, the ruling indicates that acting in accordance with the ruling would be a relevant factor in the taxpayer's favour in any exercise of discretion by the Commissioner regarding imposing SG penalties.

The ATO has also developed an employee/contractor decision tool, available at www.ato.gov.au.

FirstTech comment: Recent High Court decisions that have important implications for determining whether a person is an employee or an independent contractor

In 2022 the High Court of Australia handed down two decisions (*Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA1 (CFMEU v Personnel Contracting)*; and *ZG Operations & Anor v Jamsek & Ors [2022] HCA 2 (ZG v Jamsek)*) concerning whether a person was an employee under the ordinary meaning or an independent contractor.

In the CFMEU v Personnel Contracting decision, the court confirmed that when assessing whether a person is an employee under the general meaning or an independent contractor, the rights and obligations of the parties under an existing comprehensive agreement will take primacy over a previously applied multi-factorial test.

Following the CFMEU v Personnel Contracting decision, the High Court then handed down its decision in the ZG v Jamsek case confirming that two truck drivers providing a delivery service were independent contractors and not employees under the normal meaning. The High Court then referred the matter back to the Federal Court to determine whether the truck drivers could be considered employees under the SG definition, i.e. whether they were working under a contract that was wholly or principally for their labour.

In 2023 the Full Court of the Federal Court of Australia handed down its judgment in this case (*Jamsek v ZG Operations Australia Pty Ltd (No 3) [2023] FCAFC 48*) which also confirmed the truck drivers were independent contractors and not employees for SG purposes. The court based this decision on a number of factors, including: the contracts were not with natural persons but with people acting in a separate legal capacity as partners in a partnership; the contracts were for the provision of labour and equipment (trucks); the contract involved the delivery of a service that relied upon the resources of the partnership – only part of which was a labour component, and the contract allowed the work to be delegated to other substitute drivers.

Following these decisions, the ATO issued decision impact statements and subsequently released Taxation Ruling TR 2023/4: Income tax and superannuation guarantee: who is an employee? This ruling effectively replaces the following two rulings which have been withdrawn.

- Superannuation Guarantee Ruling SGR 2005/1 Superannuation guarantee: who is an employee?
- Taxation Ruling TR 2005/16 Income tax: Pay As You Go – withholding from payments to employees.

Exemptions

Salary or wages paid to certain employees are exempt from SG as follows:

- part-time employees aged under 18 (working 30 hours or less each week)
- resident employees paid by non-resident employers for work done outside Australia, unless the employee is covered by an international social security agreement
- non-resident employees paid solely for work undertaken outside Australia
- foreign executives who hold certain visas or entry permits, as prescribed by the regulations
- employees paid for work of a domestic or private nature for not more than 30 hours each week, e.g. part-time nanny or housekeeper
- employees who opted out of receiving SG contributions by making an election under the old section 19(4) of the SGAA prior to 1 July 2007, because their accumulated super entitlements or actual payments received exceeded their pension reasonable benefit limit (RBL). RBLs were abolished on 1 July 2007 and these elections can no longer be made from that date. However, existing elections were and remain irrevocable
- employees employed under the Community Development Employment Program
- employees in their capacity as members of the Defence Force Reserves.

Under international social security agreements, double coverage of compulsory retirement savings is prevented. Where an agreement exists and an employer would otherwise be required to make super contributions for the same work undertaken by an employee under the laws of Australia and another country, the employer may apply to the ATO for a certificate of coverage exempting it from the requirement to make SG contributions.

No age limit for SG

There is no age limit for employees to be eligible for SG. Prior to 1 July 2013, employers were not required to pay SG contributions for salary or wages paid to employees age 70 or over.

SG payment rate

The SG payment rate increased from 11.5% to 12% on 1 July 2025. For each quarter of the 2025–26 financial year, employer contributions (excluding salary sacrifice contributions) equal to 12% of each eligible employee's ordinary time earnings (OTE) base for that quarter (subject to the maximum contributions base - see later in this section) must be paid to a complying super fund.

The SG payment rate has been gradually increasing from 9.5% to 12% as shown in the following table. 2025–26 marks the end of this series of legislated increases, with the SG rate now 12%.

Financial year	SG rate	Financial year	SG rate
2017–18	9.5%	2022–23	10.5%
2018–19	9.5%	2023–24	11%
2019–20	9.5%	2024–25	11.5%
2020–21	9.5%	2025–26 and future years	12%
2021–22	10%		

Ordinary time earnings (OTE) base

An employee's ordinary time earnings (OTE) base is the sum of:

- their ordinary time earnings (OTE), and
- any sacrificed ordinary time earnings amounts.

Ordinary time earnings

An employer is required to pay SG contributions based on an eligible employee's OTE (plus sacrificed OTE amounts). OTE may not include all of the remuneration received by the employee.

The table below shows the types of employee remuneration that are included in OTE.

Employee remuneration	OTE	Salary or wages
Salary, wages	Yes	Yes
Commission	Yes	Yes
Casual employee –		
• Shift loadings	Yes	Yes
• Overtime	No	Yes
Benefits subject to fringe benefits tax (FBT)	No	No
Work paid at piece rates – no ordinary hours stipulated	Yes	Yes
Workers compensation payments –		
• Returned to work	Yes	Yes
• Not working	No	No
Directors' fees	Yes	Yes
Payments for performance in, or provision of services in relation to, entertainment, sport, promotions, films, discs, tapes, TV or radio	Yes	Yes
Payments to a contractor who is an employee under the SGAA (labour component of payments only)	Yes	Yes
Payments for domestic or private work under 30 hours per week	No	No

Employee remuneration	OTE	Salary or wages
Overtime		
Simple overtime situation (i.e. work in excess of ordinary hours of work)	No	Yes
Overtime where agreement prevails over award – • Ordinary hours retained • Distinction between ordinary and other hours removed	 No Yes	 Yes Yes
Overtime where no ordinary hours of work specified	Yes	Yes
Bonuses		
Performance bonus	Yes	Yes
Christmas bonus	Yes	Yes
Ex gratia bonus in respect of ordinary hours of work	Yes	Yes
Bonus paid in respect of overtime only	No	Yes
Allowances and expenses		
Expense allowance expected to be fully expended	No	No
Allowance by way of unconditional extra payment	Yes	Yes
Danger allowance	Yes	Yes
Retention allowance	Yes	Yes
Doctor's hourly on-call allowance in relation to ordinary hours of work	Yes	Yes
Reimbursement of expenses, including travel costs and petty cash	No	No
Leave		
Pay for annual, long service or sick leave taken	Yes	Yes
Annual leave loading – demonstrably referable to a loss of opportunity to work overtime[55]	No	Yes
Annual leave loading – all other[55]	Yes	Yes
Pay for parental leave, including adoption leave	No	No
Pay for leave from usual employment to engage in eligible community service (e.g. jury duty, SES duty) or Defence Force Reserves service	No	No
Payments on termination of employment		
Payments for unfair dismissal	No	No

55 For more information see: www.ato.gov.au/businesses-and-organisations/super-for-employers/paying-super-contributions/how-much-super-to-pay/list-of-payments-that-are-ordinary-time-earnings/superannuation-on-annual-leave-loading

Employee remuneration	OTE	Salary or wages
Payments in lieu of notice	Yes	Yes
Payments of unused annual, long service or sick leave	No	Yes
Redundancy payments	No	No
Other payments		
Dividends	No	No
Partnership and trust distributions	No	No
Payments for entering a restraint of trade agreement	No	No

Source: SGR 2009/2 at www.ato.gov.au

We recommend that employers seek legal advice on what constitutes OTE to ensure SG obligations are met. Penalties for not meeting SG obligations may be costly.

Sacrificed ordinary time earnings (OTE) amounts

Sacrificed OTE amounts are any salary sacrifice superannuation contributions made to a complying fund, to the extent they reduce an employee's OTE.

Example:

Chris is an employee earning $100,000 p.a. (all OTE). For the coming year, he elects with his employer to salary sacrifice $10,000 of his future OTE to superannuation. For that year, Chris will have an OTE base of $100,000, consisting of:

- OTE of $90,000
- sacrificed OTE amounts of $10,000.

Sacrificed OTE amounts do not include salary sacrifice arrangements relating to benefits other than superannuation contributions (e.g. salary packaging arrangements involving fringe benefits provided by employers).

Maximum contributions base

Where an employee's OTE base for a quarter exceeds the maximum contributions base, SG law only requires the employer to make SG contributions on the maximum contributions base amount (rather than an employee's full OTE base). While potentially limiting the amount of contributions required under SG law, the maximum contributions base does not stop employers from making a higher level of contributions (for example paying SG on full OTE base) or alter the terms of an employee's remuneration.

The maximum contributions base of an employee for which an employer is obliged to make SG contributions is $62,500 per quarter ($250,000 p.a.) for the 2025–26 financial year.

The maximum contributions base is calculated as the lesser of:

- The maximum contributions base for the previous financial year, indexed to AWOTE, and
- The amount calculated using the following formula:

$$\text{Concessional contributions cap} \times \frac{100}{\text{charge percentage}} \times \frac{1}{4}$$

This second method is essentially a calculated amount which ensures that an employee with a single employer would not have excess concessional contributions for a year due only to the employer's compulsory SG contributions. The second method is applicable in 2025–26 as it is the lower figure.

Where an employee is being paid by two or more different employers, a separate maximum contributions base applies for each employer. This may cause the member to have excess concessional contributions. See section 2.4 for more detail on excess concessional contributions. However, members who may otherwise have excess concessional contributions due only to SG contributions from multiple employers may apply to exempt one or more employers from having to make SG contributions. See *Members with multiple employers – opting out of SG to prevent unintentional concessional cap breaches* later in this section for further information.

Members with multiple employers – opting out of SG to prevent unintentional concessional cap breaches

Because the SG maximum earnings base applies per employer, a member with multiple employers may unintentionally exceed their concessional contributions cap due only to SG contributions (from multiple employers).

To allow members in this situation to prevent concessional cap breaches, members with multiple employers can apply to the ATO for an employer shortfall exemption certificate for one or more of their employers. This certificate exempts an employer from having to make SG contributions for the quarters specified in the certificate.

Applying for an employer shortfall exemption certificate

Employees can apply for an exemption certificate using the ATO's approved form available here: Super guarantee opt out for high income earners with multiple employers form (NAT 75067).

An employee will need to submit an application to the ATO at least 60 days prior to the first quarter for which the employer shortfall exemption certification is sought. An exemption certificate can be for a period of up to four quarters in one financial year. A separate application is required for each financial year.

An employee can apply for separate certificates for each employer and each quarter, for a particular financial year, using a single application.

In what circumstances will the ATO issue an employer shortfall exemption certificate?

To issue a certificate in this situation, the ATO must be satisfied that:

- the person is likely to exceed their concessional contributions cap for the financial year that includes quarter(s) specified in the application, and
- after issuing the certificate, the employee will have at least one remaining employer who is still obligated to provide SG contributions, and
- it is appropriate to issue the certificate in the circumstances

While the legislation does not specifically say that the member must be likely to exceed their concessional contributions cap in this situation due only to compulsory SG contributions, the ATO has indicated[56] that a member will only be eligible if they expect their employers' mandated concessional super contributions to exceed their concessional contributions cap for a financial year. Effectively this means that employees must be likely to exceed their concessional cap due to employer compulsory super contributions such as superannuation guarantee. As a result, employees will be excluded from opting out of SG where they are likely to exceed their concessional contributions cap due to other types of concessional contributions such as:

- personal deductible contributions, or
- voluntary salary sacrifice contributions.

The ATO will consider the effect that issuing the certificate is likely to have on the member's concessional contributions for the financial year and any other matters they consider relevant. There are no further legislated criteria stating what the ATO will deem appropriate, however the Government has indicated[57] that the ATO may deny an application where contributions would be reduced by a substantially larger amount than is necessary, relative to another possible certificate, or where the applicant has artificially created a situation that enables them to apply.

Where a certificate is issued, it will be provided to both the member and the employer. Once issued, a certificate is irrevocable and cannot be varied.

Employer obligations

An employer shortfall exemption certificate relieves an employer from their SG obligations for that employee for the quarters specified in the certificate.

56 Source: www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/growing-and-keeping-track-of-your-super/super-from-your-employer/super-guarantee-opt-out-for-high-income-earners-with-multiple-employers

57 Paragraph 1.41, Explanatory Memorandum, Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019.

However, there are no obligations on the employer in relation to an exemption certificate. That is, an employer is not obligated to cease making SG contributions for the employee, and is also free to recommence SG contributions during a quarter where they previously ceased contributions. This discretion may be exercised by the employer for any reason, but could include a scenario where the employer and employee have not been able to reach agreement on alternative remuneration for the quarter, in the absence of SG contributions. The employer may also choose to continue SG contributions where they have not had enough time to make the necessary payroll adjustments, or their payroll software does not allow for the temporary cessation of SG.

FirstTech comment

Employees applying for an exemption certificate will need to negotiate alternative remuneration arrangements with their employer to compensate for any SG contributions that are not paid during the relevant quarter.

There are no requirements under this measure for the foregone contributions to be substituted for higher wages or other alternative remuneration.

Timing of SG contributions

To count towards meeting an employer's SG liability during a quarter, a contribution must be made by no later than 28 days after the end of each quarter, as shown in the following table.

SG quarter 2025–26	Cut-off date for SG contributions[1]
1 July – 30 September	28 October
1 October – 31 December	28 January
1 January – 31 March	28 April
1 April – 30 June	28 July

1 Where a cut-off date falls on a day that is not business day (i.e. the cut-off date is a Saturday, Sunday or public holiday), SG contributions can instead be made by the first following business day.

While SG contributions made between 1 July and 28 July in a financial year may count towards the employer's SG obligations for the previous June quarter, the contributions will count towards the employee's concessional contributions cap in the year the contributions are made.

Employer contributions made before the start of a quarter can count toward meeting the employer's SG obligations in that quarter, provided the contributions:

- are made not more than 12 months before the beginning of the quarter, and
- have not been used to meet the employer's SG obligations during another quarter.

12.2 The superannuation guarantee charge (SGC)

If the minimum SG contribution is not made by an employer by the cut-off date for one or more quarters, or the employer does not contribute to the employee's chosen fund, the employer will be subject to the SGC and the following penalties apply:

- the charge is not tax deductible, unlike most other employer super contributions
- interest at the nominal rate (currently 10% p.a.) is payable, plus an administration fee
- the shortfall calculation is based on an employee's salary or wages base (not OTE base), which may be more than their OTE base
- further penalties for late payment (such as the general interest charge) and failure to provide a SG statement apply and are not tax deductible.

Where an employer pays the SGC, the ATO will then transfer the SG shortfall amount and any interest to the employee's chosen fund.

Salary or wages base

An employee's salary or wages base is the sum of:

- their salary or wages and
- any sacrificed salary or wages amounts.

Sacrificed salary or wages amounts are any salary sacrifice superannuation contributions made to a complying fund, to the extent they reduce an employee's salary or wages.

Calculating the SGC

The SGC includes:

The sum of an employer's individual SG shortfall amounts for each employee

This is based on the individual shortfall percentage, that is, the difference between the charge percentage and the actual percentage of support, for each employee; in other words, the difference between the required contribution and the contribution actually made.

Additionally, a penalty for any non-compliance to choice of fund rules will increase an employer's individual SG shortfall. Non-compliance with choice of fund rules includes making the correct amount of SG contributions but directing them to the wrong fund.

The amount of any increase (for non-compliance with choice of fund rules) is a maximum of $500 per employee for a notice period and is calculated as follows for each employee who has not received the appropriate amount of SG:

25% × [notional quarterly shortfall - actual quarterly shortfall], where notional quarterly shortfall is effectively the amount contributed to the wrong fund.

Interest component

An interest component of 10% p.a. of the total of the employer's individual SG shortfalls. Interest is calculated from the start of the relevant quarter until the SGC is paid to the ATO (inclusive).

A fixed administration fee

$20 is charged for each employee for whom there is an SG shortfall.

SGC example

If each employee's salary and wages and OTE for a quarter were $10,000 and there are 20 employees, the employer pays only 8.5% SG instead of 12%, and the employer pays the SGC 137 days after the start of the relevant quarter, the SGC will be:

1. Sum of individual SG shortfalls = 3.5% × $10,000 × 20 = $7,000
2. Interest component = 10% × (137/365 days) × $7,000 = $263
3. Administration fee = $20 × 20 = $400

Total SGC = $7,663

Note: The late payment general interest charge may also apply.

Paying the SGC

An employer who is liable to pay the SGC must lodge an SGC statement and pay the SGC to the ATO (not the employee's super fund) by the dates in column 3 of the table below. Where the SGC is paid after these dates, the general interest charge and other penalties may apply. An employer who fails to lodge the SG statement on time is liable to pay additional SGC (known as the Part 7 penalty) which can be up to 200% of the amount of the underlying SGC.

SG quarter 2025–26	Cut-off date for SG contributions[1]	Due date for lodgment of SGC statement and payment of SGC[1]
1 July – 30 September	28 October	28 November
1 October – 31 December	28 January	28 February
1 January – 31 March	28 April	28 May
1 April – 30 June	28 July	28 August

1 Where a due date falls on a day that is not a business day (i.e. the due date is a Saturday, Sunday or a public holiday), lodgment or payment may be made on the first business day after the due date without incurring a penalty or general interest charge.

SG obligations for the 1 April to 30 June quarter are not due until 28 July. However, employers need to make the contribution by 30 June to claim a tax deduction for that financial year.

Certain late employer SG contributions (i.e. those made after the cut-off dates in column 2 above) may be used to offset the SGC incurred. An employer can make late contributions to offset the SGC for a quarter provided they are made prior to the employer's original SGC assessment date for the quarter – which is generally the date that either the employer's first SG statement is provided for the quarter or a default assessment of SGC liability is made.

To use late contributions to offset SGC for a quarter, the employer must then make a late payment offset election to the ATO within four years of the original SGC assessment date. The employer must still lodge an SGC statement and will still be liable for the administration fee and interest component of the SGC. Where a contribution is used to offset the SGC, it is not tax deductible to the employer.

Handy ATO super guarantee tools

The ATO has released the following tools and calculators (available at www.ato.gov.au) that employers can use to help manage their SG obligations, which you may find useful:

- Superannuation guarantee eligibility decision tool (determines for which employees an employer must pay SG)
- Superannuation guarantee contributions calculator (works out the amount of SG contributions required)
- Superannuation guarantee charge statement and calculator tool (works out SGC payable and produces an SGC statement to send to the ATO).

12.3 Choice of fund

Many employees are able to choose the complying super fund to which their employer must direct SG contributions. Choice of fund legislation requires a new eligible employee who commences work to be offered choice of fund (by the employer providing them with a standard choice form).

Who may choose their own fund?

An employee is eligible to choose their own superannuation fund where they are:

- employed under a federal award
- employed under a former state award, now known as a notional agreement preserving state award (NAPSA)
- employed under an award or industrial agreement that does not require super contributions
- employed under an enterprise agreement or workplace determination made on or after 1 January 2021
- not employed under any state award or industrial agreement (including contractors who are regarded as eligible employees for super purposes).

Not all employees must be given a choice. The legislation specifically excludes:

- employees covered by a range of employment agreements that specify a super fund[58]
- government employees in unfunded public sector super schemes
- government employees who are members of the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation Scheme (PSS), other than PSSAP members
- employees who remain a member of a defined benefit fund that is in surplus or who have accrued their maximum benefit.

The employers of individuals covered by these exclusions may be able to make contributions according to the relevant award, agreement, legislation or trust deed and still comply with the super choice rules. This will be determined by the wording of the particular instrument. Employers should seek legal advice from a workplace or industrial relations lawyer.

FirstTech comment

Stapled fund rules and contributions made in accordance with a workplace determination or enterprise agreement

Under the stapled fund rules, where an employee starts employment with a new employer on or after 1 November 2021, the employer cannot satisfy the choice of fund rules by making contributions on behalf of the employee in accordance with a workplace determination or enterprise agreement made before 1 January 2021 unless the ATO has confirmed the employee does not have a stapled fund.

Please see below for further information about the stapled fund rules.

What contributions does choice cover?

Legally, an employer does not have to offer choice of fund for salary sacrifice or other voluntary employer contributions in excess of its SG obligations, but for practical purposes, many choose to do so.

Choice of fund also has no impact on members' existing super balances. However, the portability rules (see section 7.1) provide an equivalent mechanism for most members to choose in which complying fund their existing super balance will be held.

58 Excluding employees covered by an enterprise agreement or workplace determination made on or after 1 January 2021 – these employees can choose their own fund. While an employee covered by a pre-1 January 2021 enterprise agreement or workplace determination may not be eligible to choose their own fund, an employer will need contribute to the employee's stapled fund (if one exists) where they commenced employment on or after 1 November 2021. See section 12.4 for further information.

Which super funds can be chosen?

Any complying super fund or RSA can be chosen by an employee – this is an unlimited choice regime. The fund could include an in-house corporate fund, a corporate master trust, a retail personal fund, an industry fund, a super wrap or master trust, an SMSF or a small APRA fund. The only requirement is that it must be willing to accept contributions from the person's employer.

How and when can an employee choose their fund?

An employee can choose a fund in two ways:

- by responding in writing to a standard choice form given to them by their employer (this form is available at www.ato.gov.au)
- by providing a written notice to their employer requesting that contributions are made to the employee's chosen fund.

Employees can access and complete pre-filled standard choice forms through either:

- ATO online services via myGov
- their employer's employee commencement-enabled payroll software, if available.

The standard choice form must be provided by an employer within 28 days of a new employee commencing employment. It must state that the employee may choose any complying fund and include the name of the employer's default fund plus any additional information required under the regulations. The employee's written notice must set out the contact details for their chosen fund, evidence that the trustee will accept contributions and any other information required by the regulations.

An eligible employee can exercise choice of fund (including changing a previous choice of fund nomination) at any time. However, the employer is not required to accept the employee's choice if they have already chosen a fund within the last 12 months.

What happens if a person doesn't make a choice?

If an employee doesn't make a choice, the employer must instead make SG contributions to the employee's stapled fund (see section 12.4) where the employee commenced employment on or after 1 November 2021 and a stapled fund exists. In other cases, the employer must direct SG contributions to its default fund (see section 12.5).[59]

59 In limited situations, an employer may satisfy choice of fund rules by contributing to another type of fund for certain Government employees, or in accordance with certain employment agreements and awards specified in section 32C of the *Superannuation Guarantee (Administration) Act 1992*.

Circumstances in which an employer may reject an employee's choice

There are two circumstances where an employer is able to reject a fund chosen by an employee:

- where an employee fails to provide all required information (i.e. the written notice and a written statement setting out contact details for the fund), any other prescribed information and written evidence that the fund will accept contributions made by the employer
- where the employee has already chosen a fund within the last 12 months.

Will an employer be liable for the choices made by employees?

No. The legislation specifically removes any liability from an employer in relation to complying with the choice of fund rules. The requirements for minimum insurance cover in the default fund and an enhanced disclosure regime address these aspects. Employers should be careful not to inadvertently provide financial advice or do anything outside their obligations to comply with choice of fund, otherwise this protection will not apply.

What are the penalties for the employer not complying with choice of fund?

An employer who fails to offer a choice to employees or who contributes to a fund other than one chosen by an employee will be subject to a financial penalty. Section 12.2 discusses how this penalty affects an employer's SG shortfall.

12.4 Stapled funds

To minimise the build-up of unintended multiple superannuation accounts, as part of its Your Future, Your Super reforms[60], the Government modified choice of fund rules from 1 November 2021 so that in the absence of choosing a super fund, an employee's existing superannuation fund follows them (i.e. is stapled to them) as they change employment rather than a new default fund being created by each employer.

The stapled fund rules only apply to an employer for employees who commence employment on or after 1 November 2021. Where they apply, an employer is still required to make SG contributions to the employee's chosen fund (if they have exercised choice of fund). In the absence of the employee choosing a fund, the employer is generally required to:

- contribute to the employee's stapled fund (if the employee has one), or
- contribute to the employer's default fund (if the employee does not have a stapled fund).

60 *Treasury Laws Amendment (Your Future, Your Super) Act 2021*.

What is a stapled fund?

A fund must meet the following requirements in order to be a stapled fund for an employee:

- the fund must be:
  - a complying superannuation fund or
  - a complying superannuation scheme, or
  - a retirement savings account (RSA)
- the employee must be a member of the fund or scheme or be a holder of that RSA
- insofar as the ATO is aware, the fund, scheme or RSA is able to accept contributions from the employee's employer, and
- the ATO is able to disclose information about the employee or their fund to the employer.

The ATO determines whether the employee has a stapled fund. For new employees starting on or after 1 November 2021, employers need to make a request to the ATO, in the approved form, to identify any stapled fund. The ATO must then notify the employer whether a stapled fund has been identified, and if so, provide the employer with any information required about the fund to allow the employer to make contributions for the employee.

Where an employee has multiple existing super funds that meet the stapled fund requirements, the ATO applies the following tiebreaker rules to determine their stapled fund:

1. The stapled fund is the fund which has most recently been determined to be the employee's stapled fund.
2. If no fund has previously been determined, the fund that received the most recent contribution for the employee.
3. If 1 and 2 do not apply, the fund that held the largest account balance at the end of the previous financial year.
4. If 1,2 and 3 do not apply, the fund selected by the Commissioner.

Where an employer was contributing to an employee's stapled fund under the new rules, and that fund is then transferred to a successor fund without the member's consent, the employer would continue to satisfy SG/choice of fund obligations by contributing instead to the successor fund.

Stapled fund rules override enterprise agreements and workplace determinations

Under the stapled fund rules, an employer cannot comply with SG/choice of fund requirements by contributing to a fund specified in an enterprise agreement or workplace determination where the employee commenced on or after 1 November 2021 and has a stapled fund.

A summary of the requirements where workplace determinations or enterprise agreements that specify a superannuation fund is as follows:

Determination or agreement made:	Employment starts:	Employer must contribute to:
Before 1 January 2021	Before 1 November 2021	• Superannuation fund in agreement or determination.
	On or after 1 November 2021	• Stapled fund if one exists • If no stapled fund, then superannuation fund in agreement or determination.
On or after 1 January 2021	Before 1 November 2021	• Employee's chosen fund if choice is made • Superannuation fund in agreement or determination if no choice is made.
	On or after 1 November 2021	• Employee's chosen fund if choice is made • Stapled fund if no choice is made • Superannuation fund in agreement or determination if no choice and no stapled fund.

All employers permitted to use stapled fund rules

Under the stapled fund rules, all employers are able to meet SG/choice of fund requirements for an employee who commenced on or after 1 November 2021 by contributing to an employee's stapled fund, except where the employee has choice of fund and has chosen a fund that is not their stapled fund.

For example, under the new rules, an employer who would otherwise meet its SG obligations for an employee by contributing to a fund in accordance with a state based employment agreement could choose to instead contribute to that employee's stapled fund.

12.5 Default super funds

Where an eligible employee has not exercised choice of fund, and the stapled fund rules don't apply or the employee does not have a stapled fund (see section 12.4 for further information), the employer must pay their SG contributions to an eligible default super fund.[61] Contributions that are directed to a fund other than either an employee's chosen fund or the employer's default fund will not count towards meeting an employer's SG obligations.

Even if all existing employees have exercised choice of fund, an employer needs to have an eligible default fund in case any contributions are returned to the employer. Additionally, the employer must state the name and other required details of its default fund on the standard choice form it must give to every new employee within 28 days of employment commencing.

61 In limited situations, an employer may satisfy choice of fund rules by contributing to another type of fund for certain Government employees, or in accordance with certain employment agreements and awards specified in section 32C of the *Superannuation Guarantee (Administration) Act 1992*.

Eligible default funds

To qualify as an eligible default fund, a superannuation fund must:

- offer a minimum level of death cover, and
- offer a MySuper product.

While the employer meets their SG obligations by paying to an eligible default fund (unless choice has been exercised), it is the super fund trustee's responsibility to allocate any contributions received (including SG and other employer or personal contributions) to the fund's MySuper product unless the employee has elected otherwise in writing.

Minimum life insurance requirements

An employer's eligible default fund must offer, or in the case of a MySuper member who has not elected for less or no death cover, must provide, a minimum level of death cover at a premium of at least 50 cents per week (for members aged under 56) or an age-based benefit level of cover as shown in the following table.[62]

Age	20–34	35–39	40–44	45–49	50–55	56 or over
Minimum level of death cover	$50,000	$35,000	$20,000	$14,000	$7,000	Nil

Defined benefit schemes will meet the insurance requirements where they provide a death benefit with a future service component at least equal to the dollar levels of cover shown above.

There are a number of exceptions to the minimum life insurance requirement:

- Default fund contributions made by an employer under a federal award will automatically meet the insurance requirements, as will contributions by employers to RSAs and capital guaranteed funds.
- Insurance cover provided outside of super by an employer for an employee that is at least equal to the minimum level of cover required will satisfy the insurance requirement.
- If an employer cannot obtain insurance for an employee due to the employee's health, occupation or other circumstances determined by an insurer, then no minimum insurance is necessary.
- If an employee's super death benefit (insurance plus account balance) is at least $50,000 under the rules of the fund (in place as at 11 March 2005), the minimum insurance requirement does not apply.

The requirement to provide a minimum level of default cover for a MySuper member does not apply where the fund is prohibited from providing cover due to a member's account being inactive (see section 12.12 for further information). Interestingly, there appears to be no similar exception in situations where insurance is prohibited due to a member's age or low account balance (also see section 12.12 for further information).

62 Superannuation Guarantee (Administration) Regulations 2018, reg 14.

What is a MySuper product?

A MySuper product is a class of accumulation interest within a superannuation fund that meets a range of specific requirements for so-called disengaged members in relation to their superannuation. MySuper products were required to be used for default SG contributions from 1 January 2014.

Each super fund trustee can only offer one MySuper product, with two exceptions:

- where maintaining a separate product will preserve existing corporate goodwill
- where a default fund is provided to a large employer (500 employees), a separate MySuper product can be offered to employees and former employees of the employer or its associates.

MySuper features and fees

MySuper products are required to include the following features:

- A single diversified investment strategy (which may be a lifecycle strategy) must be provided with no member investment choice.
- All members holding an interest in the product must be offered the same options, benefits (except insurance) and facilities.
- There are generally no limits on the source or type of contributions that can be accepted.
- Death and TPD cover must be provided to MySuper members on an opt out basis, unless cost prohibitive, not available or not permitted under the Protecting Your Super measures. While no minimum level of cover applies for TPD cover, funds must provide on an opt out basis the minimum level of death cover in the table in this section to be an eligible default fund for SG purposes.

MySuper products are also limited to charging the following types of fees:

- administration fees (see fee rules below)
- investment fees (see fee rules below)
- buy-sell spreads (limited to cost recovery)
- switching fees (limited to cost recovery)
- activity fees (limited to cost recovery) – this fee type could be used to charge for the cost of family law super splits, setting up binding death nominations etc.
- advice fees (limited to cost recovery)
- insurance fees (limited to cost recovery).

MySuper members are able to pay for the cost of financial advice relating to their interest by agreeing to pay an advice fee, which is deducted from their MySuper interest. From 1 July 2021, ongoing advice fees (fees for personal advice paid for a period of more than 12 months) are prohibited through MySuper products.[63] It is important to note that trustees do not have to allow for advice fees to be charged.

63 Ongoing advice fees for arrangements entered into before 1 July 2021 could continue to be charged until 1 July 2022.

Super fund trustees are also able to offer their MySuper members intra-fund advice, which is effectively paid by all MySuper members and funded through the administration fee of the MySuper product. Intra-fund advice can include any general advice, and some limited personal advice. However, personal advice given in the following situations cannot be intra-fund advice:

- advice to a non-fund member about whether to join the fund
- advice about a financial product other than the fund (or a related pension or insurance product, or cash management facility)
- advice about consolidating multiple super funds into one fund
- ongoing personal advice.

Plan service fees, which have historically been charged to fund members for advice provided to the employer sponsor of a super fund, are not permitted to be charged through MySuper products.[64] Advice to employers about these products will therefore likely need to be paid for by the employer.

Members of MySuper products must be charged fees on a non-discriminatory basis, which could include all members paying the same flat fee, a percentage based fee or a combination of both. Three exceptions to this rule apply:

- where an employer is able to secure a discounted administration fee, all members of the MySuper product who are employees of that employer are subject to the same discount
- where a MySuper product includes a lifecycle investment option, each stage may have a separate investment fee, provided there are no more than four stages and all members of the same stage are charged on a non-discriminatory basis
- where an advice fee is charged.

Eligible default funds and modern awards

In addition to satisfying the eligible default fund requirements for SG purposes, an employer must also ensure that it complies with any default fund requirements that apply to any modern awards or enterprise agreements that apply to the employee.

To prevent employers having to make contributions to two separate super funds to satisfy their obligations, from 1 January 2014 all super funds nominated as default funds in modern awards must generally offer a MySuper product. Any funds that have been previously nominated in such awards are no longer valid from this date.

64 Plan service fees are also unable to be charged through other superannuation products from 1 July 2013.

Because of this change, the following types of super funds can be a valid default fund under a modern award:

- a super fund specifically nominated, which must offer a MySuper product
- any super fund that the employer had contributed to prior to 12 September 2008, which must offer a MySuper product
- an exempt public sector superannuation scheme, which will not be able to and is not required to offer a MySuper product
- a fund receiving only contributions for defined benefit members.

Default funds nominated in new enterprise agreements approved by Fair Work Australia on or after 1 January 2014 must also offer a MySuper product, be an exempt public sector super scheme or be receiving contributions only for defined benefit members.

12.6 Superannuation clearing houses

Instead of making contributions to potentially many different superannuation funds on a regular basis, employers can elect to use a clearing house to manage the distribution of their SG contributions and any voluntary contributions such as salary sacrifice.

A clearing house service involves the employer providing one super contribution to the clearing house provider, which then distributes contributions for each employee in line with choice of fund requirements as notified by the employer. This could include distributing contributions to an employee's chosen fund, stapled fund, or the employer's default super fund.

Small business superannuation clearing house

The small business superannuation clearing house can be used by any small business employer with less than 20 employees or an aggregated turnover below $10 million. Instead of paying for the use of another clearing house, eligible small business owners can use this facility as a free clearing house to satisfy their SG obligations, including managing employee choice of fund.

As part of its proposed Payday Super legislation commencing from 1 July 2026, the Goverment has proposed closing the small business superannuation clearing house from that date. At the time of writing, this proposed change had not been legislated.

When are contributions to a clearing house made?

Employer contributions made to clearing houses do not count towards meeting an employer's SG obligation until they are received by the complying super fund (chosen or default). However, an exception applies for small business employers using the small business superannuation clearing house, who have their contributions count for SG purposes when they are received by the small business clearing house.

Note that (regardless of which clearing house is used):

- For employer tax deduction purposes, a contribution has not been made until it is received by a complying super fund or RSA[65].
- For contributions cap purposes, an employer contribution will count at the time it has been received by the complying super fund or RSA and has been allocated to the member's account.

12.7 Tax deductions for employer contributions

Refer to section 2.5 for information on tax deductions for employer contributions.

12.8 Salary sacrifice arrangements

An effective salary sacrifice arrangement (SSA) involves an employee agreeing in writing to forgo part or all of their future remuneration in return for the employer providing benefits such as increased employer super contributions (but which also may include fringe benefits).

Amounts sacrificed under an effective SSA do not form part of the employee's assessable income and are not taxed at their marginal tax rate. Salary sacrificed super contributions will instead be subject to contributions tax of up to 15% when received by the employee's super fund and will count toward the employee's concessional cap. Salary sacrifice contributions may also be subject to Division 293 tax. See section 2.3.

Effective salary sacrifice super contributions are tax deductible to an employer and there is no limit to the amount of contribution/deduction. However, contributions in excess of an employee's concessional cap are assessable income of the employee, with a 15% tax offset applying (see section 2.4).

If a SSA does not apply in respect of future remuneration (e.g. the employee purports to salary sacrifice into super salary already earned), the SSA is ineffective, meaning that:

- the contributions are taxed at the employee's marginal tax rate
- the contributions count instead towards the non-concessional cap
- the employer is not entitled to a tax deduction for making the super contribution (but may instead be able to deduct the amount as salary and wages paid to the employee).

There is no specific statutory provision governing the operation of SSAs (including the amount and timing of super contributions). They are generally governed by the terms in an employee's employment contract.

65 In Practical Compliance Guideline PCG 2020/6, the ATO indicates that where an employer claims a tax deduction in respect of a contribution made to the small business superannuation clearing house during an income year, the ATO will not apply compliance resources to determine whether the contribution was also received by the fund during that income year (provided certain conditions are met).

Examples of effective SSAs include:

- agreeing with an employer at the start of a financial year to forgo $100 in salary per fortnight for the remainder of the financial year in return for $100 per fortnight in additional employer super contributions
- electing to salary sacrifice 80% of a discretionary bonus (in return for additional employer super contributions) prior to being advised of the total bonus amount.

Examples of ineffective SSAs include:

- salary sacrificing half of a discretionary bonus where all of the conditions for the payment of the bonus have already been met, for example where the employer has already advised the employee of the amount and payment date of the bonus
- salary sacrificing annual/long service leave entitlements that have become payable because of the termination of an employee's employment.

Salary sacrifice and FBT

Employer super contributions made on behalf of an employee under an effective SSA are not fringe benefits and are therefore not subject to FBT. However, where the SSA provides for super contributions to be made by an employer for someone other than the employee (e.g. their spouse), those contributions will be a fringe benefit and FBT will be payable.

Salary sacrifice and RESCs

Contributions made under an effective SSA are reportable employer super contributions (RESCs). See the definition of RESC in section 3.5.

For further information about income testing of a range of Government benefits, refer to the income tests quick reference guide on the FirstTech page of FirstNet Adviser at cfs.com.au

13 Other superannuation issues

13.1 Social security assessment of superannuation

The assessment of an accumulation interest in an Australian superannuation fund is dependent on the age of the owner and whether the funds are accessible.

Assessment of accumulation interests in superannuation funds:

- Under Age Pension age: exempt under both the income and assets test. This applies regardless of whether the owner is in receipt of an income support payment or has met a condition of release.
- Age Pension age or over: assessed as a financial investment which means assessable under the assets test and subject to deeming for income test purposes.

In some cases, a superannuation fund may be exempt where the person is Age Pension age or over but does not have access to the funds. For example, some defined benefit funds do not allow access to funds at pension age if the person is still an accruing member of the fund. In this case, the person can apply to Centrelink or the Department of Veterans Affairs to have the superannuation fund exempted until the funds are accessible.

For information about the social security assessment of superannuation income streams, see section 24.

For further information about social security payments and means testing of assets and income, refer to the FirstTech Social Security Guide which is updated every 20 September. For up to date rates and thresholds, refer to the Centrelink rates and thresholds quick reference guide. Both these guides are available at: cfs.com.au/adviser/firsttech/social-security/guides

13.2 Aged care

For information on aged care, including the assessment of superannuation and superannuation income streams for aged care fee purposes, refer to the online FirstTech Aged Care Guide available at: cfs.com.au/adviser/firsttech/social-security/guides

13.3 Superannuation issues for current or former temporary residents

Where a member is a current (and in some cases former) temporary resident (and is not an Australian citizen or permanent resident, or New Zealand citizen), some modifications apply to the way the superannuation rules apply to the member, including:

- the conditions of release that apply
- when their benefit must be transferred to the ATO as unclaimed money
- the tax payable on their benefit when withdrawn
- contributions tax concessions for which they are eligible.

Definition of temporary resident and permanent resident

Under the superannuation rules, a temporary resident is a holder of a temporary visa under the *Migration Act 1958* (the Migration Act). The Migration Act defines a temporary visa as a visa to remain in Australia (whether also a visa to travel to and enter Australia):

- during a specified period, or
- until a specified event happens, or
- while the holder has a specified status.

Under the superannuation rules, a permanent resident is a holder of a permanent visa under the Migration Act that has not ceased to be in effect. The Migration Act defines a permanent visa as a visa to remain in Australia (whether also a visa to travel to and enter Australia) indefinitely.

Modified conditions of release

Where a member is a current or former temporary resident (and is not an Australian citizen or permanent resident, or New Zealand citizen, or the holder of a Subclass 405 Investor Retirement visa or a Subclass 410 Retirement visa), they can only satisfy one of the following conditions of release:

- former temporary resident departing Australia
- unclaimed money payments
- death
- terminal medical condition
- permanent incapacity
- temporary incapacity
- where the trustee is given a release authority (e.g. for the release of excess contributions)
- any other condition of release satisfied prior to 1 April 2009.

These modifications mean that, from 1 July 2009, a current or former temporary resident (who is not an Australian citizen or permanent resident or New Zealand citizen) cannot satisfy the key age and employment-related conditions of release that apply to other superannuation members, including retirement, reaching age 65 and reaching preservation age. However, unlike other superannuation members, a current or former temporary resident (who is not an Australian citizen or permanent resident or New Zealand citizen) can withdraw their superannuation upon leaving Australia and their visa ceasing to have effect.

Former temporary resident departing Australia

A member meets the former temporary resident departing Australia condition of release where:

- they were a temporary resident (excluding Subclasses 405 Investor Retirement visa and 410 Retirement visa), and
- they are not an Australian citizen or permanent resident, or New Zealand citizen, and
- they have left Australia, and
- their visa has ceased to have effect, and
- they request in writing to receive their benefits.

Where a member meets this condition of release, the superannuation fund must comply with the withdrawal request (compulsory cashing), except where the fund is an unfunded public sector superannuation scheme where the fund may (but does not have to) comply with the withdrawal request (voluntary cashing).

Where benefits are cashed under this condition of release, they must be cashed as a single lump sum equal to a member's full withdrawal benefit in the fund. A withdrawal under this condition of release is treated as a departing Australia superannuation payment (DASP) for tax purposes. See below for further details about the taxation of DASPs.

It is important to note that a superannuation fund will often no longer hold a former temporary resident's superannuation due to the requirement to transfer it to the ATO. See below for further information.

Unclaimed money payments to the ATO and release of benefits from the ATO

Under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the ATO is required to give a super fund trustee a notice if it is satisfied that a former temporary resident has a superannuation interest in the fund.

The notice requires the super fund trustee to pay the former temporary resident's benefit to the ATO as unclaimed money. The unclaimed money condition of release allows the super fund to pay the member's benefits as a lump sum to the ATO. Upon payment to the ATO within the prescribed time, the trustee has no further liability to the member, and any insurance cover ceases.

The member then has the right to claim back the benefit (and interest calculated at the CPI rate) from the ATO. These payments are treated as a DASP for tax purposes. See below for further detail about the taxation of DASPs.

Who is a former temporary resident?

A former temporary resident is defined as a person:

- who under the *Migration Act 1958* was the holder of a temporary visa (except any visa prescribed in the Regulations), but their visa has ceased to be in effect, and
- who left Australia after starting to be a holder of their temporary visa, and
- at least six months have passed since the later of the following events:
  - the visa ceased to be in effect
  - the person left Australia, and
- the person:
  - is neither an Australian citizen or permanent resident, nor a New Zealand citizen, and
  - does not have an undetermined application for a permanent visa.

How do former temporary residents request a withdrawal from their fund/the ATO?

A former temporary resident can apply to withdraw their superannuation which is either held by their fund or the ATO, using the DASP online application system. Those with ATO-held super can also apply via ATO online services or the ATO app (these options require a myGov account linked to the ATO).

Where an online application is submitted, the former temporary resident's visa and immigration information is verified directly with the Department of Home Affairs. However, where the superannuation is held by the former temporary resident's fund and the withdrawal value is $5,000 or more, the fund will require certified copies of their identification documents before processing the withdrawal.

A former temporary resident wishing to withdraw their superannuation held by their fund can alternatively complete a paper form: Application for a departing Australia superannuation payment, (NAT 7204) and send it to their fund.

Where a paper application is submitted by a former temporary resident to their fund, they must also provide additional information depending on whether their withdrawal value is at least $5,000.

- Where the withdrawal value is less than $5,000, they must provide evidence that their visa has expired (e.g. a certified copy of their visa) and a certified copy of their passport showing they have departed Australia.
- Where the withdrawal value is $5,000 or more, they must apply for a Certificate of Immigration Status from the Department of Home Affairs as evidence that their temporary visa has ceased and that they have left Australia (Home Affairs will then email this certificate directly to the person's super fund and also send them a copy).

Former temporary residents whose withdrawal value is less than $5,000 can, instead of providing the evidence listed above, elect to apply for a Certificate of Immigration Status from the Department of Home Affairs.

A former temporary resident wishing to withdraw their superannuation held by the ATO can alternatively complete a paper form: Application for payment of ATO-held superannuation money, (NAT 74880) and send it to the ATO.

For further information about the withdrawal of super for former temporary residents, as well as links to all forms, refer to www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/temporary-residents-and-superannuation/departing-australia-superannuation-payment-dasp

Taxation of Departing Australia Super Payments (DASPs)

Where a former temporary resident requests to receive their superannuation upon departing Australia, the withdrawal is considered a DASP for tax purposes, whether it is paid from their superannuation fund, or from the ATO (after being transferred from their fund to the ATO).

A DASP is not assessable income and is not exempt income. However, recipients are liable to pay tax on the payment at specific rates, regardless of their age. The appropriate tax must be withheld by the fund trustee or the ATO when making the payment.

The tax rates that apply to a DASP are shown in Table 13.1 and depend on whether the DASP payment includes any amounts attributable to contributions made while the person was a working holiday maker, with higher tax rates applying where this is the case. A working holidaymaker is an individual who holds:

- a Subclass 417 (Working Holiday) visa, or
- a Subclass 462 (Work and Holiday) visa, or
- certain related bridging visas.

Table 13.1 DASP tax rates for 2025–26

Tax component of payment	Tax rate if no amounts attributable to contributions while a working holidaymaker	Tax rate if amounts attributable to contributions while a working holidaymaker
Tax free component	Nil	Nil
Taxable component (taxed element)	35%	65%
Taxable component (untaxed element)	45%	65%

Note: Higher tax rates for working holidaymakers do not apply to DASP payments made prior to 1 July 2017.

Where a DASP is partly attributable to contributions while a working holidaymaker and partly attributable to other sources, no apportionment applies, and the higher working holidaymaker tax rates apply to the taxable component of their entire DASP.

Taxation of other withdrawals to temporary residents

Where a temporary resident meets another eligible condition of release (for temporary residents) that is not taxed as a DASP, the tax treatment will be the same as for superannuation members who are not temporary residents.

For example, if a temporary resident became terminally ill while in Australia, they could provide the required evidence to their superannuation fund confirming that they satisfy the terminal medical condition condition of release, and withdraw their balance as a tax-free lump sum.

Other modifications to super rules for temporary residents

Government co-contribution not available

Where a person has been a temporary resident at any time during an income year (excluding a temporary visa prescribed by regulations), they are not eligible for the Government co-contribution. See section 3.5 for further information about the Government co-contribution.

Low Income Super Tax Offset (LISTO) not available

Where a person has been a temporary resident at any time during an income year (excluding a temporary visa prescribed by regulations), they are not eligible for the LISTO. See section 2.3 for further information about LISTO.

13.4 Foreign super

For individuals who are either migrating or returning to Australia, it may be possible to arrange the transfer of retirement benefits from an overseas fund to an Australian complying super fund even though actual withdrawal may be prohibited until retirement.

The overseas treatment of such a transfer should be investigated with a taxation consultant specialising in the relevant country's tax laws. The treatment of the transfer from an Australian taxation perspective is outlined below.

An Australian taxpayer may receive a super lump sum from a foreign super fund.

A foreign super fund is a fund that is not an Australian super fund and is a fund that is an indefinitely continuing provident, benefit, superannuation or retirement fund. Not all foreign retirement schemes satisfy the definition of a foreign super fund. If in doubt, guidance should be sought from the ATO.

Super lump sums transferred from overseas super funds into Australia are taxed in Australia at varying rates depending upon:

- when the transfer is received in Australia (before or after six months of Australian residency)
- whether the member makes an election regarding applicable fund earnings
- the non-concessional contributions caps (refer to section 3.2), and
- the age of the member in the financial year the transfer occurs (this will affect the ability to use the bring-forward rule and eligibility to contribute).

Special rules apply for members transferring superannuation between Australia and New Zealand under Trans-Tasman retirement savings portability. See section 13.5.

Contributions caps and foreign super transfers

Transfer received by Australian super fund	Applicable fund earnings (growth component)		Balance of transfer	
	Tax treatment	Counts towards	Tax treatment	Counts towards
Within six months[1]	• Not assessable to fund • Not assessable to individual	Non-concessional cap	• Not assessable to fund • Not assessable to individual	Non-concessional cap
After six months[1] – no election	• Not assessable to fund • Assessable to individual at MTR (Medicare levy may also apply)	Non-concessional cap	• Not assessable to fund • Not assessable to individual	Non-concessional cap
After six months[1] – with election	• Assessable to fund at 15% • Not assessable to individual	Does not count towards either non-concessional or concessional caps	• Not assessable to fund • Not assessable to individual	Non-concessional cap

1 From the date the member becomes a tax resident of Australia.

Transfer within six months

If the transfer/withdrawal of overseas retirement benefits takes place within six months from the date the member becomes a tax resident of Australia and the benefit relates only to service overseas while a non-resident, then the transfer is not assessable to the super fund or the individual.

100% of the transferred amount is treated as a non-concessional contribution in the receiving Australian super fund and subject to preservation.

Transfer after six months

Election to have applicable fund earnings taxed within super fund

If a transfer is completed after six months of tax residency, applicable fund earnings are subject to tax. Members have the right to elect to have applicable fund earnings taxed in the super fund at the more concessional rate of 15% rather than personally at their marginal tax rate.

The election form NAT 11724 is available at www.ato.gov.au. The election form, if used, must accompany the contribution to the super fund.

No election to have applicable fund earnings taxed within super fund

In the absence of an election by the individual, the applicable fund earnings will be treated as assessable income of the individual and taxed at their marginal tax rate.

> ⚠ Important
>
> Members can only make the election where, immediately after the transfer, they no longer have an interest in the foreign superannuation fund. This rule means that members who make several partial transfers from their foreign super fund instead of a single transfer (e.g. to avoid issues with the non-concessional cap) will likely not be able to elect for their applicable fund earnings to be taxed within their Australian fund.

What if the individual receives a withdrawal directly from an overseas super fund?

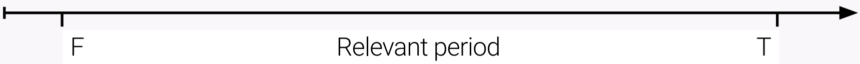
If the individual receives an amount directly from an overseas fund, the same individual taxation applies as outlined in the table above in this section, except that the individual does not have the choice to have applicable fund earnings taxed concessionally at 15%, because the amount received is not being directed to an Australian super fund. Note that where an individual who receives a lump sum from a foreign super fund does not contribute it to their Australian superannuation fund, nothing will count towards their contributions caps.

Applicable fund earnings

Applicable fund earnings are generally the earnings on the foreign super fund while the person was an Australian resident.

There are two methods for calculating applicable fund earnings according to the member's pattern of Australian tax residency.

Method 1 – If the member has been an Australian resident at all times



F is date of fund membership with foreign super fund.

T is date of transfer of foreign super fund to Australian super fund. Relevant period is from date F to date T.

The member is resident of Australia during all of period F to T.

The applicable fund earnings will be calculated as:

- gross amount of the foreign super transfer (before any foreign tax)
- **less** contributions made to the foreign super fund in the relevant period
- **less** transfers from other foreign super funds into the foreign super fund in the relevant period
- **plus** any previously exempt fund earnings.

Method 2 – If the member has not been an Australian resident at all times

F is date of fund membership with foreign super fund.

R is date of Australian residency.

T is date of transfer of foreign super fund to Australian super fund. Relevant period is from date **R** to date **T**.

The member is not a resident of Australia during all of the period **F** to **R**.

The applicable fund earnings will be calculated as:

- gross amount of the foreign super transfer (before any foreign tax)
- **less** amount of foreign super fund vested in the member just before date **R**
- **less** contributions made to the foreign super fund in the relevant period
- **less** transfers from other foreign super funds into the foreign super fund in the relevant period
- **multiplied** by the proportion of total days during relevant period when member was an Australian resident
- **plus** any previously exempt fund earnings.

Previously exempt fund earnings

Fund earnings which are transferred to another overseas fund instead of to Australia are exempt until they are eventually transferred into Australia. These previously exempt amounts are only included in assessable income in Australia upon transfer of the fund into Australia.

Using exchange rates to calculate applicable fund earnings

The ATO has stated in ID 2015/7 that when calculating applicable fund earnings, the appropriate exchange rate to use in calculating the main components of applicable fund earnings is the exchange rate on the date the foreign super lump sum or transfer is received.

For example, George had an interest in a UK pension scheme. He became an Australian resident for tax purposes on 1 July 1999 and his vested benefits at the time were £100,000. He transferred his balance to an Australian super fund on 1 April 2015, at which time his transfer value was £150,000. At 1 April 2015, the exchange rate was AUD$1 = GBP£0.5140, and this is the only exchange rate that should be used. George's applicable fund earnings would be calculated as follows:

1 Translate the amount of foreign superannuation lump sum received or transferred using the exchange rate at the date of transfer:

£150,000 ÷ 0.5140 = $291,829

2 Translate the amount of vested benefits George had just before he became an Australian resident using the exchange rate at the date of transfer:

£100,000 ÷ 0.5140 = $194,553

3 The applicable fund earnings is then calculated as the difference between the two above amounts:

$291,829 - $194,553 = $97,276.

Normal contribution rules and caps apply

The normal non-concessional contributions caps will apply to the transfer of overseas pensions into Australian super funds, as outlined in the table above. Additionally, due to the maximum age requirements for voluntary superannuation contributions, these transfers (which are considered voluntary contributions) are no longer possible after a member has reached age 75 (after allowing for the grace period up to 28 days after the end of the month of reaching 75).

The above Australian tax rules apply to transfers and withdrawal of foreign super from any country.

UK pension transfers

Historically, the majority of overseas superannuation transfers came from UK pension schemes.

However, on 6 April 2015, new rules came into effect in the UK which introduced a number of restrictions on UK pension transfers including:

- unfunded public service defined benefit super schemes can no longer be transferred
- defined benefit members (other than members of unfunded public service defined benefit schemes mentioned above) must receive advice from an authorised independent adviser before transferring or cashing out their defined benefit. An exception applies where the transfer value of the member's benefits is less than £30,000.

- Qualifying Recognised Overseas Pension Schemes (QROPS) must comply with the UK pension age test. This test requires the payment of benefits to members under the age of 55 to be prohibited other than in the case of incapacity. Unfortunately, this disqualified most large funds in Australia from being able to qualify as a QROPS fund as there are a range of conditions of release under the SIS Act, such as financial hardship and the release of benefits on compassionate grounds, which do not comply with the pension age test. However, some SMSFs have subsequently been able to qualify as QROPS by restricting fund membership to people over age 55 only. Trustees wishing to explore this possibility should seek specialist legal advice.

Further changes were made to the UK pension laws in 2017, including:

- the introduction of a 25% overseas transfer charge for certain transfers to QROPS, requested on or after 9 March 2017, unless one of a number of conditions apply. If both the QROPS was established in Australia and the individual is an Australian tax resident, and remains so for five full UK tax years, they are not affected by the new tax.
- funds that were QROPS on 8 March 2017 had to decide if they wanted their fund to continue to be a QROPS and operate the overseas transfer charge. Fund trustees were required to submit a revised undertaking to HM Revenue and Customs (HMRC) by 13 April 2017 if they wanted the fund to continue to be a QROPS. If the trustee did not do this, the fund stopped being a QROPS from 14 April 2017
- UK taxing rights were extended from five to ten tax years from the date of last UK residency, as well as also applying for five years from the date of the transfer. This applies to payments out of a QROPS that receives a UK pension transfer on or after 6 April 2017.

> **Note**
>
> The above information is not a comprehensive list of the rules that apply to UK pensions and further changes may have occurred since 2017. FirstTech does not actively monitor the UK rules so this information may be out of date and incorrect. Clients seeking advice or information about UK pension transfers or UK pensions generally should consult with a specialist in UK pension and tax laws.

For more information, refer to HM Revenue and Customs at: www.gov.uk/government/collections/overseas-pension-schemes

13.5 Super portability between Australia and New Zealand

Trans-Tasman retirement savings portability rules allow Australian and New Zealand residents to transfer their retirement savings when they move between Australia and New Zealand and are a permanent resident of the other country, while maintaining the integrity of the retirement savings systems of both countries.

It is important to note that the foreign superannuation rules discussed earlier in this section (e.g. taxation of applicable fund earnings) do not apply to Trans-Tasman retirement savings portability.

Introduction to portability rules

Eligible individuals can transfer their retirement savings between Australian complying superannuation funds and New Zealand KiwiSaver schemes. The transfer of the funds is voluntary for individuals, and funds or schemes are also not obligated to accept these transfers.

Australian super savings that include a New Zealand-sourced amount can only be transferred to and held in complying superannuation funds that are regulated by the Australian Prudential Regulation Authority (APRA). As well as it being voluntary for Australian funds to receive transfers, an Australian complying superannuation fund is also not obligated to accept a rollover from another complying fund that contains a New Zealand-sourced amount.

It is FirstTech's understanding that in practice, very few Australian superannuation funds accept New Zealand-souced amounts (whether directly or indirectly).

Once funds are transferred from the source country to the host country:

- retirement savings will be subject to superannuation and taxation rules applicable to the host fund or scheme, with some exceptions (e.g. access to retirement savings)
- transferred amounts from the source country must be separately identifiable as either Australian or New Zealand sourced amounts
- reductions and/or payments from a member's account balance will be applied to balances that were accrued in the host country, prior to being applied to balances from the source country
- New Zealand-sourced amounts being transferred to Australia for the first time will count towards the non-concessional contributions cap.

Exclusions

The following are not allowed under Trans-Tasman retirement savings portability:

- retirement savings that contain a New Zealand sourced amount cannot be transferred to an SMSF
- transfers of the following to New Zealand:
  - defined benefit interests
  - interests in an SMSF
  - unfunded public sector scheme interests
  - payments that contain taxable component (untaxed element).

Summary of super portability rules

	Transfers from New Zealand to Australia	Transfers from Australia to New Zealand
Who is eligible?	• Must provide receiving fund with evidence of permanent emigration from New Zealand • Must meet SIS contribution requirements • Under 75 (including up to 28 days after the end of the month in which the member reaches age 75) at the time of contribution	• Must provide receiving fund with evidence of permanent emigration from Australia • Must be under eligibility age for NZ super (currently 65)
What can be transferred?	• The full balance of a member's KiwiSaver account	• The entire balance, not part, in a complying Australian super fund • Exclusions apply for SMSFs and certain interests (see previous section)
Where can it be transferred?	• Any APRA-regulated complying super fund that is willing to receive the transfer • Cannot be transferred to an SMSF	• Any KiwiSaver scheme
Contributions	• Entire transfer is generally treated as a non-concessional contribution for contributions cap purposes • Exceptions apply for amounts received that have already previously been transferred to Australia or originated in Australia	• No restrictions • NZ super system does not have contributions caps

	Transfers from New Zealand to Australia	Transfers from Australia to New Zealand
Taxation	• New Zealand sourced amounts form part of tax free component • Earnings (while in accumulation phase) on New Zealand sourced amounts form part of taxable component • Normal Australian superannuation tax rules apply on withdrawal	• Transfer is exempt from Australian tax • Advice should be sought on any New Zealand tax implications
Accessing funds after transferring	• New Zealand sourced amounts cannot be transferred to an SMSF or to another country • New Zealand sourced amounts cannot be accessed until NZ retirement age (currently 65)	• Australian sourced amounts cannot be transferred to another country • Australian sourced amounts can be accessed once the member reaches age 60 and permanently retires

13.6 Superannuation and bankruptcy

One of the advantages of investing in superannuation is that it may offer protection from creditors in the event of bankruptcy. This protection is particularly important for small business owners or members in high risk professions. Bankrupts and individuals at risk of bankruptcy should consider the following:

- Superannuation balances are protected from creditors both in accumulation and pension phase.
- Contributions to superannuation made to defeat creditors can be clawed back to repay debts.
- Gross annual pension payments from superannuation pensions are assessed as income when determining whether the bankrupt person needs to contribute a portion of their income to the bankruptcy trustee. Consideration should be given to reducing pension payments where possible.
- Where a trustee of an SMSF becomes bankrupt, they are unable to be a trustee of an SMSF. In addition, if they are a director of a company, the company is prohibited from acting as a corporate trustee of an SMSF.

Who is considered bankrupt?

Bankruptcy can be initiated on an involuntary or voluntary basis.

Involuntary bankruptcy generally involves a creditor owed $10,000 or more applying to the court. A bankruptcy notice served on the member requires payment of the debt within 21 days. If the member does not make the required payment, the creditor can file a creditor’s petition for the member to be declared bankrupt. If the petition is approved, a sequestration order will be made.

Voluntarily bankruptcy involves the member lodging a debtor's petition with the Australian Financial Security Authority (AFSA) to become a bankrupt. Members who are declared bankrupt under voluntary or involuntary bankruptcy must complete a statement of affairs outlining their income and asset position and other confidential information.

Members are generally discharged from bankruptcy after three years; however, this timeframe can be extended in some circumstances.

Assets and bankruptcy

When bankruptcy is declared, a trustee registered with AFSA is appointed to administer the member's estate. The bankruptcy trustee has powers under the *Bankruptcy Act 1966* to sell the member's divisible assets or recover income over an allowable income threshold, to repay debts.

Section 116(1) of the *Bankruptcy Act 1966* provides a broad description of property that is divisible among creditors, including all property that:

- belonged to, or was vested in, the member at the commencement of the bankruptcy
- is acquired by the member, or devolves on them, after the commencement of the bankruptcy and before discharge.

Property held by the bankrupt in trust for another person is not included as property divisible among the bankrupt's creditors.

Certain assets, including superannuation, are specifically excluded (protected) from the definition of property that is divisible among creditors. An interest in a regulated superannuation fund, approved deposit fund or exempt public sector superannuation scheme is specifically protected.

This is regardless of whether the member is in accumulation or pension phase, and applies regardless of the preservation status of the super benefits, that is, even if the benefits are unrestricted non-preserved.

In addition, a lump sum payment to the bankrupt from a superannuation fund received on or after the date of bankruptcy is protected. This protection extends to any assets purchased with the superannuation proceeds.

Contributions made to defeat creditors

Although superannuation benefits are generally protected as mentioned above, the *Bankruptcy Act 1966* contains specific provisions which allow a bankruptcy trustee to recover superannuation contributions where the main purpose of the contributions was to defeat creditors. These provisions were introduced to prevent people from moving money or property into superannuation, and when they later became bankrupt, relying on the exclusion of superannuation from the definition of divisible property.

In order for the bankruptcy trustee to establish that the contribution was made to defeat creditors:

- the transfer must occur before bankruptcy (and after 28 July 2006 when the legislation came into force)
- the property would otherwise have become part of the bankrupt estate and have been available to creditors, and
- the member's main purpose must have been to prevent the property from being available to creditors or to delay the process of making the property available to the Bankruptcy Trustee.

The *Bankruptcy Act 1966* allows such contributions made by a member or a third party (e.g. employer) to be clawed back by the bankruptcy trustee. Superannuation guarantee contributions cannot be clawed back, however, as they are compulsory and are not made with the intention of defeating creditors.

In determining whether a contribution was made to defeat creditors, the pattern of contributions needs to be considered to determine whether any contributions leading up to the member being declared bankrupt are out of character. In determining whether a contribution is able to be recovered, it will be up to the contributor to explain the purpose of any contributions.

How does the bankruptcy trustee claw back out of character contributions?

The bankruptcy trustee may issue the superannuation fund with an account-freezing notice, which requires the superannuation fund trustee to prevent any withdrawals from or rollovers out of the superannuation account.

The bankruptcy trustee then has the following options to obtain the frozen superannuation funds:

1. Obtain the cooperation of the member and superannuation fund trustee to facilitate the transfer of the superannuation moneys to the bankrupt estate.
2. Request a notice from the Official Receiver. If the Official Receiver is satisfied that the trustee has provided enough information to suggest that some or all of the funds in the superannuation fund can be clawed back, the Official Receiver can issue a notice to the superannuation fund that requires remittance of the superannuation balance to the bankrupt estate.
3. Make an application to the court requesting a court order that requires the superannuation fund trustee pay the funds to the bankrupt estate.

Example

John has a regular salary sacrifice arrangement in place of $10,000 pa for five years before becoming bankrupt. In the year prior to becoming bankrupt, John increases his salary sacrifice contributions to $25,000.

The bankruptcy trustee makes an application to the Official Receiver to recover the $15,000 extra salary sacrifice contributions made during that year.

When determining whether this contribution can be recovered, the pattern of contributions is considered. John argues that he increased his superannuation contributions to provide for his retirement. The bankruptcy trustee argues that the contribution is out of character and was made with the intention of defeating creditors.

The Official Receiver reviews the evidence and makes a decision that the superannuation contribution is recoverable. The Official Receiver then issues a notice to the superannuation fund requiring the funds to be remitted to the bankruptcy trustee.

Assessment of pension payments

For the period of bankruptcy, the member must make payments to the bankruptcy trustee of half of any income they earn over a certain threshold ($72,117.50 as at 20 March 2025). Importantly, gross annual pension payments from a superannuation income stream are included in the definition of income for this purpose.

Tip

The income limits are updated twice a year, on 20 March and 20 September, and vary according to the number of dependants. Up to date income limits can be found at www.afsa.gov.au.

13.7 ATO administration of super contributions

How does the ATO track member super contributions?

The way that APRA-regulated super funds report super contributions to the ATO has changed, from annual reporting via Member Contribution Statements (MCS) to an event based system with near real time reporting.

SMSFs continue to report contributions annually as part of the fund's annual return.

Event based reporting

The event based reporting system includes two reports:

- Member Account Transaction Service (MATS) to report member contributions or transactions within 10 business days, including:
  - member contributions
  - employer contributions
  - non-employer contributions
  - retirement phase events
  - acknowledged notices of intent.
- Member Account Attribute Service (MAAS) to report changes to member accounts, such as when an account is opened or closed, whether the account is accumulation or retirement phase and what transactions the account can receive.

The system provides members with more up to date information than the previous annual reporting regime.

Member responsibility to track contributions

An individual needs to keep track of all contributions made to super accounts on their behalf to avoid exceeding their contributions caps. Employers and super funds cannot monitor total contributions for a member since a member may have multiple employers and/or multiple super fund accounts.

Individuals can also view limited information about contributions via their myGov account. While the information available is more accurate and up to date than under the annual contribution reporting system, it is important for individuals to independently verify the contributions they have made to ensure that they do not breach contributions caps.

Part B Superannuation retirement income streams

14 Introduction to superannuation retirement income streams

A retirement income stream provides a series of periodic payments that may assist in meeting income needs in retirement.

When paid from accrued superannuation benefits, a superannuation income stream can be paid to either the member (subject to preservation requirements) or one or more eligible dependants following the member's death. A superannuation income stream cannot be paid to an estate.

A superannuation income stream may be commenced within the same fund in which those benefits accrued or purchased with a super rollover benefit.

There are two providers of superannuation income streams:

- superannuation funds which provide pensions
- life insurance companies which provide annuities.

Under superannuation law, there is very little difference between pensions and annuities. They have similar payment standards and taxation treatment.

Superannuation income streams receive concessional taxation treatment including tax-free earnings on assets supporting the income stream, where they meet the definition of a retirement phase income stream (see section 14.3 for information about retirement phase income streams) and meet relevant SIS standards.

The relevant SIS standards, taxation and commutations rules for the different categories of superannuation income streams are covered in detail in the following sections:

- section 15 Account based pensions
- section 16 Transition to retirement income streams
- section 17 Term allocated pensions
- section 18 Lifetime income streams
- section 19 Fixed term income streams.

The amount of superannuation that can be transferred to retirement phase income streams is limited by the transfer balance cap (see section 21 Transfer balance cap for more information).

14.1 Conditions of release

To access preserved superannuation benefits as a superannuation income stream, a member must meet a relevant condition of release.

Conditions of release with nil cashing restrictions (shown in Table 14.1) allow superannuation benefits to be accessed as either a lump sum or income stream.

Table 14.1 Conditions of release with nil cashing restrictions

Retirement on or after preservation age
Attaining age 65
Death
Permanent incapacity
Termination of gainful employment (restricted non-preserved only)
Terminal medical condition
Termination of gainful employment with a standard employer-sponsor of the regulated super fund on or after 1 July 1997, where the member's preserved amounts in the fund at the time of the termination are less than $200
Being a lost member who is found, and the value of whose benefit in the fund, when released, is less than $200
Severe financial hardship – Test 2 (see section 8.10)

In addition to the conditions of release with nil cashing restrictions listed above, a superannuation income stream (with restrictions) can also be accessed under the following conditions of release:

- Temporary incapacity – income stream must be non-commutable and cannot be funded from member financed benefits or mandated employer-financed benefits. Practically speaking, the non-commutable income stream is generally funded from salary continuance insurance proceeds (see section 8.13).
- Attaining preservation age (transition to retirement) – income stream must be non-commutable and payments each year cannot exceed 10% of the account balance (see section 16).

14.2 Types of superannuation income streams that can be paid

An income stream must meet the pension and annuity standards set out in the SIS Regulations to be a superannuation income stream.

The pension and annuity standards changed on 1 July 2007 as part of the simpler super reforms, and 'innovative superannuation income streams' were added on 1 July 2017. Below is a summary of the rules, depending on the commencement date of the income stream.

Before 1 July 2007

Income streams that commenced before 1 July 2007 and met the regulations at that time are deemed to meet the current minimum standards.

Between 1 July 2007 and 19 September 2007

Income streams may have commenced under either the old or current SIS Regulations in the period between 1 July 2007 and 19 September 2007. This effectively provided a transitional period during which an income stream provider could choose when to offer income streams under the current regulations.

From 20 September 2007 onwards

From 20 September 2007, only those income streams that meet the current regulations can be paid. The current payment standards are more flexible and less prescriptive than the old standards, giving super funds greater choice in the type of income streams offered.

From 1 July 2017 onwards

A new category of income streams was added to the SIS standards from 1 July 2017. This category covers a range of products aimed at reducing longevity risk in retirement and includes deferred income streams, investment-linked income streams and group self-annuitised products.

Superannuation funds and life insurance companies receive a tax exemption on income from assets supporting these income stream products provided they are currently payable, or in the case of deferred products, where the income stream is in retirement phase.

Categories of income streams

There are essentially five different types of super income streams that can now commence to be paid, which meet the current pension and annuity standards in the SIS Regulations:

1. Account based income streams – these are flexible income streams with an identifiable account balance. They are commutable at any time and have a requirement for minimum income payments. They do not have a maximum income payment requirement unless commenced under the attaining preservation age (transition to retirement) condition of release. Transition to retirement income streams, which have additional payment standards, are a subset of these income streams. Term allocated pension (TAP) clones are also a subset of account based income streams. TAP clones meet the current account-based income stream standards as well as the pre-1 July 2007 term allocated pension standards.
2. Non-account-based (RCV) income streams – these are flexible income streams that do not have an identifiable account balance but may be commutable and have a residual capital value. There is no restriction on the term of the income stream, but there is a requirement for a minimum annual income payment.
3. Lifetime (nil RCV) income streams – there are two types of lifetime income streams available:
   - non-commutable lifetime income streams, and
   - commutable lifetime income streams.
4. Fixed term (nil RCV) income streams – a commutable income stream payable for a fixed term based on the recipient's age at commencement.
5. Innovative income streams – income streams payable for a beneficiary's remaining lifetime, with income stream payments that can be guaranteed in whole or part by the income stream provider, or determined in whole or part through returns on a collective pool of assets or the mortality experience of the beneficiaries of the asset pool. These income streams may also have a deferral period for annual payments and are permitted to be commuted subject to a declining capital access schedule and preservation rules.

In all cases, income streams cannot be added to through contributions or rollovers, and neither the capital nor income can be used as security for borrowing. Table 14.2 outlines the key features of the current income stream standards.

Table 14.2 Overview of superannuation income stream standards

Income stream type	Term of income stream	Payment rules	Commutable?	RCV	Payable by SMSF
1 Account based pensions					
Transition to retirement account based (see section 16)	Until account balance exhausted	Minimum payment per financial year Maximum payment 10% per financial year (where relevant condition of release is not met)	Yes, can be rolled back to accumulation phase. However, a lump sum withdrawal can only be made from any existing unrestricted non-preserved amount. Pro rata minimum payment must have been made, or the account balance after partial commutation is equal to or greater than the remaining minimum payment amount	N/A	Yes
Account based (see section 15)	Until account balance exhausted	Minimum payment per financial year	Yes, but generally a pro rata minimum payment must have been made or the account balance after partial commutation is equal to or greater than the remaining minimum payment amount	N/A	Yes
Term allocated[66] (TAP clone) (see section 17)	Term of between life expectancy and the number of years to reaching age 100	Calculated payment each financial year based on remaining term. May be varied + or - 10%. Must also satisfy account based pension minimum payment rules	Yes during 5-year window (see below). Otherwise generally no, except for limited circumstances, such as if commutation used to immediately purchase another eligible non-commutable income stream	N/A	Yes
2 Non-account-based (RCV) income streams					
Non-account based (RCV) (see sections 18.1 and 19.1)	Flexible – could be fixed (of any term) or lifetime	Minimum annual payment per year (measured from commencement date)	Yes	Yes – up to 100% of the purchase price	No, unless fully backed by life office annuity[67]

66 From 20 September 2007, term allocated income streams (TAP clones) can no longer be commenced, unless the purchase price is funded wholly from the commutation of an existing non-commutable income stream.

67 Where an SMSF had an existing income stream of this type commenced prior to 1 January 2006, it can continue to be paid.

Income stream type	Term of income stream	Payment rules	Commutable?	RCV	Payable by SMSF
3 Lifetime income streams					
Lifetime (nil RCV, commutable) (see section 18.1)	Life of beneficiary/ reversionary	Minimum first year payment, then fixed percentage, CPI or AWOTE indexation	Yes	No	No, unless fully backed by life office annuity[67]
Lifetime (nil RCV, non-commutable) (see sections 18.2 and 18.3)	Life of beneficiary/ reversionary	Annual payment can't fall, except if due to CPI indexation	Potentially during 5-year window (see below). Otherwise generally no, except for limited circumstances such as if commutation used to immediately purchase another eligible non-commutable income stream	No	No, unless fully backed by life office annuity[67]
4 Fixed term (nil RCV) income streams					
Fixed term (nil RCV, commutable) (see section 19.1)	Any term up to 100 less recipient's age at commence-ment	Minimum first year payment, then fixed percentage, CPI or AWOTE indexation	Yes	No	No, unless fully backed by life office annuity[67]
5 Innovative income streams (from 1 July 2017)					
Innovative income streams (including deferred superannuation income streams) (see section 18.4)	Life of beneficiary/ reversionary	Not subject to SIS minimum payment requirements. Payments may be guaranteed by the provider, or determined through returns on a collective pool of assets or the mortality experience of the beneficiaries of the asset pool. May have a deferral period for annual payments	Yes, subject to the maximum commutation amount specified in SIS Regulation 1.06A and B, determined by remaining life expectancy at time of commutation, and preservation rules	Access amount determined by life expectancy and time of commutation	No, unless fully backed by life office annuity

Five-year window to fully commute certain legacy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams to be fully commuted (partial commutations are not permitted). This commutation option is voluntary for members.

Eligible income streams include term allocated pensions (TAPs), non-commutable life-expectancy income streams and non-commutable lifetime income streams, which generally commenced prior to 20 September 2007, or commenced because of a conversion of an earlier legacy product that commenced prior to that date. However, non-commutable lifetime income streams provided by a defined benefit super fund (for example a lifetime pension from a Government defined benefit fund) are not eligible for this commutation option.

Where an eligible legacy income stream is fully commuted within this five-year window, a member may then use the proceeds for one (or a combination of) the following:

- Commencing a more flexible income stream such as an account based pension (subject to their transfer balance cap).
- Retaining it in accumulation phase (provided the original income stream was not a death benefit income stream).
- Withdrawing it as a lump sum.

Depending on a client's circumstances, fully commuting an eligible legacy income stream under this option may have a range of potential impacts, including:

- Social security: While the Government has confirmed that no social security debt will be raised as a result of choosing to fully commute an eligible legacy income stream, any existing asset test exemption will be lost. Clients may therefore see a decrease in their social security entitlement as a result of commuting their legacy income stream if their entitlement is determined by the assets test. In contrast, income tested clients may see an increase in their entitlement as a result of commuting their legacy pension.
- Transfer balance cap: Where the eligible legacy income stream is a capped defined benefit income stream, they may have a transfer balance account above their personal transfer balance cap due to the modified rules, and the transfer balance account debit value for the full commutation of their legacy income stream may be quite different from the commutation amount. This may mean that a client who commutes an eligible legacy income stream may not be able to use the full commutation amount to commence a new retirement phase income stream.
- Tax: Where the eligible legacy income stream is a capped defined benefit income stream, part of the income stream payments may be subject to tax under the defined benefit income cap rules (see section 22.7 for further information). Fully commuting a legacy income stream and commencing a new retirement phase income stream may therefore reduce a client's income tax liability going forward.

- Estate planning: Depending on a client's circumstances, fully commuting a legacy income stream and withdrawing the commuted amount as a lump sum may allow the withdrawal to be received tax free, instead of a future death benefit being taxable where paid to non-tax dependent beneficiaries.
- Commutation amount: Particularly for legacy income streams that are non-account based annuities, it would be important to weigh up the commutation amount (which may in some cases be minimal or nil) against the level of income stream payments provided by the legacy income stream.

For further information about the five-year window to fully commute legacy income streams and potential impacts for TAPs, see the article 'Commuting a TAP under legacy pension amnesty rules' on the FirstTech site. For further information about legacy pension commutations for SMSF income streams, see the FirstTech SMSF guide.

Advisers should also confirm with the client's legacy income stream product provider whether there are any additional restrictions in the fund's governing rules impacting the ability to fully commute under this option.

14.3 Retirement phase income streams

From 1 July 2017, retirement phase income streams include all superannuation income streams, except those listed below:

- Transition to retirement income streams (and older non-commutable allocated income streams) where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release. If the recipient is under age 65 and has satisfied the retirement, terminal medical condition or permanent incapacity condition of release, the income stream will only be in the retirement phase if the recipient has notified the trustee of the income stream provider that they have satisfied a condition of release. Where a transition to retirement income stream has reverted to a reversionary beneficiary, it will always be a retirement phase income stream, regardless of whether the reversionary beneficiary has satisfied an eligible condition of release.
- Deferred superannuation income streams where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release. A deferred superannuation income stream is in the retirement phase if the recipient has met an eligible condition of release regardless of whether income stream payments are currently being paid.
- Income streams where a commutation authority has been issued in relation to an excess transfer balance that a trustee has failed to comply with within the required 60-day period.

If an income stream is in the list of exclusions above, it is considered to be in the accumulation phase of superannuation for the purposes of the earnings tax exemption and the transfer balance cap. However, it is still considered an income stream for other purposes, including the proportioning of tax components and the taxation of payments from the income stream.

14.4 Taxation

The taxation of payments from a superannuation income stream depends on whether the income stream is paid as a member benefit or a death benefit.

The following sections detail the taxation treatment:

- member benefits including disability super benefit income streams and capped defined benefit income streams – section 22
- death benefits – section 23.

For more information on the taxation of superannuation funds that hold assets supporting superannuation income streams, see section 20.

14.5 Social security assessment

The social security assessment of superannuation and non-superannuation income streams is based on four categories:

- lifetime income stream – purchased on or after 1 July 2019
- asset-tested (long-term) – generally have a term greater than five years or an account based income stream
- asset-tested (short-term) – term of five years or less
- asset-test exempt – generally purchased pre-20 September 2007, commutable in very limited circumstances[68] and nil residual capital value.

See section 24 for more information.

68 However, many asset-test exempt income streams may be fully commuted during a five-year window starting from 7 December 2024. See section 14.2 for further information.

15 Account based pensions

Account based pensions are flexible income streams with an identifiable account balance. They can only be commenced with unrestricted non-preserved benefits. They are commutable at any time and have a requirement for minimum income payments to be made at least once per financial year.

Since their introduction in 2007, account based pensions have become the most common type of superannuation income stream due to their flexibility.

Account based pensions effectively replaced allocated pensions in 2007. Allocated pensions were a flexible income stream with an identifiable account balance that could be commenced under the pre-20 September 2007 superannuation rules. For a summary of allocated pension rules, refer to section 15.8.

15.1 Payment rules

An account based pension must comply with all of the following rules:

- The minimum payment requirement is satisfied in each financial year (see below).
- Once it has commenced, no further capital can be added to the pension via contribution or rollover.
- The pension is transferable to another person only on the death of the beneficiary.
- Where the pension is commuted, pro rata minimum payment or remaining balance requirements apply in many cases (see section 15.3).
- The capital value of the pension and the income from it cannot be used as a security for a borrowing.

The SIS Regulations also allow life offices to offer account based annuities, which must comply with the same requirements.

Note that the payment rules that apply to account based pensions are the minimum rules required under the SIS Regulations. Superannuation funds may impose additional rules and restrictions to their account based pensions, provided the minimum SIS rules are satisfied.

Minimum annual pension payment requirement for full financial years

In order to meet the payment standards, an account based pension must make at least a minimum level of pension payment throughout a financial year. The minimum pension payment requirement excludes commutations, but includes payments made under a payment split.

For full financial years, the minimum annual payment (which is then rounded to the nearest $10) is calculated as:

Minimum annual payment = account balance × percentage factor, where:

- **Account balance** is account balance at each 1 July
- **Percentage factor** is determined from the recipient's age at each 1 July (see percentage factors in Table 15.1).

Table 15.1 Percentage factors for account based pension minimum payment

Age	Under 65	65–74	75–79	80–84	85–89	90–94	95 or over
Percentage factor	4%	5%	6%	7%	9%	11%	14%

Pro rata and 1 June rule in first part financial year

Where an account based pension commences part way through a financial year, the minimum pension payment is generally prorated based on the days remaining in the year.

For the first part financial year, the minimum payment amount (which is then rounded to the nearest $10) is calculated as:

Minimum annual payment = account balance × percentage factor × pro rata factor, where:

- **Account balance** is initial purchase price on commencement of the pension.
- **Percentage factor** is determined from the recipient's age on commencement of the income stream (see percentage factors in Table 15.1).
- **Pro rata factor** is remaining number of days in financial year (including commencement day)/number of days in financial year.

Example

John commences an account based pension on 1 January 2026 at age 67. The initial purchase price is $300,000.

John's minimum annual payment: 5% × $300,000 = $15,000

As John's account based pension commenced part way through the financial year, he is subject to a prorated annual payment for the 2025–26 financial year.

Minimum payment for 2025–26 = $15,000 × 181/365 = $7,438 (rounded to $7,440).

1 June rule

An exception applies where an account based pension commences on or after 1 June in a financial year. Where this occurs, a minimum payment is not required for that first part financial year. For information on pro rata minimum pension requirements when a pension is commuted part way through the financial year, see 15.3 Commutation rules.

15.2 Taxation of pension payments

Pension payments from an account based pension are superannuation income stream benefits for tax purposes. The tax treatment depends on the age of the pensioner at the time of each payment and the tax free and taxable components that make up each payment.

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 22.

Note: This section discusses the taxation of pension payments from account based pensions that are not death benefit income streams. For information about the taxation of account based pensions that are death benefit income streams, refer to section 15.7.

Taxation of tax free component

In all cases, regardless of age, the tax free component of an account based pension payment is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component (general)

Table 15.2 shows the tax treatment of the taxable component of an account based pension payment paid from a taxed superannuation fund, where the pension is not a disability super benefit income stream.

Table 15.2

Age of income stream recipient	Taxable component (taxed element)
Age 60 or above	Non-assessable non-exempt income: No tax
Under age 60	Assessable income: taxed at marginal tax rate

Note: In rare cases, it may be possible for an account based pension to be paid from an untaxed superannuation fund. Where this is the case, refer to section 22.2 for information about the different tax treatment that applies.

Taxation of taxable component (disability super benefit income stream)

The tax treatment of the taxable component of an account based pension payment paid from a taxed superannuation fund, where the pension is a disability super benefit income stream, is the same as outlined in Table 15.2, with one important modification.

15% tax offset applies to reduce tax on taxable component

Where an account based pension payment is received from a disability super income stream while under age 60, a 15% non-refundable income tax offset applies to any taxable component (taxed element) received. The tax offset is calculated as 15% of the assessable taxable component (taxed element).

15.3 Commutation rules

Account based pensions may be partially or fully commuted at any time. Depending on the circumstances, this may include:

- commuting and making a lump sum withdrawal
- commuting and moving an amount back to accumulation phase
- commuting and rolling a lump sum to another complying superannuation fund.

However, prior to a commutation, either:

- a prorated minimum pension payment must have already been paid during the financial year, or
- the remaining account balance after the commutation occurs is at least equal to any remaining minimum payment required for that financial year.

Pro rata minimum pension payment

The minimum level of pro rata pension payment required prior to a commutation is calculated as:

Pro rata minimum pension payment = minimum annual payment × days in payment period/days in financial year, where:

- Minimum annual payment = account balance at 1 July (where the pension was already in place at the start of the financial year) multiplied by percentage factor determined by recipient's age; or initial purchase price (where the pension commenced after 1 July of the financial year) multiplied by percentage factor determined by recipient's age, prorated to the number of days remaining in the financial year from commencement date.

  Note: where the account based pension commences part way through the financial year, the relevant age is the recipient's age at date of commencement. Where the account based pension is in existence for the full financial year, the relevant age is the recipient's age at 1 July.

- Days in payment period is the number of days in the period that begins on 1 July (where the pension was already in place at the start of the financial year) or the commencement day (where the pension commenced after 1 July of the financial year), and ends on the day on which the commutation is to take place,
- Days in financial year means the number of days in the financial year of commutation.

Remaining account balance after commutation occurs

For partial commutations, as an alternative to drawing at least a pro rata minimum pension payment prior to the commutation, the payment standards are met if the account balance of the account based pension, immediately after the commutation, is at least the minimum payment amount calculated under section 15.1, reduced by the amount of pension payments already made during the financial year of commutation.

No pro rata payment/remaining balance required for some commutation types

Commutations may also be made, regardless of the level of income payments made, where:

- the commutation results from the death of the pensioner or reversionary pensioner, or
- the sole purpose of the commutation is one of the following:
  - to pay a super contributions surcharge
  - to give effect to an entitlement of a non-member spouse under a family law payment split
  - to meet the rights to return a financial product under cooling off provisions.

Commutations do not count towards minimum pension payment requirement

Full or partial commutations from account based pensions do not count towards meeting the minimum pension payment requirement.

Pension payment rules for financial year not impacted by partial commutation

It is important to note that where a partial commutation occurs during a financial year, it is a requirement that at least a pro rata minimum payment is received, or that a certain balance remains after the commutation.

These rules are separate from, and don't change, the required minimum pension payment for the account based pension for the financial year.

Example

On 1 July of a financial year, John's account based pension minimum payment is calculated as $40,000. Shortly after the start of the financial year, John commutes and withdraws half of his balance as a lump sum withdrawal. This commutation is permitted because his remaining balance is at least equal to the remaining minimum payments.

However, assuming his account based pension remains in place for the whole financial year, John must receive $40,000 in pension payments during the year. This remains the case even though his account based pension balance is significantly reduced from early in the financial year.

15.4 Taxation of commutations

Commutations from account based pensions (assuming they are then withdrawn or rolled over) are superannuation lump sums for tax purposes.[69] The tax treatment may depend on the age of the pensioner at the time of the commutation, the type of lump sum, and the tax free and taxable components that make up each payment.

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 9.

Note: This section discusses the taxation of commutations from account based pensions that are not death benefit income streams. For information about the taxation of account based pensions that are death benefit income streams, refer to section 15.7.

Taxation of tax free component

In all cases, regardless of age, the tax free component of a superannuation lump sum paid from an account based pension is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component (general)

Table 15.3 shows the tax treatment of the taxable component of a superannuation lump sum member benefit paid from an account based pension in a taxed superannuation fund, where the lump sum does not qualify as a terminal illness benefit, death benefit or disability superannuation benefit.

Table 15.3

Age	Taxable component (taxed element)	Maximum tax rate
60 and above	Non-assessable non-exempt income	N/A
Below 60	Whole amount assessable income	20%

Note: For all non-zero tax rates, Medicare levy may also apply.

Note: In rare cases, it may be possible for an account based pension to be paid from an untaxed superannuation fund. Where this is the case, refer to section 9.2 for information about the different tax treatment that applies.

For further information about the taxation of lump sum member benefits, see section 9.2.

Taxation of taxable component (terminal illness benefit)

Where a terminal medical condition exists at the time a commutation from an account based pension is made, the resulting withdrawal is a lump sum terminal medical condition payment and is non-assessable non-exempt income and not taxed. For further information about the taxation of lump sum terminal medical condition payments, see section 9.3.

69 Partial commutations are considered income stream benefits for the purposes of determining whether a super fund can claim an earnings tax exemption when paying a retirement phase income stream.

Taxation of taxable component (disability super benefit)

The taxable component of a lump sum disability superannuation benefit paid from an account based pension is taxed in the same way as shown in Table 15.3.

However, if a person receives a lump sum disability super benefit from their account based pension, the tax free component of the benefit may be increased for their future service benefit – broadly reflecting the period where they would have expected to have been gainfully employed. For further information about this tax free component uplift, see section 9.4.

Rollovers

Where an account based pension is commuted and the lump sum rolled over to another complying superannuation fund, it is treated as a rollover super benefit for tax purposes. The rollover of benefits from a taxed superannuation fund to another taxed superannuation fund is tax-free. For further information about the taxation of rollovers, see section 9.6.

No rollovers where terminal medical condition exists

Note that where a member has notified the super fund that they have a terminal medical condition and subsequently partially or fully commutes their pension within the medical certificate period, the resulting lump sum cannot be considered a rollover for tax purposes. See section 9.3 for further information.

15.5 Social security assessment

Account based pensions are assessed for social security and DVA means test purposes as asset-tested (long term) income streams. While a summary of their means test assessment follows, for further information refer to section 24.

Assets test

100% of the account balance of an account based pension is assessable under the assets test.

Income test (not including grandfathered account based pensions)

From 1 January 2015, the income test assessment of account based pensions changed, with grandfathered treatment applying to some pre-1 January 2015 account based pensions.

Under the new rules, the balance of a member's account based pension (along with their other financial assets) is subject to deeming (an assumed rate of return) for income test purposes. Actual pension payments are ignored for income test purposes.

For further information about deeming, refer to the FirstTech Social Security Guide.

Income test for grandfathered account based pensions

Grandfathering applies to allow existing income support recipients to have their pre-January 2015 account based income streams continue to be assessed under the pre-January 2015 income test rules.

Which account based pensions are grandfathered?

A member's account based pension will be grandfathered if:

- the income stream commenced prior to 1 January 2015, and
- the member has been in receipt of an eligible income support payment[70] since immediately prior to 1 January 2015 and continuously receives an eligible income support payment from that time.

Where a member is receiving an account based pension that has an automatically reversionary beneficiary and qualifies for grandfathering based on the above rules, its grandfathered status can continue when it reverts to the reversionary beneficiary upon the death of the member, provided the reversionary beneficiary is receiving an eligible income support payment at the time of reversion and continuously receives an eligible income support payment from that time.

What changes will cause grandfathering to cease?

Where a member has a grandfathered account based income stream, the following changes after 1 January 2015 will remove its grandfathered status:

- switching income stream providers
- aggregating multiple account based income streams
- refreshing a transition to retirement account based pension strategy
- adding or removing a reversionary beneficiary (if the provider requires a new income stream to be commenced)
- ceasing to receive an eligible income support payment (switching immediately from one eligible income support payment to another will not cause grandfathering to cease)
- where the member dies and a new pension (not reversionary pension) is paid to a beneficiary.

Once an income stream's grandfathered status is removed, it is then subject to deeming.

How is income assessed for grandfathered account based pensions?

Under the grandfathered rules, assessable income is determined by:

70 Refer to the FirstTech Social Security Guide for a complete list of eligible income support payments.

Annual payment - ((purchase price - commutations)/relevant number), where:

- Annual payment is gross amount of pension payments paid in the financial year.
- Purchase price is starting balance of the account based pension.
- Relevant number is:
  - where there is no reversionary beneficiary, the member's life expectancy
  - where there is a reversionary beneficiary, the longer of the member and reversionary beneficiary's life expectancy.

Grandfathered account based income streams – Centrelink reporting

For Centrelink reporting purposes, the gross annual nominated payment of a grandfathered account based pension is equal to the sum of actual payments received, plus payments to be received for the whole financial year.

Where the person nominates to increase or reduce the amount of annual payments part way through the financial year, the new annual payment amount is assessable for the remainder of the financial year.

How do commutations affect the social security deductible amount?

For account based pensions that are grandfathered, commutations may have a significant impact on the income test assessment.

In this case, individuals will need to decide whether they wish one-off withdrawals to be treated as irregular pension income or a commutation:

- If the withdrawal is taken as a pension payment, it will be treated as income in the financial year the payment is made.
- If the withdrawal is taken as a partial commutation, it is not treated as income under the income test. However, it will permanently reduce the income stream's Centrelink deductible amount.

The deductible amount will be recalculated as:

(original purchase price – lump sum commutations)/original relevant number

Whether to take additional payments as pension payments or commutations

There is no fixed rule as to when a withdrawal should be treated as either a pension payment or commutation: it must be determined in light of the member's circumstances. See section 24.2 for further information and an example of this decision.

When electing to increase the amount of annual pension payments from an account based income stream, the timing is important as the increased assessable income will apply for the remainder of the financial year. By timing the increased pension payment towards the end of the financial year, it can minimise the impact on Centrelink entitlements.

Members have an obligation to notify Centrelink within 14 days of any changes in circumstances. If they time the increased pension payment towards the end of June and then notify within the 14 day period, they could potentially reduce the amount of income assessable.

Care should be taken as although Centrelink determines the assessable income from an account based pension on a financial year basis, it is not until August that the superannuation fund provides electronic reporting to Centrelink for the next financial year, which means that their Centrelink entitlements may be reduced until this time. See the FirstTech Social Security Guide for more information.

15.6 Transfer balance cap

This section is a summary of how the transfer balance cap applies to account based pensions (excluding death benefit account based pensions).

For further information about the transfer balance cap, refer to section 21. For information about how the transfer balance cap applies to death benefit account based pensions, refer to section 15.7.

Transfer balance account credits for account based pensions

Account based pensions commenced prior to 1 July 2017

Where an account based pension commenced prior to 1 July 2017, its balance on 30 June 2017 is a transfer balance account credit on 1 July 2017.

Account based pensions commenced on or after 1 July 2017

Where an account based pension commences on or after 1 July 2017, its purchase price is a transfer balance account credit on the commencement day.

Transfer balance account debits for account based pensions

Pension payments from an account based pension are not a transfer balance account debit.

Transfer balance account debits that may arise in relation to an account based pension are as follows:

Full or partial commutations

The full or partial commutation of an account based pension is a transfer balance account debit of the amount of commutation at the time of commutation.

This debit occurs whether the commutation is cashed out as a lump sum, moved back to accumulation phase, or rolled over to another superannuation fund. Note that if it is rolled over to another fund and then used to commence a new account based pension, the commencement of that new pension will then be a transfer balance account credit.

Other debits

Other debits may include:

- structured settlement contributions
- replenishment debits approved by the ATO
- the value of an account based pension where the trustee has not complied with a commutation authority, and as a result the pension is no longer in retirement phase
- the value of an account based pension where it failed to meet the pension standards in a year (e.g. the minimum payment requirement), and is therefore no longer an income stream (and as a result is no longer in the retirement phase)
- any other amount prescribed in the regulations.

Refer to section 21.7 for further information.

15.7 Estate planning

This section is a summary of the estate planning rules that apply to account based pensions. For further information about the estate planning rules that apply to superannuation income streams, see section 23. For further information about superannuation estate planning rules generally, see section 10.

What happens when an account based pension recipient dies?

Where an account based pension recipient dies, the death benefit options depend on whether there is a valid reversionary beneficiary.

Valid reversionary beneficiary

Where there is a valid reversionary beneficiary in place, the account based pension automatically reverts on the date of death to the reversionary beneficiary.

A reversionary nomination will only be valid if the nominated person is, under the SIS Regulations, a dependant of the member (see below) who is able to receive a death benefit as an income stream (see section 23.2 for further information).

No valid reversionary beneficiary

Where there is no valid reversionary beneficiary in place, the account based pension ceases at the time of death. Under SIS rules, the remaining balance must then be cashed as a death benefit as soon as practicable to:

- the member's LPR, and/or
- one or more of the member's dependants (dependants for SIS purposes include a spouse, child, financial dependant or interdependent relation).

Superannuation death benefits may be cashed in any one or more of the following forms (per recipient):

- a single lump sum
- an interim lump sum (not exceeding the amount of the benefits ascertained at the date of death) and a final lump sum (not exceeding the balance of the benefits as ascertained in relation to the member's death)
- one or more pensions which are retirement phase income streams
- rollover for the purchase of one or more annuities which are retirement phase income streams.

While the LPR and any dependant can receive a lump sum death benefit, there are restrictions around who can receive a death benefit income stream such as a pension or annuity (e.g. most adult children are unable to receive a death benefit as an income stream. See sections 23.2 and 23.6 for further information). Any death benefit income stream paid must comply with death benefit income stream rules. Refer to section 23.3 for further information.

Where a valid binding or non-lapsing death benefit nomination is in place, the death benefit must be cashed to the nominated beneficiaries. However, such a nomination in most cases does not bind the trustee in relation to whether the death benefit is paid as a lump sum or income stream. Where this is the case and a nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

Where no valid binding or non-lapsing death benefit nomination is in place, the super fund's default provisions apply. This may include the trustee having discretion regarding the payment of the member's death benefit (possibly allowing it to take into account any non-binding nomination made by the member), or automatic payment to a specific eligible beneficiary such as the LPR.

Where the trustee decides or is required to pay a death benefit to a particular eligible beneficiary, and the nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

Death benefit account based pensions

An account based pension paid to an eligible dependant (due to automatic reversion, a valid binding or non-lapsing death benefit nomination, or trustee discretion) is a valid death benefit income stream (which is a retirement phase income stream) and therefore meets SIS death benefit cashing rules.

Commutations

Under the SIS Regulations, death benefit account based pensions can be commuted, with any commutation classified as a lump sum death benefit. From 1 July 2017, a commutation (lump sum death benefit) can also be rolled over to another fund to immediately commence another death benefit account based pension.

Ongoing death benefit cashing requirement continues to apply on commutation

Due to the ongoing SIS Regulations cashing requirement that applies to death benefits, any commutation from a death benefit account based pension must remain cashed. This could include the account based pension recipient:

- receiving the commutation as a lump sum death benefit payment
- using the commutation to immediately commence a new death benefit account based pension within the same fund
- rolling over the commuted death benefit to immediately commence a new death benefit account based pension in another fund (see section 23.5 for further information about the rollover of death benefits).

Any commutation from a death benefit account based pension cannot:

- be moved back (or rolled over) to accumulation phase, or
- be mixed with the beneficiary's other superannuation benefits.

Child death benefit account based pensions

Since 1 July 2007, to be eligible to receive a death benefit as an income stream, a child, at the time of the member's death, must be under age 18, or be financially dependent on the member and less than 25 years of age, or be of any age and have a disability that:

- is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments
- is permanent or likely to be permanent, and
- results in a substantially reduced capacity of the person for communication, learning or mobility, and the need for ongoing support services.

In other circumstances, the death benefit must be paid to the child as a lump sum.

Compulsory cashing of child death benefit income streams

If death benefits are paid to a child as a death benefit account based pension, the pension must then be cashed as a lump sum by the earlier of the day on which it is commuted and the day on which the child attains age 25, unless the child has a disability as described above.

Any lump sum received by the child in this situation is tax free (non-assessable non-exempt income).

Children receiving death benefit account based pensions commenced prior to 1 July 2007

Prior to 1 July 2007, the restriction on children being able to receive death benefit income streams did not exist, and existing death benefit account based pensions in place at that time are unaffected by this change. Therefore, any child (including independent adult children) who commenced to receive a death benefit account based pension prior to 1 July 2007 can continue the pension and is not subject to the requirement for compulsory commutation at age 25.

Transfer balance cap for death benefit account based pensions

This section is a summary of the transfer balance cap rules that apply to death benefit account based pensions. For more detailed information about how the transfer balance cap applies to death benefit income streams, see section 23.7.

Where a beneficiary receives a death benefit account based pension, the value of that pension will count towards the beneficiary's transfer balance account. Essentially this means that a beneficiary does not inherit the deceased's transfer balance cap. The amount, and timing, of the credit to the beneficiary's transfer balance account depends on whether the account based pension automatically reverted to the beneficiary.

Reversionary death benefit account based pensions

Where an account based pension automatically reverts to a nominated beneficiary on the death of the original recipient, the balance of the pension as at the time of death will count as a credit to the beneficiary's transfer balance account. However, to give the beneficiary time to arrange their affairs, the credit will be deferred and will not arise in the beneficiary's transfer balance account until 12 months from the date of death.

It should also be noted that this rule applies where a pension reverted to a member's beneficiary between 1 July 2016 and 30 June 2017. For example, where a pension reverted to a member's beneficiary on 1 October 2016, the beneficiary's transfer balance account was credited on 1 October 2017 with the value of the income stream as at 30 June 2017. Where a pension reverted to a member's beneficiary more than 12 months prior to 1 July 2017, the balance of the pension at 30 June 2017 was credited to the beneficiary's transfer balance account on 1 July 2017.

Non-reversionary death benefit account based pensions

The 12 month delay of the transfer balance credit is not available for non-reversionary account based pensions.

For non-reversionary death benefit account based pensions that commence on or after 1 July 2017, the purchase price of the new death benefit account based pension at the date of commencement is a credit to the beneficiary's transfer balance account at the date of commencement.

For existing non-reversionary death benefit account based pensions at 30 June 2017, the balance of the pension at 30 June 2017 was credited to the beneficiary's transfer balance account on 1 July 2017.

It is not possible to roll over a death benefit income stream to accumulation (see section 23.5 for further information). Therefore members will need to carefully consider the impact of receiving a death benefit income stream on their transfer balance account.

Child beneficiary's transfer balance cap

Where a child receives a death benefit account based pension, a modified transfer balance cap applies so that the child, to some extent, inherits the deceased's transfer balance cap, rather than using up their own transfer balance cap. See section 23.7 for further information.

Taxation of income stream benefits paid from death benefit account based pensions

All benefits paid from a death benefit account based pension are income stream benefits for tax purposes, except a full or partial commutation (which is a lump sum death benefit – see section 23.10).

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 23.

Taxation of tax free component

In all cases, regardless of the age of the recipient or deceased member, the tax free component of a superannuation income stream benefit paid from a death benefit account based pension is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

Table 15.4 shows the tax treatment of the taxable component of an account based pension payment paid from a taxed superannuation fund, where the pension is a death benefit income stream.

Table 15.4

Age of deceased (at time of death)	Age of recipient	Taxable component (taxed element)
60 or above	Any age	Non-assessable non-exempt income: No tax
Under 60	60 or above	Non-assessable non-exempt income: No tax
	Under 60	Marginal tax rate, less 15% tax offset

Note: In rare cases, it may be possible for an account based pension to be paid from an untaxed superannuation fund. Where this is the case, see section 23.9 for information about the different tax treatment that applies.

15% tax offset

A 15% non-refundable income tax offset applies where the taxable component (taxed element) forms part of the death benefit income stream recipient's assessable income (this occurs where both the deceased was under age 60 at the date of death and the recipient is under age 60). The tax offset is calculated as 15% of the assessable taxable component (taxed element).

Taxation of commutations from death benefit account based pensions

Where a death benefit account based pension recipient makes a commutation from their income stream, the resulting withdrawal is a lump sum death benefit.[71] For further information about the taxation of lump sum death benefits (including how to calculate tax free and taxable proportions), see section 10.

Where the commutation is rolled over to another fund to commence another death benefit income stream instead of being paid to the beneficiary, different rules apply. Refer to section 23.5 for further information.

Taxation of tax free component

In all cases, regardless of age, the tax free component of a superannuation lump sum paid from a death benefit account based pension is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

Table 15.5 shows the tax treatment of the taxable component of a superannuation lump sum death benefit paid from an account based pension in a taxed superannuation fund.

71 Partial commutations are considered income stream benefits for the purposes of determining whether a super fund is able to claim an earnings tax exemption when paying a retirement phase income stream.

Table 15.5

Recipient	Taxable component (taxed element)	Taxable component (untaxed element)
Death benefits dependant	Non-assessable non-exempt income: No tax	Non-assessable non-exempt income: No tax
Non-death benefits dependant	Assessable income: Maximum tax rate of 15%	Assessable income: Maximum tax rate of 30%

Note: For all non-zero tax rates, Medicare levy may also apply.

Although lump sums paid from a taxed superannuation fund normally do not include any taxable component (untaxed element), a lump sum death benefit paid from a taxed superannuation fund may include an untaxed element where it is wholly or partly sourced from life insurance proceeds. For information about how to calculate the untaxed element, see section 10.9.

Commutations from child death benefit account based pensions

Where a child is receiving a death benefit account based pension (excluding one who commenced to receive a death benefit account based pension prior to 1 July 2007), any commutation made by the child (including if they elect to voluntarily commute the income stream earlier than age 25) is always non-assessable non-exempt income and therefore tax-free. For further information about child death benefit income streams, refer to section 23.6.

15.8 Allocated pensions

Allocated pensions were a flexible income stream with an identifiable account balance that could be commenced under the pre-20 September 2007 superannuation rules.

Allocated pensions are treated the same as account based pensions, with the following exceptions:

Minimum and maximum payment rules

Rather than a percentage-based minimum payment requirement, allocated pensions are required to provide an annual pension payment each financial year which is between a prescribed minimum and maximum amount. For a full financial year, the annual minimum and maximum payments are calculated by dividing the account balance at the start of the financial year by a minimum and maximum pension valuation factor. The pension valuation factors varied, depending on the member's age at the start of each financial year (contact the FirstTech team for further detail about these pension valuation factors).

Prorating of both the required minimum and maximum pension payments applied during the first part financial year of an allocated pension.

Prorating of the minimum payment also generally applies in the final part financial year of an allocated pension. However, this requirement does not apply to an allocated pension commenced prior to 1 October 2003.

Converting from an allocated pension to an account based pension

Existing allocated pensions can be converted to the rules of an account based pension without having to stop and recommence the pension.

Due to the increased flexibility of account based pensions, many superannuation funds chose to automatically convert all allocated pensions to account based pensions when the rules changed in 2007.

Different tax proportioning rules may apply

Different tax proportioning rules (including the use of a flat dollar tax free/deductible amount) applied to allocated pensions commenced prior to 1 July 2007.

These existing arrangements continue to apply to that income stream after 1 July 2007 until a trigger event occurs, which includes:

- being age 60 or over at 1 July 2007
- reaching age 60
- partially or fully commuting the income stream
- death.

While most allocated pensions will have already seen a trigger event occur (and therefore regular tax proportioning rules apply), contact the FirstTech team for further information about the pre-1 July 2007 tax proportioning rules.

16 Transition to retirement income streams

A transition to retirement (TTR) income stream can be commenced once a member has satisfied the attaining preservation age condition of release and can be commenced with preserved (or a mixture of preserved and non-preserved) benefits.

A TTR income stream is essentially an account based pension, with the following additional restrictions applying until the member has met a full condition of release:

- total maximum income stream payments of 10% of the 1 July account balance per financial year applies, and
- the income stream can only be commuted to pay a lump sum withdrawal in very limited circumstances.

Once the member meets a full condition of release, a TTR income stream converts to the rules of an account based pension, with no maximum payment applying and voluntary commutations allowable.

While not covered in this section, the following other types of income streams can be commenced when the attaining preservation age condition of release is satisfied:

- a non-commutable allocated pension or annuity (must have been commenced prior to 20 September 2007)
- a non-commutable pension or annuity (refer to sections 17–19, which include further information about non-commutable pensions and annuities).

Attaining preservation age condition of release

A member meets the attaining preservation age condition of release simply by reaching their preservation age (this will be age 60 for any member turning 60 on or after 1 July 2024 – see section 8.2 for information about preservation age). No changes to a member's employment arrangements are required in order to satisfy this condition of release.

As mentioned above, once this condition of release has been satisfied, the cashing restrictions allow the member to commence any of the following income streams:

- a transition to retirement income stream
- a non-commutable allocated pension or annuity
- a non-commutable pension or annuity.

16.1 Payment rules

Note that the payment rules that apply to TTR income streams are the minimum rules required under the SIS Regulations. Superannuation funds may impose additional rules and restrictions, provided the minimum SIS rules are satisfied.

A TTR income stream must comply with all of the payment rules that apply to account based pensions. See section 15.1 for further information about payment rules for account based pensions.

For example, where a member with a TTR income stream is under age 65 at 1 July 2025, income stream payments totalling at least 4% of the account balance must be made during the 2025–26 financial year.

In addition to the payment rules, two additional restrictions apply until a full condition of release has been met.

Maximum annual payment requirement

The total amount of income stream payments in any financial year are limited to a maximum of 10% of the account balance at the start of each financial year (or the balance at commencement date in the first part financial year). The maximum income stream payment requirement excludes commutations, but includes payments made under a payment split.

This maximum payment is not required by legislation to be reduced on a pro rata basis if the TTR income stream is started or commuted part way through a financial year.

Commutation restrictions

TTR income streams are generally non-commutable. However, cash commutations may be made:

- to pay a super contributions surcharge
- to give effect to an entitlement of a non-member spouse under a family law payment split
- to ensure a payment may be made under a Release Authority (e.g. for the release of excess contributions), or
- to cash an unrestricted non-preserved benefit.

Where a member commutes a TTR income stream, the value of a commutation is generally not counted towards the 10% of account balance limit for TTR income payments.

> **Note**
>
> Unless a member's TTR income stream has sufficient unrestricted non-preserved benefits, it is not possible to commute a TTR for the purpose of releasing benefits on compassionate grounds or on the grounds of financial hardship under Test 1 of the severe financial hardship condition of release.
>
> Members who need to release benefits on these grounds (and don't have any other super interests from which the release could be requested) could consider commuting part or all of their TTR income stream back to accumulation phase (see below) before applying for the release of benefits.
>
> Where a member instead satisfies Test 2 of the severe financial hardship condition of release, all benefits in a TTR income stream become unrestricted non-preserved and accessible. For further information about the severe financial hardship condition of release, see section 8.10.

Commuting back to accumulation phase

While there are restrictions on cash commutations, benefits in a TTR income stream can be commuted:

- back to accumulation phase
- to roll over to another superannuation fund accumulation account, or
- to roll over to another TTR income stream.

The requirements mentioned in section 15.3 when commuting an account based pension (such as the requirement for a pro-rata minimum payment or minimum remaining balance) also apply when commuting a TTR income stream.

Restrictions removed once a full condition of release has been satisfied

While technically remaining a TTR income stream, a TTR income stream converts to the rules of an account based pension where a member has met a full condition of release, for example permanently retiring after reaching preservation age (age 60 for any member turning 60 on or after 1 July 2024), ceasing gainful employment after reaching age 60, reaching age 65, or death (only relevant for a reversionary TTR income stream).

Once this occurs:

- no maximum payment requirement will apply
- voluntary commutations can be made in the same way as for an account based pension (see section 15.3).

Note that a TTR income stream generally becomes a retirement phase income stream for transfer balance cap purposes once a full condition of release has occurred (and the trustee has been advised). Note that an exception applies where the member reaches age 65. In this case there is no requirement to notify the trustee. See section 16.6 for further information.

16.2 Preservation of benefits in TTR income streams

A TTR income stream can be commenced with either preserved benefits only, or a mixture of:

- preserved benefits
- restricted non-preserved benefits
- unrestricted non-preserved benefits.

Prior to a full condition of release being satisfied, any increase in benefits (eg, due to investment earnings) are generally preserved benefits.

Note that under the super rules, superannuation funds may subject benefits to higher preservation requirements than the minimum required. In the case of TTR pensions, this may involve a fund considering all benefits within a TTR pension to be preserved benefits. It is therefore important to confirm whether a member's fund will maintain existing preservation components or treat all benefits as preserved upon the commencement of their TTR pension.

> **Tip**
>
> When dealing with a fund that fully preserves benefits upon commencement of a TTR pension, consideration should be given to commencing an account based pension with all unrestricted non-preserved benefits and a TTR pension using preserved funds. This could allow the member to keep their unrestricted non-preserved funds in case of emergency.

Priority order when cashing preservation components

As discussed in section 8.1, where a superannuation benefit is cashed and the member has only met a condition of release with cashing restrictions (e.g. the attaining preservation age condition of release), the cashing must come from preservation components in the following order:

1. unrestricted non-preserved
2. restricted non-preserved
3. preserved.

It is important to note that cashing of benefits refers to the payment of benefits out of the superannuation system and not the rollover of benefits within the super system or the commencement of an income stream. Where a member has a mixture of preservation components within their super balance, and uses part of their balance to commence a TTR pension:

- The commencement of the TTR pension does not have to comply with the priority of preservation components rules (e.g. the member could choose to use 50% of their preserved and 50% of their unrestricted non-preserved benefits to commence the TTR pension, subject to their fund allowing this).

- Any payments other than rollovers made from the TTR pension, including income stream payments, and commutations which are withdrawn, are subject to the priority of preservation components rules.

Preservation once full condition of release is satisfied

All of a member's benefits in a TTR income stream become unrestricted non-preserved once they have satisfied a full condition of release, for example permanently retiring after reaching preservation age (age 60 for any member turning 60 on or after 1 July 2024), ceasing gainful employment after reaching age 60 or reaching age 65. From that time, any increase in benefits (eg, due to investment earnings) within the TTR income stream are also unrestricted non-preserved benefits.

16.3 Taxation of income stream payments

Income stream payments from a TTR income stream are taxed in exactly the same way as income stream payments from an account based pension. See section 15.2 for further information.

16.4 Taxation of commutations

Commutations from a TTR income stream (where permitted) are taxed in exactly the same way as commutations from an account based pension. See section 15.4 for further information.

16.5 Social security assessment

TTR income streams are assessed for social security and DVA means test purposes as asset-tested (long term) income streams. They are assessed in the same way as account based pensions (see section 15.5 for further information).

Assets test

100% of the account balance of a TTR income stream is assessable under the assets test.

Income test

For non-grandfathered TTR income streams (includes any commenced on or after 1 January 2015 and some commenced prior to that date), the balance of a member's TTR income stream (along with their other financial assets) is subject to deeming (an assumed rate of return) for income test purposes. Actual income stream payments are ignored for income test purposes.

For further information about deeming, refer to the FirstTech Social Security Guide.

See section 15.5 for details about grandfathered account based pensions and their income test assessment.

16.6 When does a TTR income stream become a retirement phase income stream?

It is important to know when a TTR income stream becomes a retirement phase income stream for the purposes of:

- the taxation of assets supporting the income stream (see section 16.7), and
- whether the income stream counts towards a member's transfer balance cap (see section 16.8).

A TTR income stream becomes a retirement phase income stream where the member:

- attains age 65, regardless of whether they have notified the income stream provider, or
- notifies the income stream provider that they satisfied one of the following conditions of release:
  - terminal medical condition
  - permanent incapacity
  - retirement.

A TTR income stream that reverts to a reversionary beneficiary is always a retirement phase income stream of the beneficiary, regardless of whether the reversionary beneficiary has satisfied one of the above requirements.

16.7 Taxation of assets supporting TTR income streams

From a superannuation fund taxation perspective, income and realised net capital gains generated by assets supporting a TTR income stream are taxed at 15%, in the same way that superannuation in the accumulation phase is taxed, until the TTR income stream becomes a retirement phase income stream. See section 6 for further information about the taxation of superannuation funds.

Once a TTR income stream becomes a retirement phase income stream, earnings on assets supporting the income stream become tax free. See section 20 for further information.

As a result, members who have met one of the required conditions of release may wish to contact their fund to ensure their TTR income stream is recognised as a retirement phase income stream. However, caution should be exercised when taking action to recognise a TTR income stream as a retirement phase income stream, as retirement phase income streams count towards the member's transfer balance cap.

16.8 Transfer balance cap

This section is a summary of how the transfer balance cap applies to TTR income streams (excluding death benefit reversionary TTR income streams).

For further information about the transfer balance cap, refer to section 21. For information about how the transfer balance cap applies to death benefit reversionary TTR income streams, refer to section 16.9.

Transfer balance account credits for TTR income streams

A TTR income stream does not count towards a member's transfer balance account until the time that it becomes a retirement phase income stream (see section 16.6 for information about when a TTR income stream becomes a retirement phase income stream).

TTR income stream was already a retirement phase income stream prior to 1 July 2017

Where a TTR income stream was already a retirement phase income stream prior to 1 July 2017, its balance on 30 June 2017 is a transfer balance account credit on 1 July 2017.

TTR income stream becomes a retirement phase income stream on or after 1 July 2017

Where a TTR income stream becomes a retirement phase income stream on or after 1 July 2017, its account balance on the day it becomes a retirement phase income stream is a transfer balance account credit on that same day.

Transfer balance account debits for TTR income streams

The commutation of a TTR income stream that has not yet become a retirement phase income stream is not a transfer balance account debit.

Transfer balance account debits that may arise in relation to a TTR income stream that is a retirement phase income stream are the same as transfer balance account debits for account based pensions. See section 15.6 for further information. Pension payments from a TTR income stream are not a transfer balance account debit.

16.9 Estate planning

This section is a summary of the estate planning rules that apply to TTR income streams. For further information about the estate planning rules that apply to superannuation income streams, refer to section 23. For further information about superannuation estate planning rules generally, see section 10.

What happens when a TTR income stream recipient dies?

Where a TTR income stream recipient dies, the death benefit options are broadly the same as upon the death of an account based pension recipient. See section 15.7 for further information.

No valid reversionary beneficiary

Where there is no valid reversionary beneficiary nomination in place, the TTR income stream ceases at the time of death. Any new death benefit income stream paid to an eligible beneficiary cannot be a TTR income stream (as the new income stream is commenced wholly with unrestricted non-preserved benefits). Where a new death benefit account based pension is paid on the death of a TTR income stream recipient, refer to section 15.7 for further information.

Valid reversionary beneficiary

Where there is a valid reversionary beneficiary in place, the TTR income stream automatically reverts on the date of death to the reversionary beneficiary. Legislation has been passed to ensure that the TTR income stream automatically reverts to the reversionary beneficiary, even where the beneficiary has not met a condition of release. A reversionary nomination will only be valid if the nominated person is, under the SIS Regulations, a dependant of the member who is able to receive a death benefit as an income stream (see section 23.2 for further information).

Upon reversion, a TTR income stream technically remains a TTR income stream. However, as a full condition of release (death) has been satisfied, the income stream is not subject to the additional maximum payment and commutation restrictions that initially apply to a TTR income stream. See section 16.1 for further information.

Transfer balance cap

A TTR income stream that reverts to a reversionary beneficiary is always a retirement phase income stream of the beneficiary, regardless of whether they have reached age 65 or satisfied another eligible condition of release.

Where a TTR income stream automatically reverts to a nominated beneficiary on the death of the original recipient, the balance of the pension as at the time of death will count as a credit to the beneficiary's transfer balance account. However, to give the beneficiary time to arrange their affairs, the credit will be deferred and will not arise in the beneficiary's transfer balance account until 12-months from the date of death.

It should also be noted that this 12-month deferral rule also applies where a TTR income stream reverted to a member's beneficiary between 1 July 2016 and 30 June 2017. For example, where a TTR income stream reverted to a member's beneficiary on 1 October 2016, the beneficiary's transfer balance account was credited on 1 October 2017 with the value of the income stream as at 30 June 2017. Where a TTR income stream reverted to a member's beneficiary more than 12 months prior to 1 July 2017, the balance of the TTR income stream at 30 June 2017 was credited to the beneficiary's transfer balance account on 1 July 2017.

Child death benefit TTR income streams

A TTR income stream can only automatically revert to a child in limited circumstances. A child death benefit TTR income stream is subject to the same modified rules, tax treatment and transfer balance cap assessment as a child death benefit account based pension. See section 15.7 for further information.

Any new death benefit income stream paid to a child as a result of a TTR income stream recipient's death cannot be a TTR income stream (as the new income stream is commenced wholly with unrestricted non-preserved benefits). Where a new child death benefit account based pension is paid on the death of a TTR income stream recipient, see section 15.7 for further information.

16.10 TTR strategies

The term transition to retirement initially referred to the reaching preservation age condition of release. That term is now more closely associated with the strategies that have developed from the ability to access super while still working.

The two most common TTR strategies are:

- TTR strategy 1: reduce working hours and top up cash flow with income from a TTR pension, or
- TTR strategy 2: continue working, salary sacrifice employment income or make personal deductible superannuation contributions, and top-up cash flow from a TTR pension.

For a detailed analysis of the effectiveness of TTR strategies, refer to the FirstTech guide TTR strategies in 2025–26 on the FirstTech page of FirstNet Adviser at cfs.com.au

17 Term allocated pensions

Term allocated pensions (TAPs) were introduced in 2004 and are best described as a hybrid between account based pensions and fixed term income streams. They are an income stream designed to fully draw down an account balance over a fixed term. However, they are account-based products with the investor having a choice of investments, including the ability to invest in growth assets. Payments are not guaranteed, meaning the investor bears the investment risk. TAPs may also be referred to as growth pensions and market-linked income streams (MLIS). The SIS Regulations also allow life offices to offer term allocated annuities, which must comply with the same requirements.

TAPs were able to be commenced between 20 September 2004 and 19 September 2007, and were a complying income stream which received a 50% assets test exemption for social security purposes.

TAPs are also able to be commenced on or after 20 September 2007, provided that:

- the benefits used to commence the TAP are sourced wholly from the commutation of a complying lifetime income stream, complying term income stream or term allocated pension, and
- the income stream also complies with the rules that apply to account based pensions (see section 15.1 for further information).

TAPs commenced on or after 20 September 2007 are often referred to as TAP clones.

Note that TAP clones commenced on or after 20 September 2007 only retain the 50% assets test exemption in limited circumstances. See section 17.5 for further information.

Five-year window to commute certain legacy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including TAPs, to be fully commuted. For further information about fully commuting TAPs during this window, see section 17.3.

17.1 Payment rules

TAP commenced prior to 20 September 2007

A TAP must comply with all of the following rules:

- The TAP is paid for a specified term (see below).
- The annual payment requirement is satisfied in each financial year (see below).
- Once it has commenced, no further capital can be added to the pension via contribution or rollover.
- The pension must have no residual capital value.
- The pension is transferable to another person only on the death of the primary or reversionary pensioner.
- The pension is generally non-commutable, however a full commutation can be made during a five-year window starting on 7 December 2024 (see section 17.3).
- The capital value of the pension and the income from it cannot be used as a security for a borrowing.

TAP clone commenced on or after 20 September 2007

A TAP clone must comply with all of the rules listed above for pre-20 September 2007 TAPs. In addition:

- the TAP clone must be commenced with superannuation benefits wholly sourced from the commutation of a complying lifetime income stream, complying term income stream or term allocated pension, and
- the TAP clone must also comply with the rules that apply to account based pensions (see section 15.1 for further information) or the rules of another type of authorised income stream that can be commenced from 20 September 2007 (see section 14 for further information).

It is important to note that the payment rules that apply to TAPs and TAP clones are the minimum rules required under the SIS Regulations. Superannuation funds may impose additional rules and restrictions to their TAPs and TAP clones, provided the minimum SIS rules are satisfied.

Specified term

A TAP or TAP clone recipient can select from a range of permitted terms. The term must be selected at the commencement of the income stream.

TAPs commenced prior to 1 January 2006

Members are permitted to select a term of a whole number of years, from:

- a minimum term equal to their life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the life expectancy of someone five years younger than the member, rounded up to the nearest whole number.

Where the member's spouse is a reversionary beneficiary, and the spouse has a greater life expectancy than the member, the member can still select from the terms above, but may instead select a term of a whole number of years, from:

- a minimum term equal to the reversionary beneficiary's life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the life expectancy of someone five years younger than the reversionary beneficiary, rounded up to the nearest whole number.

The life expectancy factors used in this calculation are shown in Appendix 4.

TAPs or TAP clones commenced on or after 1 January 2006

Members are permitted to select a term of a whole number of years, from:

- a minimum term equal to their life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the greater of:
  - the life expectancy of someone five years younger than the member, rounded up to the nearest whole number.
  - 100 minus the age the member reached at their most recent birthday (TAP providers were permitted, but not required, to offer this extended maximum term on TAPs commencing on or after 1 January 2006).

Where the member's spouse is a reversionary beneficiary, and the spouse has a greater life expectancy than the member, the member can still select from the terms above, but may instead select a term of a whole number of years, from:

- a minimum term equal to the reversionary beneficiary's life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the greater of:
  - the life expectancy of someone five years younger than the reversionary beneficiary, rounded up to the nearest whole number.
  - 100 minus the age the reversionary beneficiary reached at their most recent birthday (TAP providers were permitted, but not required, to offer this extended maximum term on TAPs commencing on or after 1 January 2006).

The life expectancy factors used in this calculation are shown in Appendix 4.

Annual payment requirement

In order to meet the payment standards, a TAP must make a specified level of pension payments throughout a financial year. The pension payment requirement excludes commutations, but includes payments made under a payment split.

For full financial years, the annual payment required for a TAP or TAP clone is:

Annual payment = Account balance/Payment factor (rounded to the nearest $10), where:

- Account balance is account balance at each 1 July (or in the year of commencement the account balance on the day of commencement).
- Payment factor is determined from remaining term of TAP or TAP clone at each 1 July (the remaining term is rounded as set out in Table 17.1 and payment factors are provided in Table 17.2).

Note: On the 1 July that the payment factor is first 1.00 (when the remaining term is rounded to 1 year), the minimum payment standards are met if the 1 July account balance is paid out over either 12 months, or the remaining term if this is longer. Any residual balance must be paid within 28 days after the 1 July account balance is paid out. See the article 'Payment rules when a TAP is ending' on the FirstTech website for further information about the rules that apply as a TAP approaches the end of its term.

Rounding of remaining term

When determining the relevant payment factor for a TAP or TAP clone on 1 July each year, the remaining term is rounded as follows:

Table 17.1 Calculating remaining term

Commencement date of TAP or TAP clone was	Each 1 July remaining term is
1 January – 30 June	Rounded up to the nearest whole year
1 July – 31 December	Rounded down to the nearest whole year

Table 17.2 Payment factors for TAP annual pension payment

Term of TAP remaining rounded in whole years	PF	Term of TAP remaining rounded in whole years	PF	Term of TAP remaining rounded in whole years	PF
70 or more	26.00	46	22.70	22	15.17
69	25.91	45	22.50	21	14.70
68	25.82	44	22.28	20	14.21
67	25.72	43	22.06	19	13.71
66	25.62	42	21.83	18	13.19
65	25.52	41	21.60	17	12.65
64	25.41	40	21.36	16	12.09
63	25.30	39	21.10	15	11.52
62	25.19	38	20.84	14	10.92
61	25.07	37	20.57	13	10.30
60	24.94	36	20.29	12	9.66
59	24.82	35	20.00	11	9.00
58	24.69	34	19.70	10	8.32
57	24.55	33	19.39	9	7.61
56	24.41	32	19.07	8	6.87
55	24.26	31	18.74	7	6.11
54	24.11	30	18.39	6	5.33
53	23.96	29	18.04	5	4.52
52	23.80	28	17.67	4	3.67
51	23.63	27	17.29	3	2.80
50	23.46	26	16.89	2	1.90
49	23.28	25	16.48	1 or less	1.00
48	23.09	24	16.06		
47	22.90	23	15.62		

10% flexibility

Under the SIS payment rules, a pensioner may vary the required annual pension payment from a TAP (calculated above) by plus or minus 10% of the annual calculation. This allows a member to select an annual pension payment of between:

- a minimum payment of 90% of the required annual amount, and
- a maximum payment of 110% of the required annual amount.

However, a product provider may not allow the required annual pension payment amount to be varied.

Pro rata and 1 June rule in first part financial year

Where a TAP or TAP clone commences part way through a financial year, the minimum annual pension payment requirement is prorated based on the days remaining in the year.

For the first part financial year, the payment amount is calculated as:

Annual payment = account balance/payment factor × pro rata factor (rounded to the nearest $10), where:

- **Account balance** is initial purchase price on commencement of the pension.
- **Payment factor** is determined from the term chosen for the TAP or TAP clone (see payment factors in Table 17.2).
- **Pro-rata factor** is remaining number of days in financial year (including commencement day)/number of days in financial year.

Under the 10% flexibility rule, the calculated pro rata pension payment for the first part financial year can then be varied by plus or minus 10% of the calculation.

1 June rule

An exception applies where a TAP or TAP clone commences on or after 1 June in a financial year. Where this occurs, no payment is required for that first part financial year.

17.2 Taxation of TAP pension payments

Pension payments from a TAP or TAP clone are superannuation income stream benefits for tax purposes. The tax treatment depends on the age of the pensioner at the time of each payment and the tax free and taxable components that make up each payment. A modification may also apply where the TAP or TAP clone is a capped defined benefit income stream (see below).

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 22.

Note: This section discusses the taxation of pension payments from TAPs and TAP clones that are not death benefit income streams. For information about the taxation of TAPs and TAP clones that are death benefit income streams, see section 17.7.

Taxation of tax free component

Regardless of age, the tax free component of a TAP or TAP clone pension payment is not assessable income and not exempt income. No tax is paid on these amounts.

Where the TAP or TAP clone is a capped defined benefit income stream, modified tax treatment may apply. See below for further information.

Taxation of taxable component (general)

Table 17.3 shows the tax treatment of the taxable component of a TAP or TAP clone pension payment paid from a taxed superannuation fund, where the pension is not a disability super benefit income stream.

Table 17.3

Age of income stream recipient	Taxation of taxable component (taxed element)
60 or above	Non-assessable non-exempt income: No tax
Under 60	Assessable income: taxed at marginal tax rate

Note: In rare cases, it may be possible for a TAP or TAP clone to be paid from an untaxed superannuation fund. Where this is the case, see section 22.2 for information about the different tax treatment that applies.

Note: Where the TAP or TAP clone is a capped defined benefit income stream, modified tax treatment may apply. See below for further information.

Taxation of taxable component (disability super benefit income stream)

The tax treatment of the taxable component of a TAP or TAP clone pension payment paid from a taxed superannuation fund, where the pension is a disability super benefit income stream, is the same as outlined in Table 17.3, with one important modification.

15% tax offset applies to reduce tax on taxable component

Where a TAP or TAP clone pension payment is received from a disability super income stream while under age 60, a 15% non-refundable income tax offset applies to any taxable component (taxed element) received. The tax offset is calculated as 15% of the assessable taxable component (taxed element).

Tax modification where TAP or TAP clone is a capped defined benefit income stream

A TAP or TAP clone commenced prior to 1 July 2017 is a capped defined benefit income stream for transfer balance cap purposes. As the majority of TAPs were commenced between 2004 and 2007, most TAPs are capped defined benefit income streams. See section 17.6 for further information.

Where a TAP or TAP clone is a capped defined benefit income stream, the following pension payments from the TAP or TAP clone (along with any of the following income stream payments from other capped defined benefit income streams held by the member) that exceed the defined benefit income cap are subject to additional taxation:

- payments to those age 60 or over, or
- payments paid to members under age 60 from a death benefit income stream where the deceased member was age 60 or over at the time of death.

Defined benefit income cap

A member's defined benefit income cap for a financial year is:

General transfer balance cap/16

The defined benefit income cap for 2025–26 is $125,000.

See section 22.7 for information about the additional taxation that applies to these payments that exceed the defined benefit income cap.

17.3 Commutation rules

TAPs and TAP clones cannot be commuted except:

- where fully commuted during a five-year window commencing on 7 December 2024 (see 'Five-year window to fully commute TAPs' below)
- on the death of the primary or reversionary beneficiary where a lump sum or death benefit pension (where permitted) is paid to the legal personal representative or dependant(s)
  - if the primary beneficiary has (where permitted) elected to have a term calculated with reference to a reversionary spouse's life expectancy/age, the TAP or TAP clone cannot be commuted until the death of both the primary and reversionary beneficiary
- to purchase another non-commutable (complying) income stream (e.g. another TAP clone)
- within six months of commencement, provided that it was not funded from the commutation of another complying income stream (note, this option is only relevant to a TAP commenced prior to 20 September 2007).
- to pay a super contributions surcharge liability
- to give effect to an entitlement of a non-member spouse under a family law payment split
- for a release authority or transitional release authority in relation to excess non-concessional and excess concessional contribution determinations, Division 293 tax assessments, and amounts released under the first home super saver (FHSS) scheme
- to comply with a commutation authority, issued for an excess transfer balance.

> **Note**
>
> Release of benefits on compassionate grounds or on the grounds of financial hardship are not an exception to the non-commutable rules for complying income streams.

Five-year window to fully commute TAPs

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including TAPs (and TAP clones), to be fully commuted. This commutation option is voluntary for members.

Where a TAP is fully commuted within this five-year window, a member may then use the proceeds for one (or a combination of) the following:

- Commencing a more flexible income stream such as an account based pension (subject to their transfer balance cap).
- Retaining it in accumulation phase (provided the TAP was not a death benefit income stream).
- Withdrawing it as a lump sum.

Depending on a client's circumstances, fully commuting a TAP under this option may have a range of potentially significant social security, tax and transfer balance cap impacts. For further information about this commutation option and these impacts, see section 14.2, and the article 'Commuting a TAP under legacy pension amnesty rules' on the FirstTech site.

Partial commutations are not permitted under this option. Prior to the full commutation under this option, at least a pro rata pension payment must have been made during the financial year (discussed later in section 17.3).

Advisers should also confirm with the client's TAP product provider whether there are any additional restrictions in the fund's governing rules impacting the ability to fully commute under this option.

Rollovers of complying income streams

Separate from the five-year full commutation window discussed above, a TAP or TAP clone, or another type of complying income stream, may be commuted and rolled over, provided the commutation is used to commence a new income stream that:

- meets one of the new standards (as set out in section 14), and
- also meets the standards for complying lifetime, complying fixed term or term allocated income streams.

In the case of rolling over to a new TAP clone for example, in practice this involves the new income stream meeting the TAP income stream rules and account based pension rules (see section 15).

> **Important**
>
> Remember that even though the rollover of a complying income stream may be permitted, a pre-20 September 2007 income stream that is rolled over on or after 20 September 2007 may lose any assets test exemption status for social security purposes. See section 17.5 for more information on retaining assets test exemption on rollover.

Payment requirements prior to commutation

Prior to a commutation, either:

- at least a prorated pension payment must have already been paid during the financial year, or
- the remaining account balance after the commutation occurs is at least equal to any remaining minimum payment required for that financial year.

Pro rata pension payment

The level of pro rata pension payment required prior to a commutation is calculated as:

Pro rata payment = annual payment (rounded to nearest $10) × days in payment period/days in financial year, where:

- **Annual payment** is either:
  - the required annual payment for the full financial year (varied to the minimum level of 90%) where the pension was already in place at the start of the financial year (see section 17.1), or
  - the already prorated payment for the financial year (varied to the minimum level of 90%) where the pension commenced after 1 July of the financial year (see section 17.1).
- **Days in payment period** is the number of days in the period that begins on 1 July (where the pension was already in place at the start of the financial year) or the commencement day (where the pension commenced after 1 July of the financial year), and ends on the day on which the commutation is to take place.
- **Days in financial year** means the number of days in the financial year of commutation.

Remaining account balance after commutation occurs

For partial commutations, as an alternative to drawing a pro rata pension payment prior to the commutation, the payment standards are met if the account balance of the TAP or TAP clone, immediately after the commutation, is at least the payment amount calculated under section 17.1 (varied to the minimum level of 90%), reduced by the amount of pension payments already made during the financial year of commutation.

No pro rata payment/remaining balance required for some commutation types

Commutations may also be made, regardless of the level of income payments made, where:

- the commutation results from the death of the pensioner or reversionary pensioner, or
- the sole purpose of the commutation is one of the following:
  - to pay a super contributions surcharge
  - to give effect to an entitlement of a non-member spouse under a family law payment split
  - to meet the rights to return a financial product under cooling off provisions.

Commutations do not count towards annual pension payment requirement

Full or partial commutations from TAPs do not count towards meeting the annual pension payment requirement.

17.4 Taxation of commutations

Commutations from a TAP (assuming they are then withdrawn or rolled over) are superannuation lump sums for tax purposes. The tax treatment may depend on the age of the pensioner at the time of the commutation, the type of lump sum, and the tax free and taxable components that make up each payment.

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 9.

Note: This section discusses the taxation of commutations from TAPs that are not death benefit income streams. For information about the taxation of TAPs that are death benefit income streams, refer to section 17.7.

Taxation of lump sum withdrawals

In almost all cases a member with a TAP (excluding death benefit TAP) will be over age 60 and in a taxed superannuation fund. In such cases, lump sum withdrawals are tax free including both the tax free component and taxable component (taxed element).

In rare situations where a client holds a TAP and is under age 60, see section 9 for further information about the taxation of lump sum withdrawals.

Taxation of rollovers

Where a TAP is commuted and the lump sum rolled over to another complying superannuation fund (for example due to being fully commuted and rolled over under the five-year full commutation option or due to being commuted to purchase a new complying income stream), it is treated as a rollover super benefit for tax purposes.

The rollover of benefits from a taxed superannuation fund to another taxed superannuation fund is tax-free. For further information about the taxation of rollovers, see section 9.6.

17.5 Social security assessment

TAPs commenced prior to 20 September 2007

TAPs commenced between 20 September 2004 and 19 September 2007 are assessed for social security and DVA means test purposes as asset-test exempt income streams. While a summary of their means test assessment follows, for further information refer to section 24.

Assets test

50% of the account balance of a TAP is assessable under the assets test.

Income test

The income value for TAPs is calculated by the following formula:

Annual payment - (purchase price/term), where:

- **Annual payment** is the gross amount of pension payments paid in the financial year.
- **Purchase price** is the amount paid to purchase the TAP.
- **Term** is the term of the TAP at commencement.

Example

John commenced a term allocated pension in 2006 for $200,000. The term selected was 20 years. John receives an annual payment of $11,000. Assessable income is: $11,000 - ($200,000/20) = $1,000.

TAP clones commenced on or after 20 September 2007

TAP clones commenced on or after 20 September 2007 have the same income test treatment as TAPs commenced prior to that date.

However, a TAP clone commenced on or after 20 September 2007 is fully assessable under the assets test unless one of the below conditions is met allowing the 50% assets test exemption to continue to apply.

Retaining the 50% assets test exemption on a TAP clone

In limited circumstances,[72] where an original complying income stream is commuted on or after 20 September 2007 and used to commence a TAP clone, the TAP clone can maintain a 50% assets test exemption. This includes where:

- a 50% asset-test exempt TAP (or TAP clone) is fully commuted to purchase a TAP clone
- a 50% asset-test exempt income stream is fully commuted to purchase a TAP clone where additional conditions are met regarding:
    - the reversionary beneficiary of the original income stream predeceasing the original beneficiary
    - the separation of the primary and reversionary beneficiary of the original income stream
    - the original income stream being a defined benefit income stream paid from an SMSF that does not have an actuarial certificate specifying the high probability requirement
    - transferring to a successor fund
    - the closure of an SMSF due to the death of the primary beneficiary or the administrative responsibilities of the SMSF were too onerous due to the age or incapacity of a trustee.

See the FirstTech Social Security Guide for further detail about the requirements for a TAP clone to retain a 50% assets test exemption in these circumstances, as well as the other limited situations where this exemption can be retained.

> **Caution!**
>
> When commuting a term allocated income stream to then purchase a new complying income stream, it is very important that 100% of the account balance is commuted if the member wants to maintain the 50% asset-test exemption. Term allocated income streams purchased with partial commutations will no longer be eligible for the 50% asset-test exemption and the original income stream will be treated as if it was never a complying income stream and a debt may be raised. If 100% of the account balance cannot be commuted, for example due to frozen funds, consideration should be given to delaying commuting the term allocated income stream until the funds are unfrozen, unless the frozen funds can be transferred to the new TAP as part of the full commutation process.

72 Part 3 of Social Security (Retention of Exemption for Asset-test Exempt Income Streams) Principles 2022.

TAP clone cannot receive asset-test exemption where original income stream has 100% asset-test exemption

While a TAP clone can retain a 50% asset-test exemption in limited circumstances, no asset-test exemption can be retained on a TAP clone if the original income stream was 100% asset-test exempt, rather than 50% asset-test exempt.

Permanent extension of Centrelink debt relief measures for 100% asset-test exempt income streams within SMSFs

Under normal social security rules, where a 100% ATE defined benefit pension paid by a SMSF fails an annual high probability test, it is then treated as if it had never been an ATE income stream. This can lead to a substantial debt being raised against a member by Centrelink.

To provide relief during the global financial crisis, the Government announced that for 2008–09 and 2009–10, a 100% ATE pension that fails the high probability test will become fully asset-tested, but any social security debt as a result of failing this test will be waived.

Further relief was provided for SMSFs from 27 November 2009, which allows any social security debt created to also be waived where:

- the member's SMSF is paying a 100% ATE pension, and
- the member provides an actuarial certificate confirming that the income stream does not satisfy the high probability test, and
- the member rolls over their pension in full (including any reserves) into a term allocated pension within the SMSF.

This new term allocated pension will be fully asset-tested.

The Government then extended the debt relief from 25 August 2011[73] so that a debt waiver is available where a 100% ATE income stream sourced from a SMSF or SAF is fully commuted and used to purchase a fully asset-tested TAP from an SMSF or SAF, or from a retail provider. Under these provisions, debt relief is available irrespective of whether the income stream fails to satisfy the high probability test.

Assets test exemption lost if TAP fully commuted under five-year commutation option

Where a member fully commutes their TAP during the five-year commutation window starting 7 December 2024 (see section 17.3 for further information) and uses the commuted amount to commence a new income stream such as an account based pension, the new income stream will be assessed in the normal way for social security purposes and will not qualify for any asset test exemption.

However, the Government has confirmed that no social security debt will apply as a result of the member fully commuting their TAP, for the period prior to the commutation.

73 Social Security (Waiver of Debts — Self Managed Superannuation Funds and Small APRA Funds) (DSS) Specification 2021

17.6 Transfer balance cap

This section is a summary of how the transfer balance cap applies to TAPs and TAP clones (excluding those that are death benefit income streams).

For further information about the transfer balance cap, refer to section 21. For information about how the transfer balance cap applies to TAPs and TAP clones that are death benefit income streams, see section 17.7.

When is a TAP a capped defined benefit income stream?

A TAP (or TAP clone) is a capped defined benefit income stream if it commenced prior to 1 July 2017. As the majority of TAPs were commenced between 2004 and 2007, most TAPs are capped defined benefit income streams.

Capped defined benefit income streams are treated differently under the transfer balance cap rules, including:

- The calculation of credits and debits that apply to a person's transfer balance account.
- A person's excess transfer balance is ignored where the excess can only be attributed to a capped defined benefit income stream.
- Income from capped defined benefit income streams exceeding $125,000 pa may be subject to additional taxation.

Transfer balance account credits for TAPs that are capped defined benefit income streams

Where a TAP is a capped defined benefit income stream (and therefore commenced prior to 1 July 2017[74]), its special value on 30 June 2017 is a transfer balance account credit on 1 July 2017.

The special value of a TAP is:

Annual entitlement × remaining term, where:

- Annual entitlement is first payment an individual is entitled to receive after the valuation is required ÷ number of days in period relating to payment × 365.
- Remaining term is number of years (rounded up to the nearest whole number) remaining on the term of the TAP.

74 Where a TAP commences on or after 1 July 2017 due to the involuntary rollover of a pre-1 July 2017 capped defined benefit income stream as part of a successor fund transfer (SFT), it will also qualify as a capped defined benefit income stream. See section 21.8 for further information.

Example: Special value of a term allocated pension

On 30 June 2017, Tony had a term allocated pension (also known as a market linked pension) with an account balance of $319,800, and a remaining term of 5.5 years.

The minimum annual payment from the TAP at 1 July 2017 was $60,000. Tony was able to select an annual payment of +/– 10% (i.e. between $54,000 and $66,000).

Tony's TAP is a capped defined benefit income stream. Tony chose to receive $5,000 per month, on the last day of each month in 2017–18.

The value of Tony's TAP for the purposes of the transfer balance cap was calculated as follows:

- Annual entitlement = ($5,000/31) × 365 = $58,870.97
- Special value = $58,870.97 × 6 = $353,225.81

(Note, the remaining term of 5.5 years is rounded up to six years for the purposes of this calculation.)

The special value of Tony's TAP is $353,225.81. It is interesting to note that this value exceeds the account balance of Tony's pension by $33,425.81. Tony had an opening balance of $353,225.81 in his transfer balance account on 1 July 2017.

Transfer balance account debits for TAPs that are capped defined benefit income streams

The full or partial commutation of a TAP is a transfer balance account debit at the time of commutation. However, where the TAP is a capped defined benefit income stream, the debit amount (for a full commutation) is:

- the amount of the original transfer balance account credit for the TAP, less
- the sum of:
  - the amount of any transfer balance account debits for the TAP (excluding debits due to a family law payment split), and
  - the total amount of superannuation income stream benefits (since 1 July 2017) the person was entitled to receive from the TAP before the start of the financial year in which the commutation takes place, and
  - the greater of the income stream benefits paid from the TAP to the person during the financial year of commutation and the minimum amount required to be paid for the TAP during the part-financial year in which the commutation takes place.

For a partial commutation, the debit value is the lesser of:

- the debit value that would arise if the commutation was a full commutation; and
- the amount of the superannuation lump sum that results from the partial commutation.

Where a debit would have otherwise arisen prior to 5 April 2022, modified rules may delay the debit to 5 April 2022. Other debits may also apply in limited circumstances. See section 21.8 for further information.

Modified excess transfer balance for capped defined benefit income streams

Where a member would otherwise have an excess transfer balance due only to capped defined benefit income streams (e.g. a TAP that is a capped defined benefit income stream), a modification applies to disregard that excess transfer balance and ensure that they will not be subject to excess transfer balance tax or have to commute the excess amount.

However, where a member has an excess transfer balance attributable to one or more capped defined benefit income streams as well as one or more types of non-capped defined benefit income streams, such as an account based pension, they have an excess transfer balance to the extent that it can be attributed to a non-capped defined benefit income stream.

For further information, see section 21.16.

Transfer balance account credits for TAPs that are not capped defined benefit income streams

Where a TAP is not a capped defined benefit income stream (and therefore commenced on or after 1 July 2017), its purchase price is a transfer balance account credit generally on its commencement date. Where a credit would have otherwise arose prior to 5 April 2022, modified rules may delay the credit to 5 April 2022. See section 21.8 for further information.

Transfer balance account debits for TAPs that are not capped defined benefit income streams

The full or partial commutation of a TAP is a transfer balance account debit of the amount of commutation at the time of commutation.

For example, if a TAP clone (that is not a capped defined benefit income stream) is fully commuted and then rolled over and used to commence a new TAP clone, a transfer balance account debit will occur at the time of the commutation, for the commutation amount. The commencement value of that new pension will then be a transfer balance account credit.

Other debits may also apply in limited circumstances. See section 21.7 for further information.

Implications for rolling over TAPs that are capped defined benefit income streams

Where a member rolls over a TAP or TAP clone commenced prior to 1 July 2017 to a new TAP clone, the new income stream will not be a capped defined benefit income stream. It is therefore important to consider the following transfer balance cap implications:

- The new TAP will have its purchase price used to determine the transfer balance account credit instead of its special value.
- Where any excess transfer balance can only be attributed to the new TAP, it will be an excess transfer balance and will not be ignored as would have been the case with the existing TAP. While this would have previously led to a member having an excess transfer balance in perpetuity, from 5 April 2022 a TAP is able to be commuted to the extent required to comply with a commutation authority for an excess transfer balance. See section 21.8 for further information, including potentially delayed timing of TBA credits and debits in this situation.
- The defined benefit income cap will not apply to the new TAP – see section 17.2 for information about this cap.

Where a member elects to fully commute their TAP (which is a capped defined benefit income stream) under the five-year legacy income stream commutation window now available, and use the proceeds to commence an account based pension, similar transfer balance cap consequences arise. See further information about the five-year window to commute legacy income streams in section 14.2.

17.7 Estate planning

This section is a summary of the estate planning rules that apply to TAPs and TAP clones. For further information about the estate planning rules that apply to superannuation income streams, refer to section 23. For further information about superannuation estate planning rules generally, see section 10.

What happens when a TAP recipient dies?

Where a TAP (or TAP clone) recipient dies, the death benefit options depend on whether there is a valid reversionary beneficiary.

Valid reversionary beneficiary

Where there is a valid reversionary beneficiary in place, the TAP automatically reverts on the date of death to the reversionary beneficiary. A reversionary nomination will only be valid if the nominated person is, under the SIS Regulations, a dependant of the member (see below) who is able to receive a death benefit as an income stream (see section 23.2 for further information).

No valid reversionary beneficiary

Where there is no valid reversionary beneficiary in place, the TAP ceases at the time of death. Under SIS rules, the remaining balance must then be cashed as a death benefit as soon as practicable to:

- the member's LPR, and/or
- one or more of the member's dependants (dependants for SIS purposes include a spouse, child, financial dependant or interdependent relation).

Superannuation death benefits may be cashed in any one or more of the following forms (per recipient):

- a single lump sum
- an interim lump sum (not exceeding the amount of the benefits ascertained at the date of death) and a final lump sum (not exceeding the balance of the benefits as ascertained in relation to the member's death)
- one or more pensions which are retirement phase income streams
- rollover for the purchase of one or more annuities which are retirement phase income streams.

While the LPR and any dependant can receive a lump sum death benefit, there are restrictions around who can receive a death benefit income stream such as a pension or annuity (e.g. most adult children are unable to receive a death benefit as an income stream). See sections 23.2 and 23.6 for further information. Any death benefit income stream paid must comply with death benefit income stream rules. See section 23.3 for further information.

Where a valid binding or non-lapsing death benefit nomination is in place, the death benefit must be cashed to the nominated beneficiaries. However, such a nomination in most cases does not bind the trustee in relation to whether the death benefit is paid as a lump sum or income stream. Where this is the case and a nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

Where no valid binding or non-lapsing death benefit nomination is in place, the super fund's default provisions apply. This may include the trustee having discretion regarding the payment of the member's death benefit (possibly allowing it to take into account any non-binding nomination made by the member), or automatic payment to a specific eligible beneficiary such as the LPR.

Where the trustee decides or is required to pay a death benefit to a particular eligible beneficiary, and the nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

Death benefit TAPs

A TAP that reverts to a reversionary beneficiary is a valid death benefit income stream (which is a retirement phase income stream) and therefore meets SIS death benefit cashing rules.

In the absence of a valid reversionary beneficiary, any recipient of the death benefit as a new income stream would receive a more flexible income stream (such as an account based pension).

Commutations

Under general commutation rules, where the reversionary beneficiary of a TAP is a spouse, and the term of the TAP was calculated with reference to their life expectancy, the death benefit TAP remains non-commutable in the reversionary beneficiary's hands.

However, where the reversionary beneficiary is not a spouse, or if the term of the TAP was calculated with reference to the deceased pensioner's life expectancy only, the death benefit TAP can be commuted by the reversionary beneficiary. In this situation, they could commute and cash it out as a lump sum death benefit, or commute it and use it to immediately commence a death benefit income stream such as an account based pension. However, under general social security rules, a reversionary TAP or TAP clone can only qualify for a 50% assets test exemption where it is non-commutable in the hands of both the primary and reversionary beneficiary, regardless of the term chosen. Due to this requirement, many reversionary TAPs/TAP clones may therefore be non-commutable until the death of both the primary and reversionary beneficiary.

Five-year window to commute certain legacy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including TAPs, to be fully commuted. This includes a death benefit TAP that has reverted to a reversionary beneficiary. For further information about fully commuting TAPs during this window, see section 17.3. The Government has confirmed that no social security debt will apply as a result of the member fully commuting their TAP, for the period prior to the commutation.

Ongoing death benefit cashing requirement continues to apply on commutation

Due to the ongoing SIS Regulations cashing requirement that applies to death benefits, any commutation from a death benefit TAP (where permitted) must remain cashed. This could include the TAP recipient:

- receiving the commutation as a lump sum death benefit payment
- using the commutation to immediately commence a new death benefit account based pension within the same fund
- rolling over the commuted death benefit to immediately commence a new death benefit account based pension in another fund (see section 23.5 for further information about the rollover of death benefits).

Due to the ongoing SIS Regulations cashing requirement that applies to death benefits, any commutation from a death benefit TAP (where permitted) cannot:

- be moved back (or rolled over) to accumulation phase, or
- be mixed with the beneficiary's other superannuation benefits.

Transfer balance cap for reversionary death benefit TAPs

Where a TAP that is a capped defined benefit income stream automatically reverts to a nominated beneficiary on the death of the original recipient on or after 1 July 2017, the special value (see section 17.6) at the time of death counts towards the beneficiary's transfer balance account.

In the case of a TAP that is not a capped defined benefit income stream, the balance of the pension as at the time of death will count as a credit to the beneficiary's transfer balance account.

However, in both situations, to give the beneficiary time to arrange their affairs, the credit will be deferred and will not arise in the beneficiary's transfer balance account until 12 months from the date of death.

It should be noted that this rule also applied where a TAP reverted to a member's beneficiary between 1 July 2016 and 30 June 2017. For example, where a TAP reverted to a member's beneficiary on 1 October 2016, the beneficiary's transfer balance account was credited on 1 October 2017 with the special value of the TAP at 30 June 2017. Where a TAP reverted to a member's beneficiary more than 12 months prior to 1 July 2017, the special value of the TAP at 30 June 2017 was credited to the beneficiary's transfer balance account on 1 July 2017.

Transfer balance cap for reversionary death benefit TAPs paid to a child

Where a death benefit TAP reverts to a child, a modified transfer balance cap applies so that the child, to some extent, inherits the deceased's transfer balance cap, rather than using up their own transfer balance cap. Refer to section 23.7 for further information.

Taxation of income stream benefits paid from death benefit TAPs

All benefits paid from a death benefit TAP are income stream benefits for tax purposes, except a full or partial commutation where permitted (which is a lump sum death benefit – see section 23.10).

A modification may also apply where the TAP or TAP clone is a capped defined benefit income stream (see below).

While a summary is shown below, further information on this tax treatment (including how to calculate tax free and taxable proportions) is available in section 23.

Taxation of tax free component

Regardless of the age of the recipient or deceased member, the tax free component of a superannuation income stream benefit paid from a death benefit TAP is not assessable income and not exempt income. No tax is paid on these amounts.

Where the TAP or TAP clone is a capped defined benefit income stream, modified tax treatment may apply. See below for further information.

Taxation of taxable component

Table 17.4 shows the tax treatment of the taxable component of a TAP payment paid from a taxed superannuation fund, where the pension is a death benefit income stream.

Table 17.4

Age of deceased (at time of death)	Age of recipient	Taxable component (taxed element)
60 or above	Any age	Non-assessable non-exempt income: No tax
Under 60	60 or above	Non-assessable non-exempt income: No tax
	Under 60	Marginal tax rate less 15% tax offset

Note: In rare cases, it may be possible for a TAP to be paid from an untaxed superannuation fund. Where this is the case, refer to section 23.9 for information about the different tax treatment that applies.

Note: Where the TAP or TAP clone is a capped defined benefit income stream, modified tax treatment may apply. See below for further information.

15% tax offset

A 15% non-refundable income tax offset applies where the taxable component (taxed element) forms part of the death benefit income stream recipient's assessable income (this occurs where both the deceased was under age 60 at the date of death and the recipient is under age 60). The tax offset is calculated as 15% of the assessable taxable component (taxed element).

Modification where TAP or TAP clone is a capped defined benefit income stream

A TAP or TAP clone commenced prior to 1 July 2017 is a capped defined benefit income stream for transfer balance cap purposes. See section 17.6 for further information.

Where a TAP or TAP clone is a capped defined benefit income stream, the following pension payments from the TAP or TAP clone (along with any of the following income stream payments from other capped defined benefit income streams held by the member) that exceed the defined benefit income cap are subject to additional taxation:

- payments to those age 60 or over, or
- payments paid to members under age 60 from a death benefit income stream where the deceased member was age 60 or over at the time of death.

Defined benefit income cap

A member's defined benefit income cap for a financial year is:

General transfer balance cap/16

The defined benefit income cap for 2025–26 is $125,000.

Refer to section 22.7 for information about the additional taxation that applies to these payments that exceed the defined benefit income cap.

Taxation of commutations from death benefit TAPs

Where a death benefit TAP recipient (if permitted) makes a commutation from their income stream, the resulting withdrawal is a lump sum death benefit.[75] For further information about the taxation of lump sum death benefits (including how to calculate tax free and taxable proportions), see section 10.

Where the commutation is rolled over to another fund to commence another death benefit income stream instead of being paid to the beneficiary, different rules apply. See section 23.5 for further information.

Taxation of tax free component

In all cases, regardless of age, the tax free component of a superannuation lump sum paid (where permitted) from a death benefit TAP is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

Table 17.5 shows the tax treatment of the taxable component of a superannuation lump sum death benefit paid (where permitted) from a death benefit TAP in a taxed superannuation fund.

75 Partial commutations are considered income stream benefits for the purposes of determining whether a super fund is able to claim an earnings tax exemption when paying a retirement phase income stream.

Table 17.5

Recipient	Taxable component (taxed element)	Taxable component (untaxed element)
Death benefits dependant	Non-assessable non-exempt income: No tax	Non-assessable non-exempt income: No tax
Non-death benefits dependant	Assessable income: Maximum tax rate of 15%.	Assessable income: Maximum tax rate of 30%

Note: For all non-zero tax rates, Medicare levy may also apply.

Although lump sums paid from a taxed superannuation fund normally do not include any taxable component (untaxed element), a lump sum death benefit paid from a taxed superannuation fund may include an untaxed element where it is wholly or partly sourced from life insurance proceeds. For information about how to calculate the untaxed element, see section 10.9.

18 Lifetime income streams

This section discusses lifetime income streams purchased with superannuation moneys.

A lifetime income stream pays regular income over a person's (and in some cases reversionary beneficiary's) lifetime. Lifetime income streams are generally inflexible products with limited access to capital; however, they may suit members who want to address longevity risk, which is the risk of outliving their money.

There are four main categories of superannuation lifetime income streams

- non-complying lifetime income streams (see section 18.1)
  - may be commutable
  - social security – does not qualify for social security asset-test exemption. When purchased on or after 1 July 2019, assessed under the category of 'lifetime income stream'
  - does not qualify as a capped defined benefit income stream for transfer balance cap purposes
- complying lifetime income streams (see section 18.2)
  - purchased prior to 20 September 2007 or with the rollover of an existing complying income stream
  - limitations on commutability and no residual capital value
  - social security – generally 50% or 100% asset-test exempt
  - complying lifetime annuities are capped defined benefit income streams for transfer balance cap purposes if purchased before 1 July 2017
- defined benefit lifetime income streams (see section 18.3)
  - paid from a defined benefit superannuation scheme – may be Government or corporate
  - value of member's interest in the scheme is defined by a formula which may take into account factors such as final average salary, age, membership period and contribution history
  - social security – 100% asset-test exempt
  - for transfer balance cap purposes, defined benefit income streams are generally capped defined benefit income stream

- innovative income streams (see section 18.4)
  - new category of superannuation income stream available from 1 July 2017
  - designed to allow more flexibility for product providers to offer products that address longevity risk in retirement
  - includes deferred products, investment-linked pensions and annuities and group self-annuitised products
  - social security – when purchased on or after 1 July 2019 assessed under the category of lifetime income stream
  - does not qualify as a capped defined benefit income stream for transfer balance cap purposes.

As lifetime income streams generally meet the definition of a retirement phase income stream, they receive concessional taxation treatment including tax-free earnings on assets supporting the income stream. An exception is deferred superannuation income streams, which are not in retirement phase until the member has met a specified condition of release.[76]

In addition, the amount of superannuation that can be transferred to a lifetime income stream may be limited by the transfer balance cap.

18.1 Non-complying lifetime income streams

A non-complying lifetime income stream pays regular income over a person's (and in some cases reversionary beneficiary's) lifetime. A non-complying lifetime income stream does not have to comply with the restrictions that apply to complying lifetime income streams and therefore has more flexibility when selecting features such as withdrawal values and income payments.

Non-complying lifetime income streams do not qualify for an asset-test exemption under the social security assets test and do not qualify as a capped defined benefit income stream for transfer balance cap purposes.

There are two categories of non-complying lifetime income streams:

a flexible income streams with a residual capital value

b commutable lifetime income streams with no residual capital value.

Payment rules

a Flexible income streams with a residual capital value

This category of income stream allows retirees to invest in a guaranteed income stream with a residual capital value (RCV) and no restrictions on term.

However, due to the requirement to receive the minimum annual payment each year of the income stream, income stream providers generally do not provide lifetime income streams under this category.

76 Specified conditions of release include retirement, reaching age 65, permanent incapacity or terminal medical condition.

Payment rules:

- no identifiable account balance
- cannot be used as security for borrowing
- may provide for an RCV, commutation value or withdrawal benefit that is no more than 100% of the purchase price
- must comply with the minimum annual payment standards each year.

For example, if a member age 65 purchased a lifetime annuity for $100,000, they would need to receive the minimum annual payment each year that the annuity was payable, for example 5% p.a. between age 65 and 74, 6% p.a. between age 75 and 79.

b Commutable lifetime income streams with no residual capital value

This category of income stream is typically a lifetime annuity that may be commutable and with no residual capital value.

Payment rules:

- payable for the life of the beneficiary and that of any reversionary beneficiary
- income payments can only vary through fixed indexation, CPI or Average Weekly Earnings (AWE)
- may be commutable – generally lifetime annuities are only commutable within a guaranteed period. Commutations may be voluntary commutations or amounts payable on death
- no residual capital value
- cannot be used as security for borrowing
- must comply with the minimum annual payment standards in the first year of annuity payments.

For example, if a member age 70 purchased a lifetime annuity for $100,000, the minimum annual payment for a person between age 65 and 74 is 5%. Therefore they would need to receive an annual payment of at least 5% ($5,000) in the first year that the annuity becomes payable. Annuity payments are not required to meet the minimum in subsequent years, such as at age 75, when the minimum increases to 6%.

Minimum annual payment

Superannuation lifetime income streams that are not complying lifetime income streams must meet minimum annual payment standards in either the first year or all years depending on the type of lifetime income stream (see payment rules above).

The minimum annual payment is calculated in a similar manner as for an account based pension, with purchase price used in place of account balance. Once calculated, the minimum annual payment is rounded to the nearest $10.

Minimum annual payment = purchase price × percentage factor, where:

Purchase price is total amount paid to purchase the income stream.

Percentage factor is determined by recipient's age at commencement of the income stream and at the anniversary of the commencement day thereafter using the following table:

Age	Under 65	65–74	75–79	80–84	85–89	90–94	95 or over
Minimum percentage	4%	5%	6%	7%	9%	11%	14%

Taxation of income stream payments

Non-complying lifetime income streams purchased with superannuation moneys are subject to the same tax treatment as other superannuation income streams. Where the member is age 60 or over, income stream payments are non-assessable, non-exempt income.

Taxation of tax free component

Regardless of age, the tax free component of a superannuation non-complying lifetime income stream is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable components

The following table sets out the taxation of the taxable components of a superannuation non-complying lifetime income stream payment, where the income stream is not a disability super benefit income stream:

Age	Taxed component (taxed element)
60 and above	Non-assessable non-exempt income: No tax
Below 60	Assessable income: taxed at marginal tax rate

Commutations

The ability to commute a non-complying lifetime income stream will depend on the product features offered by the income stream provider. Commutations are generally only allowable where the lifetime income stream has a guaranteed period, also known as a withdrawal period.

The length of the guaranteed period is selected at commencement of the income stream. Generally, the longer the guaranteed period, the lower the annual payments paid from the lifetime income stream.

In some cases, there may be costs involved in commuting a lifetime income stream and the commutation value may be determined by prevailing interest rates. In this case, the amount received may be less than the original investment amount, even after taking into account payments which have already been received.

For withdrawals subject to prevailing interest rates, a net present value calculation will determine the surrender value and will take into account:

- interest rate movements from inception to the time of the calculation
- the amount of regular payments that would have been made over their lifetime
- minimum payment requirements under the *Life Insurance Act 1995*.

Where the commutation value is subject to prevailing interest rates:

- if interest rates have increased relative to interest rates at time of purchase, the commutation value will reduce, and
- if interest rates have decreased relative to interest rates at time of purchase, the commutation value will increase.

Taxation of commutations

Commutations from non-complying lifetime income streams (assuming they are withdrawn) are superannuation lump sums for tax purposes. The tax treatment may depend on the age of the pensioner at the time of the commutation and the tax free and taxable components that make up each payment.

Where the member is age 60 or over at the time of the lump sum withdrawal, the commutation is assessed as non-assessable non-exempt income.

Any tax free component is non-assessable non-exempt income. The following table sets out the taxation of the taxable component (taxed element).

Age	Taxable component (taxed element)	Max tax rate
60 and above	Non-assessable non-exempt income	0%
Below 60	Whole component assessable income	20%

Note: For all non-zero tax rates, Medicare levy may also apply.

Rollovers

Where a non-complying lifetime income stream is commuted and the lump sum rolled over to a complying superannuation fund or to commence another superannuation annuity, it is treated as a rollover super benefit for tax purposes. In most cases, the rollover of benefits is not subject to tax, unless the rollover super benefit contains a taxable component (untaxed element). For further information about the taxation of rollovers, see section 9.6.

Social security assessment

Under social security legislation, the assessment of a non-complying lifetime income stream depends on whether it is classified as:

1 asset-tested (long term) – purchased before 1 July 2019

2 lifetime income stream – purchased on or after 1 July 2019.

All lifetime income streams[77] purchased on or after 1 July 2019 that comply with a capital access schedule receive a reduced assessable value under the social security assets test. Grandfathering applies to lifetime income streams commenced prior to this date, and they continue to be assessed under the previous means test treatment, that is, asset-tested (long term) income streams.

For more information on the social security assessment of lifetime income streams, refer to section 24.

1 Asset-tested (long term)

Non-complying lifetime annuities purchased before 1 July 2019 are assessed as asset-tested (long term) income streams.

77 Excluding lifetime defined benefit income streams – see section 18.3 for further information.

Assets test assessment

The assessable asset value is determined using the following formula:

Purchase price - [((purchase price - RCV) ÷ relevant number) × term elapsed], where:

- **Purchase price** is the amount paid to purchase the annuity less commutations.
- **RCV** is the residual capital value.
- **Relevant number** is the life expectancy of the primary beneficiary (or longest life expectancy if the lifetime income stream is reversionary).
- **Term elapsed** is the number of years that have elapsed since the lifetime income stream commenced. The number of years is rounded down to the nearest:
  - half-year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Jessica is age 65 and purchases a non-complying lifetime annuity for $100,000. It has a 10-year guaranteed period where she is able to make voluntary commutations. She receives monthly income payments from the annuity.

Jessica's life expectancy at commencement is 22.47.

The assessable asset value of the annuity after 10 months from commencement is:

$100,000 - [($100,000 - $0) ÷ 22.47) × 0.5] = $97,775.

Income test assessment

The assessable income value is calculated by the following formula:

Annual payment - ((purchase price - RCV)/relevant number), where:

- **Annual payment** is gross amount of annuity payments paid in the year.
- **Purchase price** is the amount paid to purchase the annuity less commutations.
- **RCV** is the residual capital value.
- **Relevant number** is the life expectancy of the primary beneficiary (or longest life expectancy if the lifetime income stream is reversionary).

Example

In the example above, Jessica purchased a lifetime annuity for $100,000. Her life expectancy at commencement is 22.47. The annual payment is $6,000.

Under the income test, assessable income is:

$6,000 - (($100,000 - $0)/22.47) = $1,550

2 Lifetime income stream – purchased on or after 1 July 2019

All lifetime income streams[78] purchased on or after 1 July 2019 that comply with a capital access schedule receive a reduced assessable value under the social security assets test. A capital access schedule limits the amount of capital that can be accessed as a voluntary commutation or death benefit. See Capital access schedule below for more information.

For lifetime income streams purchased on or after 1 July 2019 that comply with the capital access schedule, the social security assessment is:

Assessable assets:

- 60% of the purchase price assessable until the individual reaches their threshold day (see below), then
- 30% of the purchase price assessable for the remainder of their life.

Assessable income:

- 60% of annual payment.

78 Excluding lifetime defined benefit income streams – see section 18.3 for further information.

Threshold day

An individual's threshold day is generally the date the individual reaches a specified age. This age is based on the life expectancy of a 65 year old male at the income stream's assessment day using current life expectancy tables (rounded down to nearest whole number of years). This age applies regardless of the gender of the individual.

- For income streams with an assessment day prior to 1 January 2025, the age is 84
- For income streams with an assessment day on or after 1 January 2025, the age is 85

However, where the above age is within five years of assessment day, an individual's threshold day is instead at the end of five years.

The assessment day is generally the date of purchase; however, the rules are more complex for deferred income streams. See 'Deferred income streams' in section 18.4 for more information.

Example: Assets test

Joan purchases a non-complying lifetime income stream at age 66 for $100,000 on 1 July 2025.

Under the assets test, 60% of the purchase price ($60,000) is assessable until age 85 (19 years), after which point 30% ($30,000) is assessable.

Example: Income test

Tom receives an annual payment of $10,000 from a non-complying lifetime income stream purchased on 1 July 2025.

60% ($6,000) is assessed as income under the income test. As payments increase due to indexation, 60% of the indexed payments will be assessable for the duration of the lifetime income stream.

Capital access schedule

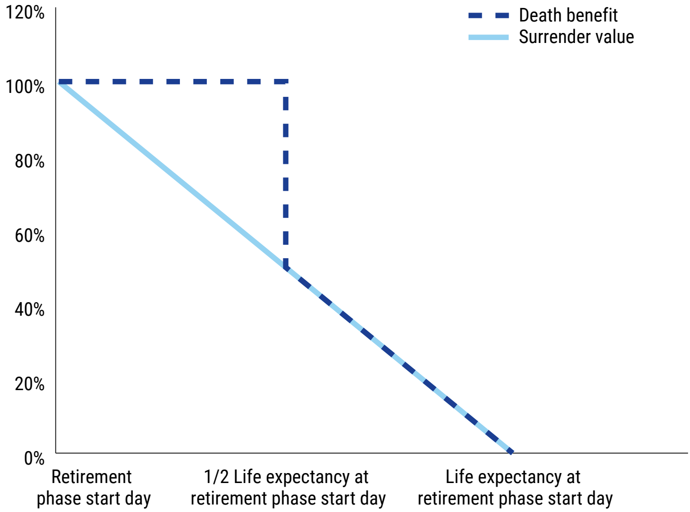
The capital access schedule is a legislative restriction on the amount that can be commuted from a non-complying lifetime income stream and receive beneficial social security treatment.

Chart 18.1 demonstrates the maximum amount that can be commuted either voluntarily or on death, known as the 'capital access schedule'.

In summary, the maximum amount that can be commuted as a voluntary surrender value is a declining straight line over the primary beneficiary's life expectancy (or reversionary beneficiary's life expectancy in certain circumstances). On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

The capital access schedule is important for social security purposes as lifetime income streams that comply receive a reduced assessable asset value (i.e. 60% of the purchase price assessable until threshold day, then 30% of the purchase price assessable for the remainder of their life).

Chart 18.1 Capital access schedule



FirstTech comment

The capital access schedule is the maximum commutation amount permitted under the legislation. However, individual products may provide a commutation amount that is significantly lower than this amount. For example, some lifetime annuities may have a nil amount that can be commuted voluntarily.

What if they do not comply with the capital access schedule?

Non-complying lifetime income streams purchased on or after 1 July 2019 that do not comply with the capital access schedule, that is, allow a higher amount to be commuted than the schedule allows, are assessed differently under the assets test.

In this case, the assessable asset value of the lifetime income stream is the higher of:

- current or future surrender value
- current or future death benefit
- 60% of the purchase price assessable until threshold day, then 30% of the purchase price assessable for the remainder of their life.

However, under the income test, they are assessed in the same way as other non-complying lifetime income streams, that is, 60% of the annual payment is assessable.

Example

Deidre purchased a lifetime annuity in July 2020 for $100,000.

Under the annuity contract, if Deidre dies in the first 15 years, the death benefit value is 100% of the purchase price. In addition, she is able to voluntarily commute 100% of the purchase price at a 15-year window (i.e. 15 years after date of purchase).

As these commutation amounts exceed the amount permitted under the capital access schedule, the assessable asset value for social security purposes is the higher of:

- current or future surrender value
- current or future death benefit
- 60% of the purchase price assessable until threshold day, then 30% of the purchase price assessable for the remainder of her life.

In this case, the assessable asset value is $100,000 for the first 15 years. After 15 years, as the surrender value and death benefit value are nil, the asset value would be 60% of the purchase price assessable until age 84 (her threshold day), then 30% of the purchase price assessable for the remainder of her life.

Under the income test, 60% of the annual payment is assessable.

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax.

Transfer balance account credits for non-complying lifetime income streams

As a non-complying lifetime income stream does not meet the definition of a capped defined benefit income stream, when determining their credit value for transfer balance cap purposes, it is the purchase price that is counted.

The purchase price counts towards a person's transfer balance account regardless of the product features chosen. For example, the purchase price is assessable irrespective of whether the income stream has a guaranteed period.

The purchase price of a non-complying lifetime income stream purchased before 1 July 2017 is included for transfer balance cap purposes in the value of a member's existing retirement phase income streams at 30 June 2017. The purchase price of non-complying lifetime income streams purchased on or after 1 July 2017 is included as a credit at the purchase date.

Example

Joel purchased a non-complying lifetime income stream for $100,000 in July 2020. The guaranteed period is 10 years.

Joel has a transfer balance account credit of $100,000 at July 2020.

Transfer balance debits for non-complying lifetime income streams

Where a non-complying lifetime income stream is commuted, a debit is created for transfer balance cap purposes equal to the commutation value.

Example

Jean purchased a non-complying lifetime annuity for $100,000 in July 2017. The guaranteed period is 15 years.

Due to the purchase of the annuity, Jean has a transfer balance credit of $100,000 at July 2017.

In July 2020, Jean decides to voluntarily commute the lifetime income stream. The voluntary surrender value is $85,000. Jean will receive a transfer balance account debit of $85,000.

Estate planning

The estate planning options when a member who is receiving a non-complying lifetime income stream dies depends on:

- whether any amount remains payable beyond their death and, if so,
- whether it is a reversionary income stream.

No amount remains payable beyond death

Where there is no ongoing liability for further benefits to be paid once an income stream recipient dies, no superannuation death benefit is payable.

Amount payable on death and a reversionary income stream

Where a member receiving a non-complying lifetime income stream dies and there is a valid reversionary beneficiary, the income stream automatically reverts to the reversionary beneficiary and any future income stream payments are then made to the reversionary beneficiary.

Since 1 July 2007, an income stream can only revert upon death where the reversionary beneficiary is an eligible dependant able to receive a death benefit as an income stream under the SIS Regulations. See section 23.2 for further information.

Any reversionary income stream that continues to be paid must comply with death benefit income stream rules. See section 23.3 for further information.

Amount payable on death not a reversionary income stream

Where a member receiving a superannuation income stream dies and there is no valid reversionary beneficiary, the income stream ceases at the time of death. Any remaining benefit must be cashed as soon as practicable as a death benefit in accordance with the SIS Regulations.

See section 23 for further information about estate planning relating to superannuation income streams, and section 10 for further information about superannuation estate planning generally and lump sum superannuation death benefits.

Taxation of death benefits

When the original beneficiary of a lifetime income stream dies, the taxation implications depend on whether the beneficiary receives the death benefit as a lump sum or income stream.

Lump sum death benefit

Where the beneficiary receives a lump sum death benefit:

Component	Recipient	Taxation
Tax free	Death benefits dependant or non-death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Non-death benefits dependant	Assessable income: Maximum tax rate 15%

Note: For all non-zero tax rates, Medicare levy may also apply.

Note: Death benefits dependants include a spouse, child under age 18, financial dependant or someone in an interdependency relationship.

Death benefit income stream

Where the beneficiary receives a death benefit income stream:

Component	Age of deceased (at time of death)	Age of recipient	Tax treatment
Tax free	n/a	n/a	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Age 60 or above	Any age	Non-assessable non-exempt income: No tax
	Under age 60	Age 60 or above	Non-assessable non-exempt income: No tax
	Under age 60	Under age 60	Assessable income: Taxed at marginal tax rate less 15% tax offset

18.2 Complying lifetime income streams

Prior to 20 September 2007, complying income streams could be purchased that provided favourable treatment for:

- Reasonable Benefit Limit (RBL) purposes – complying income streams provided access to a higher level of total superannuation benefits before any amount was taxed as excessive under the RBL taxation rules in place at that time. These taxation rules were abolished on 1 July 2007.
- Social security assets test purposes – complying income streams are eligible for a 50% or 100% exemption under the social security assets test (see Social security assessment below for more information).

While members are generally no longer able to purchase complying income streams with superannuation moneys, they may still be eligible for the social security assets test exemption if they hold complying income streams purchased prior to 20 September 2007. In addition, income streams purchased on or after 20 September 2007 may qualify as a complying income stream where they are commenced from the rollover of complying pre 20 September 2007 income streams. See the FirstTech Social Security Guide for more information.

There are three types of complying income streams: term allocated pensions, complying lifetime income streams and complying life expectancy income streams.

In this section, we focus on complying lifetime income streams[79], which are lifetime income streams that comply with a number of restrictions including:

- limitations on commutability, and
- no residual capital value.

Another category of income stream that qualifies for social security assets test exemption is defined benefit income streams. See section 18.3 for more information.

For more information on complying life expectancy income streams, see section 19 Fixed term income streams. For more information on term allocated pensions, see section 17 'Term allocated pensions'.

Five-year window to commute certain legacy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including some complying lifetime income streams, to be fully commuted. For further information about fully commuting complying lifetime income streams during this window, see later in this section.

79 SIS Regulation 1.05(2) or 1.06(2).

Payment rules

To qualify as a complying lifetime income stream, the income stream must comply with the following payment rules:[80]

- payable throughout the lifetime of the primary beneficiary (and reversionary beneficiary if applicable)
- income payments must be paid at least annually and the amount payable in a year cannot be less than the amount payable in the preceeding year (except in limited cases where CPI movements have been negative). Note, to qualify as a complying income stream for social security purposes, the change in payments year to year cannot decrease, and must not exceed the larger of CPI plus 4%, or 5%
- no residual capital value
- cannot be security for borrowing
- income stream can only be transferred on death to a reversionary beneficiary
- limited commutations – can only be commuted:
  - where fully commuted during a five-year window commencing on 7 December 2024 if income stream is eligible (see 'Five-year window to fully commute some complying lifetime income streams' below)
  - on the death of the primary beneficiary for the benefit of a reversionary beneficiary, the primary beneficiary's estate (if no surviving reversionary beneficiary) or the reversionary beneficiary's estate (if the reversionary beneficiary survives the primary beneficiary and then dies).
    Note: An amount can only be commuted within 20 years or a period equal to the primary beneficiary's life expectancy (if less than 20 years)
  - within six months of commencement (provided that it was not funded from the commutation of another complying income stream)
  - to purchase another complying income stream
  - to pay a super contributions surcharge liability
  - to give effect to an entitlement of a non-member spouse under a family law payment split
  - for a release or transitional release authority.

Five-year window to fully commute some complying lifetime income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including some complying lifetime income streams, to be fully commuted (partial commutations are not permitted). This commutation option is voluntary for members.

80 SIS Regulation 1.05(2) or 1.06(2).

Importantly, non-commutable lifetime income streams provided by a defined benefit super fund (for example a lifetime pension from a Government defined benefit fund) are not eligible for this commutation option. This (defined benefit) exclusion does not apply to complying lifetime income streams in an SMSF or small APRA fund.

Where a complying lifetime income stream is fully commuted within this five-year window, a member may then use the proceeds for one (or a combination of) the following:

- Commencing a more flexible income stream such as an account based pension (subject to their transfer balance cap).
- Retaining it in accumulation phase (provided the original income stream was not a death benefit income stream).
- Withdrawing it as a lump sum.

Depending on a client's circumstances, fully commuting a complying lifetime income stream under this option may have a range of potentially significant social security, tax and transfer balance cap impacts. It would also be important to weigh up the amount of any full commutation available from the income stream against the income stream payments received from it. For further information about this commutation option and these impacts, see section 14.2. For information about the commutation of complying lifetime income streams in an SMSF, see the FirstTech SMSF guide.

Advisers should also confirm with the client's income stream product provider whether there are any additional restrictions in the fund's governing rules impacting the ability to fully commute under this option.

Taxation of income stream payments

This section discusses the tax treatment of income stream payments from superannuation complying lifetime income streams. Complying lifetime income streams purchased with superannuation moneys are generally subject to the same tax treatment as other superannuation income streams as shown below.

However, where the complying lifetime income stream is a capped defined benefit income stream (e.g. a complying lifetime annuity), additional taxation may apply where payments exceed the defined benefit income cap of $125,000. See section 22 for more information on the taxation of capped defined benefit income streams. Income stream payments that do not exceed the defined benefit income cap are taxed in the same way as complying lifetime income streams that are not capped defined benefit income streams.

Taxation of tax free component

Regardless of age, the tax free component of a superannuation complying lifetime income stream is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

The following table sets out the taxation of the taxable component of a superannuation complying lifetime income stream payment, where the income stream is not a disability super benefit income stream:

Age	Taxed component (taxed element)
60 and above	Non-assessable non-exempt income: No tax
Below 60	Assessable income: taxed at marginal tax rate

Social security assessment

Complying lifetime income streams generally qualify for a 50% or 100% exemption under the social security assets test.

Complying lifetime income streams could be purchased prior to 20 September 2007. On or after that date, only complying lifetime income streams purchased with the rollover of an existing complying lifetime, life expectancy or term allocated pension qualify.

100% assets test exempt and 50% asset-test exempt income streams that are voluntarily rolled over after 20 September 2007 become fully asset-tested unless they meet specific exemption criteria. Refer to the FirstTech Social Security Guide for more information.

Assets test assessment

If purchased prior to 20 September 2004, complying lifetime income streams qualified for a 100% assets test exemption.

If purchased on or after 20 September 2004 and before 20 September 2007, complying lifetime income streams qualified for a 50% assets test exemption. In this case, the asset value is determined using the following formula:

50% × (purchase price - (purchase price × (term elapsed/relevant number))), where:

- **Purchase price** is the amount paid to purchase the income stream.
- **Relevant number** is the life expectancy of the primary beneficiary (or longest life expectancy if the lifetime income stream is reversionary).
- **Term elapsed** is the number of years that have elapsed since the lifetime income stream commenced. The number of years is rounded down to the nearest:
  - half year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

George purchased a complying lifetime annuity for $100,000. As he purchased the annuity in 2006, it qualified for a 50% assets test exemption. His life expectancy at commencement was 17.70. He receives monthly income payments from the annuity.

The assessable asset value of the annuity after 13 years is:

50% × ($100,000 - ($100,000 × (13/17.70))) = $13,277

Income test assessment

The income value is calculated by the following formula:

Annual payment - (purchase price/relevant number), where:

- **Annual payment** is gross amount of annuity payments paid in the year.
- **Purchase price** is the amount paid to purchase the income stream.
- **Relevant number** is the life expectancy of the primary beneficiary (or longest life expectancy if the lifetime income stream is reversionary).

Example

In the example above, George purchased a complying lifetime annuity for $100,000. The annual payment is $6,000. His life expectancy at commencement was 17.70.

Under the income test, assessable income is:

$6,000 - ($100,000/17.70) = $350

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax.

Complying lifetime income streams that meet the standards of SIS Regulation 1.06(2) or 1.05(2), and were purchased before 1 July 2017, meet the definition of a capped defined benefit income stream for transfer balance cap purposes.

Transfer balance account credits for complying lifetime income streams purchased before 1 July 2017

Complying lifetime income streams purchased before 1 July 2017 are included for transfer balance cap purposes in the value of a member's existing retirement phase income streams at 30 June 2017. As they are capped defined benefit income streams, the credit is determined by their special value as at 30 June 2017.

The special value is:

Annual entitlement × 16, where:

Annual entitlement is calculated by using the gross first payment the individual is due to receive after the time of valuation and annualising this figure as follows:

Annual entitlement = first payment/days in period × 365

Example

George purchased a complying lifetime income stream for $100,000 in July 2006. He receives a monthly payment from the annuity of $500 in July 2017.

For transfer balance cap credit purposes at 1 July 2017, the annuity is valued at:

Annual entitlement = $500/31 × 365 = $5,887

Transfer balance credit = $5,887 × 16 = $94,192

For more information on the transfer balance cap assessment of capped defined benefit income streams, see section 21.8.

Transfer balance account credits for complying lifetime income streams purchased on or after 1 July 2017

While most complying lifetime income streams had to be purchased before 20 September 2007, it is possible to purchase a complying lifetime income stream on or after 1 July 2017, where it is purchased with the rollover of another complying income stream and meets relevant conditions.

As complying lifetime annuities purchased on or after 1 July 2017 do not meet the definition of a capped defined benefit income stream[81], when determining their credit value for transfer balance cap purposes, it is the purchase price that is counted.

The purchase price is included as a credit at the purchase date.

81 Where a complying lifetime annuity commences on or after 1 July 2017 due to the involuntary rollover of a pre-1 July 2017 capped defined benefit income stream as part of a successor fund transfer (SFT), it will also qualify as a capped defined benefit income stream. See section 21.8 for further information.

> **Example**
>
> Ian purchased a complying lifetime income stream for $100,000 in July 2020. The guaranteed period is 10 years.
>
> Joel has a transfer balance credit of $100,000 at July 2020.

Note: Complying lifetime pensions can be purchased at any time and qualify as capped defined benefit income streams. Lifetime pensions are generally defined benefit income streams. See 18.3 'Defined benefit income streams' for more information.

Transfer balance debits for complying lifetime income streams

Where a complying lifetime income stream that is a capped defined benefit income stream is fully commuted, a debit is created for transfer balance cap purposes equal to the original transfer balance credit amount for the complying lifetime income stream. Where a commutation is made from a complying lifetime income stream that is not a capped defined benefit income stream, the debit is instead equal to the commutation value.

For more information on transfer balance cap debits, see section 21.

> **Example**
>
> George purchased a complying lifetime income stream for $100,000 in July 2006. He receives a monthly payment from the annuity of $500 in July 2017.
>
> For transfer balance cap credit purposes at 1 July 2017, the annuity is valued at:
>
> Annual entitlement = $500/31 × 365 = $5,887
>
> Transfer balance credit = $5,887 × 16 = $94,192
>
> George then fully commutes his complying lifetime income stream in July 2020. For transfer balance cap purposes, George will receive a debit of $94,192.

Estate planning

The estate planning options when a member who is receiving a complying lifetime income stream dies depends on:

- whether any amount remains payable beyond their death and, if so,
- whether it is a reversionary income stream.

No amount remains payable beyond death

Where there is no ongoing liability for further benefits to be paid once an income stream recipient dies, no superannuation death benefit is payable.

Amount payable on death and a reversionary income stream

Where a member receiving a complying lifetime income stream dies and there is a valid reversionary beneficiary, the income stream automatically reverts to the reversionary beneficiary and any future income stream payments are then made to the reversionary beneficiary.

Since 1 July 2007, an income stream can only revert upon death where the reversionary beneficiary is an eligible dependant able to receive a death benefit as an income stream under the SIS Regulations. See section 23.2 for further information.

Any reversionary income stream that continues to be paid must comply with death benefit income stream rules. See section 23.3 for further information.

Amount payable on death not a reversionary income stream

Complying lifetime income streams may have a guaranteed period, which is a predetermined period in which any remaining payments, up to the end of the period, are paid to a reversionary beneficiary, or the primary beneficiary's estate, if the primary beneficiary dies within the allowable guaranteed period.

The allowable limits for the guaranteed period can be up to the shorter of:

- the primary beneficiary's life expectancy at purchase or, if life expectancy is not a whole number, life expectancy rounded up to the next whole number, and
- 20 years.

See section 23 for further information about estate planning relating to superannuation income streams, and section 10 for further information about superannuation estate planning generally and lump sum superannuation death benefits.

Taxation of death benefits

When the original beneficiary of a complying lifetime income stream dies, the taxation implications depend on whether the estate receives a death benefit lump sum or the reversionary beneficiary receives an income stream.

Lump sum death benefit

Where the estate receives a lump sum death benefit:

Component	Recipient	Taxation
Tax free	Death benefits dependant or non-death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Non-death benefits dependant	Assessable income: maximum tax rate 15%

Note: For all non-zero tax rates, Medicare levy may also apply.

Note: Death benefits dependants include a spouse, child under age 18, financial dependant or someone in an interdependency relationship.

Death benefit pension

Where the beneficiary receives a death benefit pension:

Component	Age of deceased (at time of death)	Age of recipient	Tax treatment
Tax free	n/a	n/a	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Age 60 or above	Any age	Non-assessable non-exempt income: No tax
	Under age 60	Age 60 or above	Non-assessable non-exempt income: No tax
	Under age 60	Under age 60	Assessable income: Taxed at marginal tax rate less 15% tax offset

See section 22.7 for modifications to the tax treatment of death benefit income streams paid to a recipient age 60 or over (deceased was any age), or paid to a beneficiary under age 60 (deceased was age 60 or over), that are capped defined benefit income streams.

Transfer balance cap treatment of death benefits

Where a complying lifetime income stream reverts to a beneficiary following the death of the original recipient, a credit arises in the beneficiary's transfer balance account 12 months after the original recipient's death. The credit will equal:

- the special value of the income stream at the time of death (if a capped defined benefit income stream)
- the original purchase price of the income stream (if not a capped defined benefit income stream).

Where a new death benefit income stream is paid instead, see section 23 for further information.

18.3 Defined benefit lifetime income streams

A defined benefit income stream is a pension paid from a public sector or corporate defined benefit superannuation fund (e.g. the Public Sector Superannuation Scheme). Most of these schemes are closed to new members. It does not include income streams purchased from retail providers or SMSFs or small APRA funds.

To be classified as a defined benefit income stream, it must be paid for the lifetime of the recipient and must be attributable to a defined benefit interest as defined in the SIS Regulations.

Most defined benefit income streams are also capped defined benefit income streams.

Capped defined benefit income streams have modified rules for:

- the transfer balance cap
- total superannuation balance, and
- the taxation of pension/annuity payments.

Payment rules

To be classified as a defined benefit income stream, it must be paid for the lifetime of the recipient and must be attributable to a defined benefit interest as defined in the SIS Regulations.

A member's interest in a superannuation fund is a defined benefit interest to the extent that:

- It is an interest in an unfunded public sector superannuation scheme that has at least one defined benefit member, or
- The member's entitlements are defined by reference to one or more of the following:
  - the individual's salary at a particular date or averaged over a period
  - another individual's salary at a particular date or averaged over a period
  - a specified amount
  - specified conversion factors.

A defined benefit income stream is a pension paid from a public sector or corporate defined benefit superannuation fund.

Public sector super schemes are those:

- established by a Commonwealth, state or territory law
- set up under the authority of the Commonwealth, or a state or territory, or
- set up under the authority of a municipal corporation, local governing body or public authority constituted under a Commonwealth, state or territory law.

Examples of public sector super schemes include:

- Commonwealth schemes such as the Commonwealth Superannuation Scheme (CSS)
- State government schemes such as SuperSA Lump Sum and Pension Schemes (South Australia) and ESSSuper New Scheme and Revised Scheme (Victoria)
- Public authority staff schemes such as the Australia Post Superannuation Scheme.

Taxation of defined benefit pensions

There are two key issues for the taxation of defined benefit pensions: the amounts, if any, of tax free component and untaxed element in the taxable component.

Tax free component: it is necessary to look closely at all aspects of a defined benefit pension and the member's circumstances to confirm whether there is, in fact, a tax free component, and its amount, as outlined in the following tables. Of particular note is the fact that many defined benefit pensions are not eligible for a tax free component.

Taxable component (untaxed element): defined benefit pensions with an untaxed element of the taxable component are subject to tax at the member's marginal tax rate less a 10% offset when age 60 and above. Under age 60, they are subject to tax at the member's marginal tax rate with no tax offset applying. This should be a consideration in any strategies that involve commencing a defined benefit pension with an untaxed element prior to the member turning age 60.

Tax free component of defined benefit pensions commenced on or after 1 July 2007

Type of pension	Tax free component calculation
Entirely employer-financed, i.e. no member contributions	Pre-July 1983 component as at date pension commenced
Partly member financed	Pre-July 1983 component plus undeducted contributions component as at date pension commenced plus non-concessional contributions made on or after 1 July 2007

Tax free component of defined benefit pensions commenced before 1 July 2007, following a trigger event

Type of pension	Tax free component calculation for defined benefit pension commenced prior to 1 July 1994	Tax free component calculation for defined benefit pension commenced between 1 July 1994 and 30 June 2007
Entirely employer financed (i.e. no member contributions)	Nil	Pre-July 1983 component, as at date of trigger event
Partly member financed	Unused undeducted purchase price (UUPP) as at date of trigger event	Unused undeducted purchase price (UUPP) + pre-July 1983 component, as at date of trigger event

Note: The formula under section 27A(1) of the Income *Tax Assessment Act 1936* for calculating the UUPP of pensions commenced on or after 1 July 1994 excludes any pre-July 1983 component. An allowance for this amount is then added back to determine the tax free component when such a pension is triggered. However, pensions commenced before 1 July 1994 include pre-July 1983 component in their UUPP . Accordingly, section 307.125(6A) of the *Income Tax (Transitional Provisions) Act 1997* does not allow any additional pre-July 1983 component to be added back. **Note:** The UUPP will be nil if at 1 July 2007 the member had already exceeded their life expectancy. **Note:** Refer to section 22.5 for more on trigger events.

Defined benefit income streams that are capped defined benefit income streams

As discussed, many defined benefit income streams are capped defined benefit income streams. Where they are, modified tax treatment applies to any capped defined benefit income stream payments made in an income tax year exceeding the defined benefit income cap (currently $125,000). See section 22.7 for further information.

Social security assessment of defined benefit income streams

An income stream is a defined benefit income stream for social security purposes if:

- it is a pension under the SIS Regulations, and
- in the case of an income stream arising under a super fund established on or after September 1998 – the income stream is a lifetime pension, and
- in the case of an income stream arising under a super fund established before September 1998 – the income stream is provided under rules that meet the standards determined, by legislative instrument, by the Minister, and
- in any case – the income stream is attributable to a defined benefit interest.

Defined benefit interest

A super interest is a defined benefit interest if it is:

- an interest in an unfunded public sector super scheme that has at least one defined benefit member, or
- an interest that entitles the member who holds the interest, when benefits for the interest become payable, to be paid a benefit defined, wholly or in part, by reference to one or more of the following:
  - the amount of the member's salary at the date of the termination of the member's employment
  - the date of the member's retirement, or another date
  - the amount of the member's salary averaged over a period
  - the amount of the salary, or allowance in the nature of salary, payable to another person (e.g. a judicial officer, a member of the Commonwealth or a state parliament, a member of the Legislative Assembly of a territory), or
  - specified conversion factors.

Assets test assessment

Defined benefit income streams are asset-test exempt if they meet the conditions above.

Income test assessment

The assessable income of a defined benefit income stream is based on the annual payment and the deductible amount they receive for tax purposes.

Assessable income = annual income - deductible amount, where:

- **Annual income** means the amount payable to the person for the year from the income stream.
- **Deductible amount** (if any) is the tax free proportion used for tax purposes, subject to a cap of 10% of the annual payment.

The 10% cap only applies to people in receipt of income support payments from Centrelink. People receiving payments from Department of Veterans' Affairs, such as the service pension, are not impacted. In addition, defined benefit income streams paid by the following military superannuation funds are excluded from this cap:

- Defence Force Retirement & Death Benefits Scheme (DFRDB)
- Military Superannuation & Benefits Scheme (MilitarySuper), and
- Defence Force Retirement Benefits Scheme (DFRB).

Example

Bill and Norma receive a part Age Pension and Bill receives a defined benefit income stream that is not paid from a military superannuation scheme. The defined benefit income stream has an annual payment of $50,000 and a tax free percentage of 50%.

In this case, the social security deductible amount is the tax free component ($25,000), but capped at 10% of the annual payment, which is $5,000 ($50,000 × 10%).

Therefore, assessable income will be $45,000 ($50,000 - $5,000).

FirstTech Comment

From 1 July 2007, there were changes to the taxation of income streams that impacted the calculation of the tax free proportion. Defined benefit income streams acquired from 1 July 2007 have their deductible amount calculated as a proportion based on the tax free component at commencement.

For defined benefit income streams acquired before 1 July 2007, different rules applied when calculating their deductible amount. They retain the original deductible amount until:

- the income stream is partially commuted on or after 1 July 2007 – the new deductible amount will be used irrespective of whether it is lower than the deductible amount prior to the commutation
- the primary beneficiary dies and the income stream reverts to a reversionary beneficiary on or after 1 July 2007 – the new deductible amount will be used irrespective of whether it is lower than the deductible amount prior to reversion, or
- the person is age 60 on 1 July 2007 or turns age 60 after 1 July 2007.

Refer to the FirstTech Social Security Guide for more information on the calculation of the deductible amount that applied to income streams acquired before 1 July 2007.

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to 'retirement phase'. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax within the fund.

Most defined benefit income streams are also capped defined benefit income streams, which means they have a special value for transfer balance cap purposes. However, advisers should check with the defined benefit fund to determine whether it meets the definition of a capped defined benefit income stream.

Transfer balance account credit for defined benefit income streams that are capped defined benefit income streams

Defined benefit income streams that meet the definition of lifetime pension can be commenced at any time and qualify as a capped defined benefit income stream. Refer to section 21.8 for more information.

Capped defined benefit income streams commenced before 1 July 2017 are included for transfer balance cap purposes in the value of a member's existing retirement phase income streams at 30 June 2017. As they are capped defined benefit income streams, the credit is determined by their special value as at 30 June 2017.

The special value is:

Annual entitlement × 16, where:

Annual entitlement is calculated by using the gross first payment the individual is due to receive after the time of valuation and annualising this figure as follows:

Annual entitlement = first payment/days in period × 365

Example

Bert commenced a defined benefit income stream that met the definition of a capped defined benefit income stream in July 2006. He receives a monthly payment from the income stream of $500 in July 2017.

For transfer balance cap credit purposes at 1 July 2017, the capped defined benefit income stream is valued at:

Annual entitlement = $500/31 **×** 365 = $5,887

Transfer balance credit = $5,887 **×** 16 = $94,192

The special value of capped defined benefit income streams commenced on or after 1 July 2017 is included as a transfer balance account credit at the commencement of the income stream.

For more information on the transfer balance cap assessment of capped defined benefit income streams, see section 21.8.

Defined benefit income streams that are not capped defined benefit income streams

Defined benefit income streams that are not capped defined benefit income streams have their value determined by the *Income Tax Assessment (1997 Act) Regulations 2021*. Income streams commenced prior to 1 July 2017 are valued at 30 June 2017 (and the transfer balance account credit applied on 1 July 2017), while income streams commenced on or after 1 July 2017 are valued at commencement date (with the transfer balance account credit applied at that date).

The valuation is determined by a range of factors, including the current income stream entitlement and future lump sum entitlement from the defined benefit interest. Advisers should check a member's specific defined benefit income stream valuation with their scheme.

Estate planning

Defined benefit income streams generally have restrictions on how death benefits can be paid when the primary beneficiary dies.

Depending on the rules of the scheme, a spouse or dependent child may be able to receive a reversionary defined benefit pension on the death of the primary beneficiary.

The reversionary pension may be a percentage of the pension paid to the primary beneficiary.

For example, a spouse may receive a reversionary ComSuper pension at a rate determined by the number of children the couple had at the time of death, and whether the primary beneficiary initially elected to receive a reduced rate of pension. These rates vary from 67% to 108% of the deceased's rate of pension.

Taxation of reversionary pension

Where a reversionary beneficiary receives a death benefit defined benefit pension, the tax treatment of pension payments is shown in the following table.

Component	Age of deceased (at time of death)	Age of recipient	Tax treatment
Tax free	n/a	n/a	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Age 60 or above	Any age	Non-assessable non-exempt income: No tax
	Under age 60	Age 60 or above	Non-assessable non-exempt income: No tax
	Under age 60	Under age 60	Assessable income: taxed at marginal tax rate less 15% tax offset
Taxable component (untaxed element)	Age 60 or over	Any age	Assessable income: taxed at marginal tax rate less 10% tax offset
	Under age 60	Age 60 or above	Assessable income: taxed at marginal tax rate less 10% tax offset
	Under age 60	Under age 60	Assessable income: taxed at marginal tax rate (no tax offset)

See section 22.7 for modifications to the tax treatment of death benefit income streams paid to a recipient age 60 or over (deceased was any age), or paid to a beneficiary under age 60 (deceased was age 60 or over), that are capped defined benefit income streams.

In rare cases where a lump sum death benefit is paid, or where a reversionary death benefit defined benefit pension is commuted to a lump sum withdrawal, it is taxed as a lump sum death benefit. Refer to section 10 for details on the taxation of lump sum death benefits.

Transfer balance cap treatment of death benefits

Where a defined benefit income stream reverts to a beneficiary following the death of the original recipient, a credit arises in the beneficiary's transfer balance account 12 months after the original recipient's death.

When determining the credit, the value of the reversionary lifetime capped defined benefit income stream is determined at the date of death, with the special value calculated as:

Annual entitlement × 16

Where the annual entitlement is based on the first payment the reversionary beneficiary is entitled to receive after the date of death. This first payment is divided by the number of days in the period, then multiplied by 365.

TBC debit to correct inflated value of reversionary pensions

Where a lifetime pension or annuity that is a capped defined benefit income stream reverts to a reversionary beneficiary, the special value of that income stream at the time of death (the next payment (annualised) × 16) is a credit to the reversionary beneficiary's transfer balance account.

However, some lifetime income streams (particularly some Government super fund lifetime defined benefit pensions) may initially continue a higher level of income stream payments upon reversion, but then reduce those payments permanently to a lower level. This reduction in payments occurs not due to commutations or investment earnings, but due to the rules of the fund/income stream. This led to some situations where the credit in a reversionary beneficiary's transfer balance account was inflated compared to the ongoing payments for the income stream.

To avoid being disadvantaged in this situation, a transfer balance account debit arises for a member where:

- they are a retirement phase recipient of a lifetime pension or annuity that is a capped defined benefit income stream, and
- they were entitled to receive a superannuation income stream benefit at an earlier time, and the amount of the next superannuation income stream benefit is reduced, and
- the reduction is not attributable to any other type of transfer balance debit or a Consumer Price Index adjustment.

The value of the transfer balance account debit is the special value of the income stream just before the last higher payment, less the special value of the income stream just before the first lower payment. The debit applies to the member's transfer balance account just prior to the reduction in payments.

Example:

A lifetime defined benefit pension (capped defined benefit income stream) recently reverted to Maria upon the death of her spouse. The first eight payments she received were $1,500 per fortnight, after which payments reduce to $1,000 per fortnight.

The credit for the income stream to Maria's transfer balance account is $625,714 (($1,500/14 × 365) × 16) – note that as the income stream reverted to her this credit will not arise until 12 months after the date of death.

Just prior to Maria's reduction in payments, a debit of $208,571 will arise in Maria's transfer balance account. This debit is calculated as:

- Special value just before last higher payment:
  $625,714 (($1,500/14 × 365) × 16), less
- Special value just before first lower payment:
  $417,143 (($1,000/14 × 365) × 16).

18.4 Innovative income streams

From 1 July 2017, super and tax rules were amended to allow superannuation funds and life insurance companies to offer a range of innovative retirement income stream products. A key aim of these products is to better manage longevity risk in retirement.

The rules cover a range of income stream products including:

- deferred products
- investment-linked pensions and annuities, and
- group self-annuitised products.

Superannuation funds and life insurance companies receive a tax exemption on income from assets supporting these new income stream products, provided they are currently payable, or in the case of deferred products, the income stream is in retirement phase.

Payment rules

To qualify as an innovative lifetime income stream,[82] the income stream must comply with the following payment rules:

- **Benefit payments can only commence after a relevant condition of release is satisfied**

Innovative income streams can only start making payments once the primary beneficiary has died, retired, has a terminal medical condition, is permanently incapacitated or has attained the age of 65.

This ensures that providers of these income streams do not receive an earnings tax exemption until the primary beneficiary has satisfied a relevant condition of release.

An income stream purchased through instalments must also be fully paid prior to income stream payments commencing.

Under existing standards, an income stream cannot permit the capital supporting the income stream to be added to by way of contribution or rollover after the income stream has commenced. This requirement continues to apply to innovative income streams.

82 SIS Regulations 1.06A and 1.05(1).

- Recognition of deferred income streams and an annual payment requirement

Payment of the income stream benefits must be made at least annually unless the income stream is a deferred superannuation income stream and payment of the benefits has not yet started.

Following the cessation of any deferral period, payments must continue throughout the life of a beneficiary.

FirstTech comment

Unlike most other types of superannuation income streams (e.g. a non-complying lifetime annuity), the innovative income stream rules do not require a calculated minimum or specified payment to be made (in the first year or each year) or specify limits around the indexation of payments. However, once payments commence, they must be made at least annually for the life of the income stream.

Up until 1 July 2017, the definition of a superannuation income stream, in the tax regulations, required the income stream to be currently payable. A deferred superannuation income stream may meet the tax definition of a superannuation income stream if payments start more than 12 months after the superannuation interest supporting the benefit is acquired, and payments are then made at least annually.

An interest in a deferred superannuation income stream is always treated as a separate superannuation interest.

A deferred superannuation income stream will count towards a member's transfer balance account (and qualify for tax-free earnings on assets supporting the income stream) when it is in the retirement phase. A deferred superannuation income stream is in the retirement phase at any time that the member has met one of the following conditions of release:

- retirement
- reaching age 65
- permanent incapacity
- terminal medical condition.

A deferred superannuation income stream is in the retirement phase if the recipient has met an eligible condition of release, regardless of whether income stream payments are currently being paid.

- No unreasonable deferral of income stream payments

There must be no unreasonable deferral of benefit payments after the start of payments from the income stream.

This rule is designed to ensure a genuine retirement income stream is provided to a beneficiary, with benefit payments being set in a manner that does not circumvent the commutation rules or provide estate planning benefits.

There are a number of factors considered when determining whether the deferral of income stream payments is unreasonable. These are:

- when the payments are made in relation to when returns are derived
- the age, life expectancy, or other factors relevant to mortality of beneficiaries
- the relative sizes of annual total payments from year to year, where payments do not depend on returns, age or life expectancies
- any other relevant factors.

These factors provide some flexibility to enable benefit payments to be varied between years.

Example: Unreasonable deferrals

A reversionary annuity purchased for $250,000 at age 60 with payments starting at age 80 would likely be considered unreasonable if the payments for the first 20 years were $1,000 p.a., but then were very large, such as $50,000 pa for any following payment year.

Another example of an unreasonable deferral might be a pooled product where the payments, although not necessarily wholly deferred for any period, are very heavily weighted to higher payments in later years and do not represent any alignment with investment returns or mortality experiences.

While it is unlikely that there is an incentive for providers to offer such products, if they did, the product would be considered unreasonable as it would not provide a genuine retirement income stream and would likely be an attempt to circumvent the capital access schedule rules and normal taxation arrangements.

- **Restrictions on accessing capital supporting the income stream**

There is a restriction on the amount of commutations that may be made from the day the primary beneficiary enters the retirement phase.

This retirement phase start day for a deferred superannuation income stream is the later of:

- the day the primary beneficiary has satisfied a relevant condition of release, i.e. retirement, death, terminal medical condition, permanent incapacity and attaining age 65, and
- the day the superannuation interest is acquired.

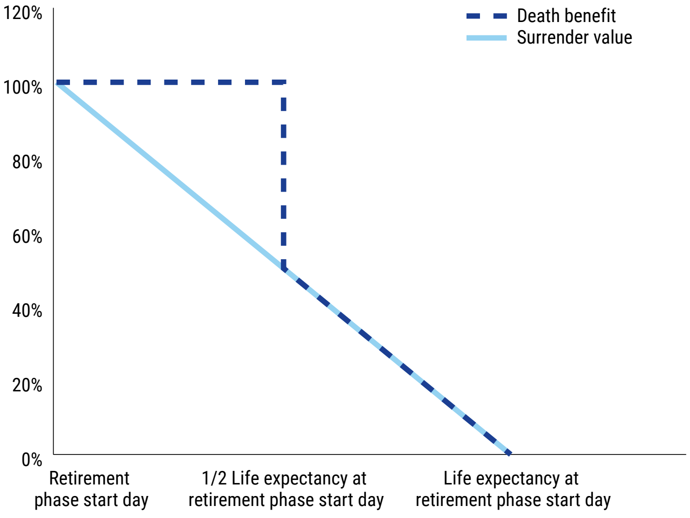
For other innovative income streams, the retirement phase start day is the day benefits start to be payable.

The retirement phase start day is also the day the member's transfer balance account is credited.

The maximum commutation amount that can be accessed after 14 days from the retirement phase start day, is an amount calculated on a declining straight line basis over the primary beneficiary's life expectancy (or the reversionary beneficiary's life expectancy if the primary beneficiary is not alive) on their retirement phase start day.

On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

Chart 18.2 Capital access schedule



Example: Maximum commutation amount (death benefit) from immediate lifetime annuity

Hector purchases an immediate annuity for $20,000 on his 65th birthday on 21 August 2017. The annuity is immediately payable and meets the payment standards for innovative income streams.

The contract only enables the income stream to be commuted within 14 days of the purchase day, or on Hector's death, up until his 80th birthday. The full amount of the purchase price is payable if the annuity is commuted within 14 days of the retirement phase start day.

Hector passes away on 30 December 2028, aged 76 years.

The following inputs are required for the purposes of working out the maximum commutation amount of the death benefit:

- access amount on retirement phase start day: $20,000
- access amount at the time of commutation: $20,000
- prescribed life tables: 2010–2012 Australian Life Tables – Male
- life expectancy period for the income stream = 19 × 365 = 6,935 days
- first half of the life expectancy period: 3,467 days
- remaining life expectancy is 6,935 - 4,149 = 2,786 days

The maximum amount that could be payable on commutation of the income stream on Hector's death is:

$$= \left[\frac{\text{Access amount for the income stream at the time of the commutation}}{\text{Life expectancy period for the income stream}} \times \text{Remaining life expectancy} \right] - \text{Previous commutations}$$

= ($20,000 ÷ 6,935 × 2,786) - 0

= $8,034.61

If Hector had passed away before 17 February 2027, being within 3,467 days of the retirement phase start day (half of life expectancy period), the maximum commutation amount for the income stream would have been $20,000 (being the access amount at that point in time).

Example adapted from Explanatory Statement, Treasury Laws Amendment (2017 Measures No. 1) Regulations 2017.

Other innovative income stream standards

Prior to the retirement phase start day, commutation amounts are not restricted (subject to preservation rules).

The capital value of an innovative income stream cannot be used as security for a borrowing.

SMSFs cannot provide innovative income streams to their members unless they are wholly determined by reference to policies of life assurance purchased by the trustee of the superannuation fund.

Condition of release for deferred superannuation income streams

A condition of release permits an interest in a deferred superannuation income stream to be acquired with preserved and restricted non-preserved superannuation benefits. This enables deferred superannuation income streams to be purchased while a member is still in the accumulation phase on potentially more attractive terms than those available when a member reaches retirement age.

Pooled investment pensions (PIPs) and annuities (PIAs)

A pooled investment pension (PIP) is a pension provided under the rules of a superannuation fund where those rules ensure that once income stream payments start, they continue for the remainder of an individual's life. For a product to be a PIP, payments must be determined having regard to the age, life expectancy or other factors relevant to the mortality of each individual who has that kind of interest in the fund, and the pool of assets in the fund held for the collective benefit of those individuals.

The transfer balance account value of a PIP will be the value at a particular point in time of so much of a collective pool of assets attributed to the individual, under the rules of the superannuation fund, as certified by an actuary.

Superannuation funds providing PIPs are required to have at least 50 members.

A pooled investment annuity (PIA) is a comparable product to a PIP but is instead provided by a life insurance company. A PIA is a superannuation annuity provided under a contract, where the contract ensures that once annuity payments start, they continue for the remainder of the individual's life. For a product to be a PIA, annuity payments must be determined having regard to the age, life expectancy or other factors relevant to the mortality of each individual who has that kind of interest with the life insurance company, and the pool of assets held for the collective benefit of those individuals.

To be a PIA, the life insurance company that offers the annuity must provide annuities to at least 50 entities.

The existing valuation rules in regulations made for valuing annuities continue to apply.

For example, an immediate annuity would be valued using the historic purchase price of the annuity.

The accumulation phase value of PIPs and PIAs is the default value determined under paragraph 307-205(2)(b) of ITAA 1997.

Taxation of income stream payments

Innovative lifetime income streams purchased with superannuation money are subject to the same tax treatment as other superannuation income streams. Where the member is age 60 or over, income stream payments are non-assessable non-exempt income.

Taxation of tax free component

Regardless of age, the tax free component of a an innovative superannuation income stream payment is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable components

The following table sets out the taxation of the taxable components of an innovative superannuation income stream payment, where the income stream is not a disability super benefit income stream:

Age	Taxable component (taxed element)
60 and above	Non-assessable non-exempt income: No tax
Below 60	Assessable income: taxed at marginal tax rate

Commutations

The ability to make a commutation from an innovative retirement income stream will depend on the product features of the particular income stream and legislative requirements.

The legislation restricts the amount that can be commuted from the day the primary beneficiary enters the retirement phase.

This retirement phase start day for a deferred superannuation income stream is the later of:

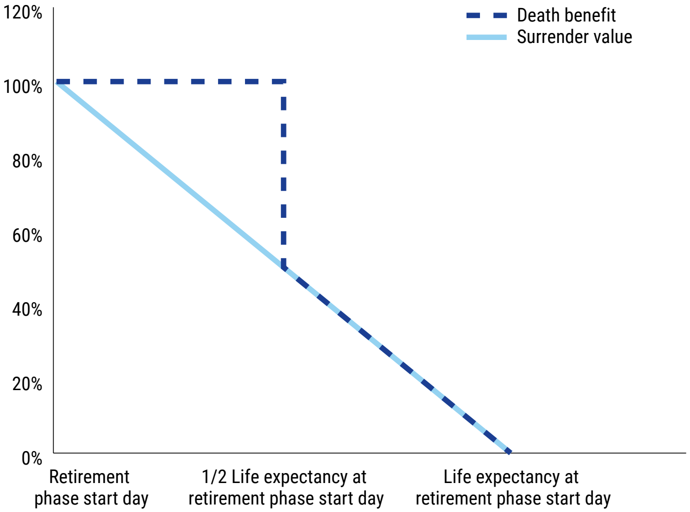
- the day the primary beneficiary has satisfied a relevant condition of release that has a nil cashing restriction, i.e. retirement, death, terminal medical condition, permanent incapacity and attaining age 65, and
- the day the superannuation interest is acquired.

For other innovative income streams, the retirement phase start day is the day benefits start to be payable.

The maximum commutation amount that can be accessed after 14 days from the retirement phase start day, is an amount calculated on a declining straight line basis over the primary beneficiary's life expectancy (or the reversionary beneficiary's life expectancy if the primary beneficiary is not alive) on their retirement phase start day.

On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

Chart 18.3 Capital access schedule



Taxation of commutations

Commutations from innovative income streams (assuming they are withdrawn) are superannuation lump sums for tax purposes. The tax treatment may depend on the age of the pensioner at the time of the commutation and the tax free and taxable components that make up each payment.

Where the member is age 60 or over, at the time of the lump sum withdrawal, the commutation is non-assessable non-exempt income.

Any tax free component is non-assessable non-exempt income, regardless of the member's age. The following table sets out the taxation of the taxable component (taxed element):

Age	Taxable component (taxed element)	Max tax rate
60 and above	Non-assessable non-exempt income	0%
Below 60	Whole component assessable income	20%

Note: For all non-zero tax rates, Medicare levy may also apply.

Rollovers

Where an innovative income stream is commuted and the lump sum rolled over to a complying superannuation fund or to commence another superannuation annuity, it is treated as a rollover super benefit for tax purposes. The rollover of a super benefit is not subject to tax in the receiving fund, unless the rollover contains a taxable component (untaxed element). For further information about the taxation of rollovers, see section 9.6.

Social security assessment

All lifetime income streams purchased on or after 1 July 2019 are assessed under new income and asset-test rules.

For more information on the social security assessment of lifetime income streams, including information about the treatment of those commenced prior to 1 July 2019, see section 24.

Lifetime income stream – purchased on or after 1 July 2019

All innovative lifetime income streams purchased on or after 1 July 2019 are assessed under new income and assets test rules. Grandfathering applies to lifetime income streams commenced prior to this date, and they will continue to be assessed under the current means test treatment, i.e. asset-tested (long term) income streams.

Under the new rules, innovative lifetime income streams must comply with a capital access schedule.

A capital access schedule limits the amount of capital that can be accessed as a voluntary commutation or death benefit. See Capital access schedule below for more information.

For lifetime income streams purchased on or after 1 July 2019 that comply with the capital access schedule, the social security assessment is:

Assessable assets:

- 60% of the purchase price[83] assessable until the individual reaches their threshold day (see below), then
- 30% of the purchase price assessable for the remainder of their life.

Assessable income:

- 60% of annual payment.

83 For deferred income streams, amounts paid to purchase the income stream are indexed to the assessment date. See Deferred income streams below for more information.

Threshold day

An individual's threshold day is generally the date the individual reaches a specified age. This age is based on the life expectancy of a 65 year old male at the income stream's assessment day using current life expectancy tables (rounded down to nearest whole number of years). This age applies regardless of the gender of the individual.

- For income streams with an assessment day prior to 1 January 2025, the age is 84
- For income streams with an assessment day on or after 1 January 2025, the age is 85

However, where the above age is within five years of assessment day, an individual's threshold day is instead at the end of five years.

The assessment day is generally the date of purchase; however, the rules are more complex for deferred income streams. See 'Deferred income streams' later in this section for more information.

Example: Assets test

Joan purchases a non-complying lifetime income stream on 1 July 2025. She is age 66 and the purchase price is $100,000.

Under the assets test, 60% of the purchase price ($60,000) is assessable until age 85 (19 years), after which point 30% ($30,000) is assessable.

Example: Income test

Tom receives an annual payment of $10,000 from a non-complying lifetime income stream purchased on 1 July 2025.

60% ($6,000) is assessed as income under the income test. As payments increase due to indexation, 60% of the indexed payments will be assessable for the duration of the lifetime income stream.

Capital access schedule

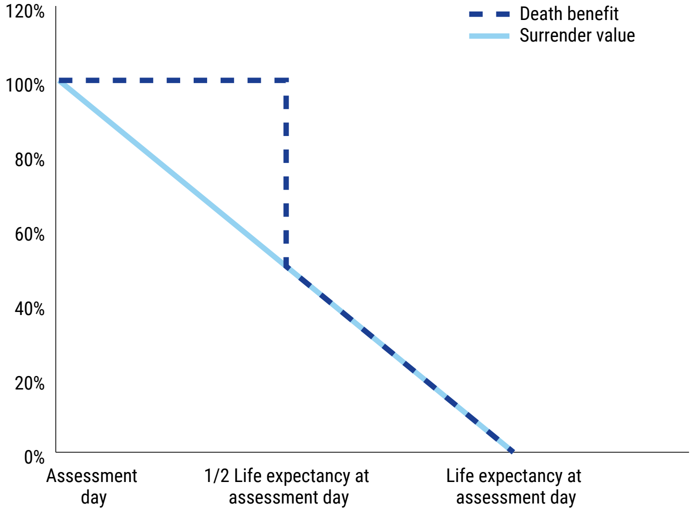
The capital access schedule is a legislative restriction on the amount that can be commuted from an innovative income stream.

Chart 18.4 demonstrates the maximum amount that can be commuted either voluntarily or on death, known as the capital access schedule.

In summary, the maximum amount that can be commuted as a voluntary surrender value is a declining straight line over the primary beneficiary's life expectancy (or reversionary beneficiary's life expectancy in certain circumstances). On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

The capital access schedule is important for social security purposes as lifetime income streams that comply receive a reduced assessable asset value (i.e. 60% of the purchase price assessable until the individual reaches their threshold day, then 30% of the purchase price assessable for the remainder of their life).

Chart 18.4 Capital access schedule



FirstTech Comment

The capital access schedule is the maximum commutation amount permitted under the legislation. However, individual products may provide a commutation amount that is significantly lower than this amount. For example, some lifetime annuities may have a nil amount that can be commuted voluntarily.

Lifetime income streams that do not comply with the capital access schedule are not innovative retirement income streams and would be assessed as non-complying lifetime income streams. See section 18.1 for more information.

Deferred income streams

A deferred income stream is an income stream that commences payments more than 12 months after it is acquired.[84]

For example, a member may purchase a deferred income stream at age 60 for $100,000 that does not commence paying an income stream until they reach age 80.

Under the deferred income stream rules, once the income stream payments commence, they must be paid at least annually for the remainder of the member's lifetime.

For social security purposes, the assessment depends on whether the deferred lifetime income stream is purchased with superannuation or non-superannuation money.

The following table summarises the income and assets test assessment. Note that the information in this section does not cover the assessment that applies where a deferred lifetime income stream has reverted to a reversionary beneficiary (for information about this refer instead to section 24.1).

	Assets test	Income test
Superannuation	• Before assessment day: no assessable asset value • From assessment day up to and including threshold day: 60% of purchase price assessable • After threshold day: 30% of purchase price assessable	• Before payments commence: no assessable income • Once payments commence: 60% of gross payments assessable

Non-superannuation	• Before assessment day: 100% of purchase price assessable
	• From assessment day up to and including threshold day: 60% of purchase price assessable
	• After threshold day: 30% of purchase price assessable
		• Before assessment day: purchase amount is deemed
		• From assessment day:
		  • Before payments commence: no assessable income
		  • Once payments commence: 60% of gross payments assessable

84 This is the definition of deferred income stream for superannuation purposes (SIS Regulation 1.03(1)).

Assessment day

A deferred lifetime income stream's assessment day depends on whether it is purchased with superannuation or non-superannuation money, as shown in the following table:

Superannuation	Non-superannuation
The latest of the following days: • the day the income stream recipient satisfies an eligible condition of release (retirement, death, reaching age 65, terminal medical condition, permanent incapacity) • the day the first amount was paid for the income stream • the day the income stream was acquired (if no amount is identified as having been paid for the income stream).	The income stream's commencement day where it occurs prior to Age Pension age, or Otherwise, the latest of the following days: • the day the income stream recipient reaches Age Pension age • the day the first amount was paid for the income stream • the day the income stream was acquired (if no amount is identified as having been paid for the income stream).

Note: An income stream's commencement day is generally the first day of the period to which the first payment under the income stream relates.

Threshold day

A deferred lifetime income stream's threshold day is the later of:

- the day that the income stream recipient reaches a specified age (84 for income streams with an assessment day prior to 1 January 2025 and 85 for income streams with an assessment day on or after 1 January 2025), and
- five years from the assessment day.

Indexation of purchase price

When determining the purchase price of a deferred lifetime income stream that is paid for by one or more instalments, amounts paid for the income stream are indexed when determining:

- for non-superannuation income streams – value of the financial investment assessable between the date of purchase and the assessment day
- for superannuation and non-superannuation income streams, the purchase price on the assessment day.[85]

When indexing the purchase price, amounts paid for the income stream are indexed on the 12 month anniversary of the purchase date.

The compound rate used for this calculation is the upper deeming threshold (currently 2.25% p.a.).

85 Where an instalment is received on or after assessment day, it adds to the purchase price but is not indexed.

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax within the fund.

Most superannuation income streams are considered to be retirement phase income streams with a few exceptions. One of those exceptions is deferred superannuation income streams where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release.

A deferred superannuation income stream is in the retirement phase if the recipient has met an eligible condition of release regardless of whether income stream payments are currently being paid.

Where a deferred superannuation income stream is not in retirement phase, it is considered to be in the accumulation phase of superannuation for the purposes of the earnings tax exemption and the transfer balance cap.

Retirement phase income streams

Innovative superannuation income streams, other than deferred income streams prior to the member meeting an eligible condition of release, are considered to be in retirement phase.

As innovative retirement income streams do not meet the definition of a capped defined benefit income stream, when determining their credit value for transfer balance cap purposes, it is the value at the starting day that is counted.

Deferred income streams

For deferred income streams, the income stream is in the retirement phase if the recipient has met an eligible condition of release regardless of whether income stream payments are currently being paid.

The value that counts as a credit for transfer balance cap purposes is the greater of:

- the sum of each amount of consideration paid for the interest and associated earnings calculated in accordance with the regulations
- the total amount of superannuation benefits that would become payable if the individual voluntarily caused the interest to cease.

Where a deferred income stream is paid for by instalments, an additional transfer balance account credit will also arise where any instalments are paid after the time the income stream enters retirement phase (as these instalments have not already been counted in the original credit value of the income stream). The value of the credit is the amount of consideration paid and it arises at the time the consideration is paid.

Estate planning

The estate planning options when a member who is receiving an innovative lifetime income stream dies depends on:

- whether any amount remains payable beyond their death, and if so:
- whether it is a reversionary income stream.

No amount remains payable beyond death

Where there is no ongoing liability for further benefits to be paid once an income stream recipient dies, no superannuation death benefit is payable.

Amount payable on death and a reversionary income stream

An innovative income stream can revert to an eligible beneficiary on death where the income stream had commenced making payments prior to the death of the primary beneficiary.

However, due to the requirement for a death benefit income stream to be in retirement phase, where the primary beneficiary dies before payments have commenced, to be an eligible beneficiary, the reversionary beneficiary must have satisfied an eligible condition of release (retirement, reaching age 65, permanent incapacity, terminal medical condition) on the death of the primary beneficiary.

If the reversionary beneficiary does not satisfy this requirement, the trustee must cash out the benefit as soon as practicable. This can be done by commuting the deferred superannuation income stream and either paying the deceased's superannuation interests out as a lump sum to the beneficiary or paying it through one or more new pensions or annuities.

Where a reversionary beneficiary is nominated, the maximum amount that can be commuted from the income stream is impacted where the primary beneficiary is not alive on their retirement phase start day. In this case, where the income stream reverts to an eligible beneficiary, the reversionary beneficiary's life expectancy period is used.

Amount payable on death not a reversionary income stream

For innovative retirement income streams, restrictions apply to the amount that can be commuted on death from the day the income stream is in retirement phase. For deferred income streams, this is the day the member meets a full condition of release, that is retirement, death, terminal medical condition, permanent incapacity and attaining age 65. For all other income streams, it is the day the income stream is acquired.

On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

Taxation of death benefits

When the original beneficiary of an innovative income stream dies, the taxation implications depend on whether the beneficiary receives the death benefit as a lump sum or income stream.

Lump sum death benefit

Where the beneficiary receives a lump sum death benefit:

Component	Recipient	Taxation
Tax free	Death benefits dependant or non-death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Non-death benefits dependant	Assessable income: Maximum tax rate 15%

Note: For all non-zero tax rates, Medicare levy may also apply.

Note: Death benefits dependants include a spouse, child under age 18, financial dependant or someone in an interdependency relationship.

Death benefit pension

Where the beneficiary receives a death benefit pension:

Component	Age of deceased (at time of death)	Age of recipient	Tax treatment
Tax free	n/a	n/a	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Age 60 or above	Any age	Non-assessable non-exempt income: No tax
	Under age 60	Age 60 or above	Non-assessable non-exempt income: No tax
	Under age 60	Under age 60	Assessable income: Taxed at marginal tax rate less 15% tax offset

19 Fixed term income streams

This section discusses fixed term income streams purchased with superannuation money.

Fixed term income streams are generally fixed term annuities provided by life insurance companies that provide a guaranteed income stream for a specified term.

Annuity payments are set at commencement and are not subject to market fluctuations. However, access to capital may be restricted with the ability to voluntarily commute or receive a death benefit dependant on the contract's terms and conditions.

As fixed term annuities meet the definition of a retirement phase income stream, they receive concessional taxation treatment including tax-free earnings on assets supporting the income stream. In addition, the amount of superannuation that can be transferred to a fixed term annuity may be limited by the transfer balance cap.

There are two main categories of superannuation fixed term annuities:

- non-complying fixed term annuities (see section 19.1)
  - flexibility with selecting term
  - may be commutable
  - may have a residual capital value
- complying life expectancy income streams (see section 19.2)
  - purchased prior to 20 September 2007 or with the rollover of a complying income stream
  - limitations on term, commutability and no residual capital value
  - generally capped defined benefit income stream for transfer balance cap purposes
  - 50% or 100% asset-test exempt for social security purposes.

19.1 Non-complying fixed term annuities

A non-complying fixed term annuity does not comply with the requirements of a complying life expectancy income stream[86], which has restrictions on term, commutability and residual capital value and is generally eligible for 50% or 100% social security asset-test exemption. See section 19.2 Complying life expectancy income streams for more information.

A non-complying fixed term annuity generally has more flexibility when selecting terms, withdrawal values and residual capital values. However non-complying fixed term annuities do not qualify for an asset-test exemption under the social security assets test and do not qualify as a capped defined benefit income stream for transfer balance cap purposes.

86 SIS Regulations 1.05(9) and 1.06(7).

Payment rules

There are two main categories of non-complying fixed term annuities (commenced on or after 1 July 2007):

1 flexible income streams with a residual capital value[87]

2 term certain income streams with no residual capital value.[88]

Flexible income streams with a residual capital value

This category of income stream is typically a fixed term annuity that allows retirees to invest in a guaranteed income stream with a residual capital value (RCV) and no restrictions on term.

Payment rules:

- payable for any fixed term
- no identifiable account balance
- may provide for an RCV, commutation value or withdrawal benefit that is no more than 100% of the purchase price
- cannot be used as security for borrowing
- cannot be transferred to another person except on the death of the beneficiary
- must comply with the minimum annual payment standards[89] **each year**.

For example, if a member age 65 purchased a five-year term annuity for $100,000, the minimum annual payment for a person between 65 and 74 is 5%. Therefore, they would need to receive an annual payment of at least 5% ($5,000) each year of the five year term.

Term certain income streams with no residual capital value

This category of income stream is typically a fixed term annuity with no RCV.

Payment rules:

- payable for a fixed term no greater than 100, less the primary beneficiary's age on the commencement date
- income payments can only vary through fixed indexation, CPI or Average Weekly Earnings (AWE)
- may be commutable
- no RCV
- cannot be used as security for borrowing
- cannot be transferred to another person except on the death of the beneficiary

87 SIS Regulation 1.05(11A)(b)(i).

88 SIS Regulation 1.05(11A)(b)(ii).

89 Clause 2 of Schedule 7, Superannuation Industry (Supervision) Regulations 1994.

- must comply with the minimum annual payment standards[90] in the first year of annuity payments
- total income payments in subsequent years can only vary from the total payments in the previous year through fixed indexation, CPI or AWE.[91]

For example, if a member age 70 purchased a 10-year term annuity for $100,000, the minimum annual payment for a person between 65 and 74 is 5%. Therefore they would need to receive an annual payment of at least 5% ($5,000) in the first year that the annuity becomes payable. Annuity payments are not required to meet the minimum in subsequent years, such as at age 75, when the minimum increases to 6%.

> **Note**
>
> Where a member purchases a fixed term annuity that pays a residual capital value, the requirement to pay the minimum annual payment each year may cause the annuity provider to restrict the amount of residual capital value that the member can select at commencement.
>
> For example, if a member age 65 purchased a five-year term annuity for $100,000, they would need to receive an annual payment of at least 5% ($5,000) each year.
>
> In this case, the annuity provider may restrict the maximum residual capital value that can be selected to be less than 100% of the purchase price. This enables a portion of the capital to be repaid as annuity payments which assists in meeting the minimum annual payment requirement.

Minimum annual payment

Superannuation fixed term annuities that are not complying life expectancy income streams must meet minimum annual payment standards (see payment rules above).

The total of the payments from a fixed term annuity in the first year is calculated in a similar manner as for an account based pension, with purchase price used in place of account balance.

Minimum annual payment = purchase price × percentage factor (rounded to the nearest whole $10), where:

- **Purchase price** is total amount paid to purchase the income stream.
- **Percentage factor** is determined by recipient's age at commencement of the income stream and at each anniversary of the commencement day thereafter using Table 19.1.

90 Clause 2 of Schedule 7, Superannuation Industry (Supervision) Regulations 1994.

91 Average Weekly Earnings.

Table 19.1 Minimum payment percentages

Age	Under 65	65–74	75–79	80–84	85–89	90–94	95 or over
Minimum percentage	4%	5%	6%	7%	9%	11%	14%

Taxation of annuity payments

Fixed term annuities purchased with superannuation money are subject to the same tax treatment as other superannuation income streams. Where the member is age 60 or over, annuity payments are non-assessable non-exempt income.

Taxation of tax free component

Regardless of age, the tax free component of a superannuation income stream is not assessable income and not exempt income. No tax is paid on these amounts.

An exception is capped defined benefit income streams such as complying life expectancy income streams. See section 19.2 Complying life expectancy income streams for more information. A non-complying fixed term annuity is not a capped defined benefit income stream.

Taxation of taxable components

Table 19.2 sets out the taxation of the taxable components of superannuation annuity payments, where the annuity is not a disability super benefit income stream:

Table 19.2 Taxation of taxable component

Age of income stream recipient	Taxable component (taxed element)
60 and above	Non-assessable non-exempt income: No tax
Under 60	Assessable income: taxed at marginal tax rate

Note: For all non-zero tax rates, Medicare levy may also apply.

Commutations

The ability to commute a fixed term annuity during its term will depend on the type of annuity purchased, as well as any limitations imposed by the annuity provider.

In some cases, there may be costs involved in commuting an annuity and the commutation value may be determined by prevailing interest rates. In this case, the annuitant may receive less than the original investment amount, after taking into account payments which have already been received.

For withdrawals subject to prevailing interest rates, a net present value calculation will determine the surrender value and will take into account:

- interest rate movements from inception to the time of the calculation
- the amount of regular payments that would have been made for the term
- the RCV (if applicable), and
- minimum payment requirements under the *Life Insurance Act 1995*,

where the commutation value is subject to prevailing interest rates:

- if interest rates have increased relative to interest rates at time of purchase, the commutation value will reduce, and
- if interest rates have decreased relative to interest rates at time of purchase, the commutation value will increase.

Taxation of commutations

Commutations of fixed term superannuation income streams are taxed as lump sum superannuation benefits. Where the member is age 60 or over, the commutation is non-assessable non-exempt income. The tax free component of a commutation is non-assessable non-exempt income regardless of age.

Table 19.3 sets out the taxation of the taxable component (taxed element).

Table 19.3 Taxation of taxable component

Age	Taxable component (taxed element)	Max tax rate
60 and above	Non-assessable non-exempt income	0%
Below 60	Assessable income	20%

Note: For all non-zero tax rates, Medicare levy may also apply.

Social security assessment

Under social security legislation, the assessment of a fixed term annuity depends on whether it is classified as:

1. Asset-tested (short term) – term five years or less (unless the term is less than the member's life expectancy).
2. Asset-tested (long term) – term six years or greater (unless the term is five years or less and the term equals or exceeds the member's life expectancy).
3. Asset-test exempt – complying life expectancy income stream (purchased pre-20 September 2007 or commenced with the rollover of a pre-20 September 2007 complying income stream). See section 19.2 Complying life expectancy income streams for more information. A non-complying fixed term annuity cannot be asset-test exempt.

1 Asset-tested (short term)

Fixed term annuities with a term of five years or less are generally classified as asset-tested (short term) income streams.

The only exception is where the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy. In this case, the income stream will be assessed as asset-tested (long term).

Assets test assessment

The asset value is determined using the following formula:

Purchase price - [((purchase price - RCV) ÷ relevant number) × term elapsed], where:

- **Purchase price** is the sum of the payments made to purchase the annuity less commutations.
- **RCV** (residual capital value) is the capital amount payable on the termination of the income stream.
- **Relevant number** is the term of the annuity.
- **Term elapsed** is the number of years that have elapsed since the annuity's commencement day. The number of years is rounded down to the nearest:
  - half-year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Bob purchased a five year annuity for $100,000. It has a residual capital value of $50,000. He receives monthly income payments from the annuity.

The assessable asset value of the annuity after 10 months from commencement is:

$100,000 - [($100,000 - $50,000) ÷ 5) × 0.5] = $95,000

Income test assessment

The income value is calculated by applying deeming to the assessable asset value.

Example

In the example above, the assessable asset value is $95,000.

Under the income test, deemed income is assessable as follows for a single pensioner:

($64,200 × 0.25%) + ($30,800 × 2.25%) = $853.50

2 Asset-tested (long term)

Fixed term annuities with a term of six years or greater are generally classified as asset-tested (long term) income streams.

In addition, where the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy, the income stream will be assessed as asset-tested (long term).

Example

Doris is 91 years old with a life expectancy of 4.69 years.

She purchased a five-year term annuity.

Ordinarily an income stream with a term of five years or less would be considered an asset-tested (short term) income stream. However, as Doris has a life expectancy of less than five years and the term of the income stream is greater than her life expectancy, the income stream is asset-tested (long term).

Assets test assessment

The asset value is determined using the following formula:

Purchase price - [((purchase price - RCV) ÷ relevant number) × term elapsed], where:

- **purchase price** is the sum of the payments paid to purchase the annuity less commutations
- **RCV,** residual capital value is the capital amount payable on the termination of the income stream
- **relevant number** is the term of the annuity
- **term elapsed** is the number of years that have elapsed since the annuity's commencement day. The number of years is rounded down to the nearest:
  - half-year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Gina purchased a 10 year annuity for $100,000. It has a residual capital value of $50,000. She receives monthly income payments from the annuity.

The assessable asset value of the annuity after 10 months from commencement is:

$100,000 - [($100,000 - $50,000) ÷ 10) × 0.5] = $97,500

Income test assessment

The income value is calculated by the following formula:

Annual payment - ((purchase price - RCV)/relevant number), where:

- **Annual payment** is gross amount of annuity payments paid in the year.
- **Purchase price** is the sum of the payments made to purchase the annuity less commutations.
- **RCV** (residual capital value) is the capital amount payable on the termination of the income stream.
- **Relevant number** is the term of the annuity.

Example

In the example above, Gina purchased a 10-year annuity for $100,000. It has a residual capital value of $50,000. The annual payment is $6,000.

Under the income test, assessable income is:

$6,000 - (($100,000 - $50,000)/10) = $1,000

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax within the fund.

Fixed term annuities

A member's transfer balance account is credited with the purchase price of any non-complying fixed term annuities. A non-complying fixed term annuity will not be a capped defined benefit income stream for transfer balance account purposes.

The purchase price counts towards a person's transfer balance account regardless of the product features chosen. For example, the purchase price is assessable irrespective of whether 0% or 100% residual capital value is chosen.

The purchase price of non-complying fixed term annuities purchased before 1 July 2017 is credited to the member's transfer balance account on 1 July 2017.

The purchase price of non-complying fixed term annuities purchased on or after 1 July 2017 is credited to the member's transfer balance account on the purchase date.

Transfer balance debits

Where a non-complying fixed term annuity is commuted, the amount of the commutation is a debit in the member's transfer balance account at the time the lump sum is received.

This includes the residual capital value of a fixed term annuity when it reaches the end of its term.

> **Example**
>
> Jane purchased a two year term annuity for $100,000 in July 2017. Residual capital value is 100%.
>
> Due to the purchase of the annuity, Jane's transfer balance account is credited $100,000 at July 2017.
>
> In July 2019, when the annuity reaches the end of its term, the residual capital value of $100,000 is payable. Jane's transfer balance account will be debited $100,000 in July 2019.

Estate planning

Fixed term annuities purchased with superannuation money are subject to similar restrictions and taxation as other superannuation income streams.

On death of the original beneficiary, a superannuation fixed term annuity can only be paid to a SIS dependant or the member's estate. A SIS dependant includes a spouse, child, financial dependant or someone in an interdependency relationship at the date of death. However, it is important to check with the annuity provider as they may have further restrictions.

A reversionary beneficiary can only be added at commencement of the policy. In the event of the original beneficiary's death, regular payments can continue to the reversionary beneficiary until the end of the annuity's term. Alternatively, the reversionary beneficiary may choose to receive the death benefit as a lump sum.

Where the estate is the beneficiary, they can only receive a death benefit lump sum in accordance with superannuation law.

Taxation of death benefits

When the original beneficiary of a fixed term annuity dies, the taxation implications depend on whether the beneficiary receives the death benefit as a lump sum or income stream.

Lump sum death benefit

Table 19.4 outlines the tax treatment of a lump sum death benefit.

Table 19.4 Taxation of lump sum death benefit

Component	Recipient	Taxation
Tax free	Death benefits dependant or non-death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Death benefits dependant	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Non-death benefits dependant	Assessable income: Maximum tax rate 15%

Note: For all non-zero tax rates, Medicare levy may also apply.

Note: Death benefits dependants include a spouse, child under 18, financial dependant or someone in an interdependency relationship.

Death benefit income stream

Table 19.5 outlines the tax treatment of a death benefit income stream.

Table 19.5 Taxation of death benefit income stream

Component	Age of deceased (at time of death)	Age of recipient	Tax treatment
Tax free	n/a	n/a	Non-assessable non-exempt income: No tax
Taxable component (taxed element)	Age 60 or above	Any age	Non-assessable non-exempt income: No tax
	Under age 60	Age 60 or above	Non-assessable non-exempt income: No tax
	Under age 60	Under age 60	Assessable income: Taxed at marginal tax rate less 15% tax offset

See section 19.2 Complying life expectancy income streams, for modifications to the tax treatment of death benefit income streams paid to a recipient age 60 or over (deceased was any age), or paid to a beneficiary under age 60 (deceased was age 60 or over), that are capped defined benefit income streams.

19.2 Complying life expectancy income streams

Prior to 20 September 2007, complying income streams could be purchased that provided favourable treatment for:

- Reasonable Benefit Limit (RBL) purposes – complying income streams provided access to a higher level of total superannuation benefits before any amount was taxed as excessive under the RBL taxation rules in place at that time. These taxation rules were abolished on 1 July 2007.
- Social security asset-test purposes – complying income streams are eligible for a 50% or 100% exemption under the social security assets test (see Social security assessment below for more information).

While members are generally no longer able to purchase complying income streams, they may still be eligible for the social security asset-test exemption if they hold complying income streams purchased prior to 20 September 2007. In addition, income streams purchased on or after 20 September 2007 may qualify as a complying income stream where they are commenced from the rollover of complying pre-20 September 2007 income streams. See the FirstTech Social Security Guide for more information.

There are three types of complying income streams – term allocated pensions, complying lifetime income streams and complying life expectancy income streams.

In this section, we focus on complying life expectancy income streams[92], which are fixed term annuities that comply with a number of restrictions including:

- limitations on term
- limitations on commutability, and
- no residual capital value.

For more information on complying lifetime income streams, see section 18 Lifetime income streams. For more information on term allocated pensions, see section 17 Term allocated pensions.

Five-year window to commute certain legacy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including complying life-expectancy income streams, to be fully commuted. For further information about fully commuting complying life-expectancy income streams during this window, see later in this section.

92 SIS Regulations – 1.05(9) or 1.06(7) and s 9B *Social Security Act 1991*.

Payment rules

To qualify as a complying life expectancy income stream, the income stream must comply with the following payment rules:[93]

Term (set at commencement)

If purchased before 20 September 2004:

- primary beneficiary's life expectancy where life expectancy is less than 15 years, or
- between 15 years and life expectancy, where life expectancy exceeds 15 years.

If purchased between 20 September 2004 and 31 December 2005

The primary beneficiary is permitted to select a term of a whole number of years, from:

- a minimum term equal to their life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the life expectancy of someone five years younger than the primary beneficiary, rounded up to the nearest whole number.
- Where the primary beneficiary's spouse is a reversionary beneficiary, and the spouse has a greater life expectancy than the primary beneficiary, the primary beneficiary can still select from the terms above, but may instead select a term of a whole number of years, from:
- a minimum term equal to the reversionary beneficiary's life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the life expectancy of someone five years younger than the reversionary beneficiary, rounded up to the nearest whole number.

The life expectancy factors used in this calculation are shown in Appendix 4.

If purchased on or after 1 January 2006

The primary beneficiary is permitted to select a term of a whole number of years, from:

- a minimum term equal to their life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the greater of:
  - the life expectancy of someone five years younger than the primary beneficiary, rounded up to the nearest whole number.
  - 100 minus the age the primary beneficiary reached at their most recent birthday (income stream providers were permitted, but not required, to offer this extended maximum term on income streams commencing on or after 1 January 2006).

93 SIS Regulations 1.05(9) or 1.06(7) and s 9B *Social Security Act 1991*.

Where the primary beneficiary's spouse is a reversionary beneficiary, and the spouse has a greater life expectancy than the primary beneficiary, the primary beneficiary can still select from the terms above, but may instead select a term of a whole number of years, from:

- a minimum term equal to the reversionary beneficiary's life expectancy, rounded up to the nearest whole number, to
- a maximum term equal to the greater of:
  - the life expectancy of someone five years younger than the reversionary beneficiary, rounded up to the nearest whole number.
  - 100 minus the age the reversionary beneficiary reached at their most recent birthday (income stream providers were permitted, but not required, to offer this extended maximum term on income streams commencing on or after 1 January 2006).

The life expectancy factors used in this calculation are shown in Appendix 4.

Example

John is age 68 and commences a complying life expectancy annuity on 1 February 2006. John can choose a term of between 16 years (his life expectancy in whole years rounded up) and 32 years (the difference between age 100 and his current age). Note that the 2000/02 life expectancy tables were used in 2006.

If John chose to commence a reversionary life expectancy annuity, he has the option of basing the term on his spouse's age. If John's spouse, Grace, is age 65 on 1 January 2006, John has the option of choosing a term between 22 years (Grace's life expectancy in whole years) and 35 years (the difference between age 100 and Grace's current age).

Other payment rules

- income payments must be paid at least annually and can only increase each year by no more than the greater of 5% or CPI plus 1%
- limited commutations – can only be commuted:
  - where fully commuted during a five-year window commencing on 7 December 2024 (see 'Five-year window to fully commute complying life-expectancy income streams' below)
  - on the death of the primary beneficiary, where payment is made to the reversionary beneficiary, or (if no reversionary beneficiary) to the primary beneficiary's estate; or on the death of the reversionary beneficiary where payment is made to another reversionary beneficiary or (if no other reversionary beneficiary) to the reversionary beneficiary's estate
    - if the primary beneficiary has (where permitted) elected to have a term calculated with reference to a reversionary spouse's life expectancy/age, the life expectancy income stream cannot be commuted until the death of both the primary and reversionary beneficiary
  - within six months of commencement (provided that it was not funded from the commutation of another complying income stream)
  - to purchase another complying income stream
  - to pay a super contributions surcharge liability
  - to give effect to an entitlement of a non-member spouse under a family law payment split
  - for a release authority
  - to comply with a commutation authority issued for an excess transfer balance.

Five-year window to fully commute complying life-expectancy income streams

During a five-year window commencing on 7 December 2024, the SIS Regulations allow certain otherwise non-commutable legacy income streams, including complying life-expectancy income streams, to be fully commuted (partial commutations are not permitted). This commutation option is voluntary for members.

Where a complying life-expectancy income stream is fully commuted within this five-year window, a member may then use the proceeds for one (or a combination of) the following:

- Commencing a more flexible income stream such as an account based pension (subject to their transfer balance cap).
- Retaining it in accumulation phase (provided the original income stream was not a death benefit income stream).
- Withdrawing it as a lump sum.

Depending on a client's circumstances, fully commuting a complying life-expectancy income stream under this option may have a range of potentially significant social security, tax and transfer balance cap impacts. It would also be important to weigh up the amount of any full commutation available from the income stream against the income stream payments received from it. For further information about this commutation option and these impacts, see section 14.2. For information about the commutation of complying life-expectancy income streams in an SMSF, see the FirstTech SMSF guide.

Advisers should also confirm with the client's income stream product provider whether there are any additional restrictions in the fund's governing rules impacting the ability to fully commute under this option.

Taxation of annuity payments

Complying life expectancy income streams are subject to the same tax treatment as other superannuation pensions. For example, where the member is age 60 or over, annuity payments are non-assessable non-exempt income.

Table 19.6 sets out the taxation of annuity payments, where the annuity is not a disability super benefit income stream.

Table 19.6 Taxation of annuity payments

Age	Tax free component	Taxable component (taxed element)
60 and above	Tax-free	Non-assessable non-exempt income: No tax
Below 60		Assessable income: taxed at marginal tax rate

However, complying life expectancy income streams that were purchased before 1 July 2017 qualify as capped defined benefit income streams, which may be subject to additional taxation where annuity payments, including the tax free component, exceed the defined benefit income cap (currently $125,000). See section 22.7 for more information on the taxation of capped defined benefit income streams.

Social security assessment

Complying life expectancy income streams generally qualify for a 50% or 100% exemption under the social security assets test.

Complying life expectancy income streams could be purchased prior to 20 September 2007. On or after that date, only complying life expectancy income streams purchased with the rollover of an existing complying lifetime, life expectancy or term allocated pension qualify for an assets test exemption. Refer to the FirstTech Social Security Guide for more information.

Assets test assessment

If purchased prior to 20 September 2004, complying life expectancy income streams qualified for a 100% assets test exemption.

If purchased on or after 20 September 2004 and before 20 September 2007, they qualified for a 50% assets test exemption. In this case, the asset value is determined using the following formula:

50% × (purchase price - (purchase price ÷ relevant number × term elapsed)), where:

- **Purchase price** is the sum of the payments paid to purchase the annuity.
- **Relevant number** is the term of the annuity.
- **Term elapsed** is the number of years that have elapsed since the annuity's commencement day. The number of years is rounded down to the nearest:
  - half-year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Jenny purchased a 20 year, complying life expectancy income stream for $100,000. As she purchased the annuity in 2006, it qualified for a 50% asset-test exemption. She receives monthly income payments from the annuity.

The assessable asset value of the annuity after 19 years is:

50% × ($100,000 - ($100,000/20 × 19)) = $2,500

Income test assessment

The income value is calculated by the following formula:

Annual payment - (purchase price/relevant number), where:

- **Annual payment** is gross amount of annuity payments paid in the year.
- **Purchase price** is the sum of the payments made to purchase the annuity.
- **Relevant number** is the term of the annuity.

Example

In the example above, Jenny purchased a 20-year complying life expectancy annuity for $100,000. The annual payment is $6,000.

Under the income test, assessable income is:

$6,000 - ($100,000/20) = $1,000

Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax within the fund.

Complying life expectancy income streams that meet the standards of SIS Regulation 1.06(7) or 1.05(9), and were purchased before 1 July 2017, meet the definition of a capped defined benefit income stream for transfer balance cap purposes.

Complying life expectancy income streams purchased before 1 July 2017 are credited to the member's transfer balance account on 1 July 2017. As they are capped defined benefit income streams, the credit is determined by their special value as at 30 June 2017.

The special value is: **Annual entitlement × term remaining**, where:

- **Annual entitlement** is calculated by using the gross first payment the individual is due to receive after the time of valuation and annualising this figure as follows: Annual entitlement = first payment/days in period × 365
- **Remaining term** is the number of years (rounded up to the nearest whole number) remaining on the term of the product.

Example

Jenny purchased a 20-year, complying life expectancy income stream for $100,000 in October 2006. She receives a monthly payment from the annuity of $500 in July 2017.

For transfer balance cap credit purposes, the annuity is valued at:

Annual entitlement × term remaining: $5,887 × 10 = $58,870, where:

- **annual entitlement** = $500/31 × 365 = $5,887
- **term remaining** = 10 years

For information about the transfer balance account debit that applies where a complying life expectancy income stream (which is a capped defined benefit income stream) is commuted, refer to section 21.8.

Estate planning

On the death of the primary beneficiary, if a reversionary partner has been specified, regular payments continue to the reversionary partner until the end of the annuity's term.

If a reversionary beneficiary has not been nominated, a lump sum death benefit can only be paid to a SIS dependant or the member's estate.

Taxation of death benefits

When the original beneficiary of a complying life expectancy income stream dies, the taxation implications depend on whether the beneficiary receives the death benefit as a lump sum or income stream.

Where the beneficiary receives a lump sum death benefit:

- any tax free component is received tax-free
- any taxable component (taxed element) is received tax-free when received by a death benefits dependant for tax purposes. This includes a spouse, child under 18, financial dependant or someone in an interdependency relationship
- any taxable component (taxed element) that is not received by a death benefits dependant for tax purposes, is subject to a maximum 15% rate of tax, plus Medicare levy where applicable.

Where the beneficiary receives a death benefit pension:

- any tax free component is received tax-free
- any taxable component (taxed element) where the deceased was age 60 or above at time of death will be received tax-free
- any taxable component (taxed element) where the deceased was under age 60 and the beneficiary was age 60 or above will be received tax-free
- any taxable component (taxed element) where the deceased was under age 60 and the beneficiary was under age 60, will be taxed at their marginal tax rate less a 15% tax offset.

See section 22.7 for modifications to the tax treatment of death benefit income streams paid to a recipient age 60 or over (deceased was any age), or paid to a beneficiary under age 60 (deceased was age 60 or over), that are capped defined benefit income streams.

Transfer balance cap treatment of death benefits

Where a complying life expectancy income stream that is a capped defined benefit income stream reverts to a spouse following the death of the original recipient, the beneficiary's transfer balance account is credited 12 months after the original recipient's death. The credit will equal the special value of the income stream calculated at the time of death.

20 Taxation of superannuation income stream assets

Section 20 focuses on the modified tax treatment that applies to superannuation funds that hold assets supporting superannuation income streams.

For details about the taxation of superannuation funds generally, refer to section 6.

20.1 Outline of taxation of assets supporting superannuation income streams

Taxable investment income on assets within a complying superannuation fund is taxed at 15%.

However, an exception applies where there are retirement phase income streams being paid from the fund. Any investment income earned on assets supporting retirement phase income streams (that would otherwise be assessable income) is exempt income and as a result is excluded from the fund's taxable income. This effectively means that earnings on assets supporting retirement phase income streams are tax-free.

No exception applies to assets supporting superannuation income streams that are not in the retirement phase (e.g. some TTR income streams and some deferred income streams). Earnings on those assets are taxed in the same way as assets supporting accumulation interests. Refer to section 6 for further information about this tax treatment.

For information about when an income stream is, or is not, in retirement phase, see section 21.6.

20.2 Calculation of exempt income relating to retirement phase income streams

A complying superannuation fund can generally choose between two methods when calculating the amount of income that is exempt from tax. These are generally referred to as the segregated assets method and unsegregated assets method.

A brief summary of each method is as follows; however, for further details about these two methods, refer to the FirstTech SMSF Guide.

Segregated assets method

Under the segregated assets method, any of a complying superannuation fund's ordinary or statutory income derived from segregated current pension assets is exempt income.

An asset is a segregated current pension asset where it is invested, held or otherwise dealt with solely to enable the fund to discharge its liabilities in relation to a retirement phase superannuation income streams.

The vast majority of large APRA-regulated funds use the segregated assets method to determine their exempt income.

Unsegregated assets method

Under the unsegregated assets method (also known as the proportionate method), a proportion of the fund's total income which would otherwise be assessable, is exempt income.

The proportion is calculated based on the fund's total income for the income year (excluding assessable contributions), its average liabilities for retirement phase income streams during the income year and its average total superannuation liabilities during the income year.

SMSFs that hold both retirement phase income stream interests as well as other accumulation interests generally elect to apply the unsegregated method due to its comparative administrative simplicity.

Certain SMSFs must use unsegregated assets method

From the 2017–18 income year, if a SMSF has at least one retirement phase income stream at any time of the year and:

- a fund member has a total superannuation balance over $1.6 million immediately before the start of the relevant income year
- that member is receiving a retirement phase income stream from any source including the SMSF or another super provider immediately before the start of the relevant income year

the SMSF will need to use the unsegregated method to calculate exempt income for all members for the entire income year.

From the 2021–22 year, an exception applies where all of the fund's assets would otherwise be segregated current pension assets for an entire income year (for example if all of the fund's assets for the entire income year were solely supporting the payment of retirement phase income streams that are account based pensions, allocated pensions and / or term allocated pensions). In this case, all of the fund's assets will be segregated current pension assets for all of that year.

20.3 When a superannuation income stream starts and ends

Tax Ruling TR 2013/5 provides the ATO's view of when a superannuation income stream (such as an account based pension) starts and ends for tax purposes.

Identifying a point in time when a superannuation income stream starts and ends is important to determine:

- the time and value of credits and debits that count towards the member's transfer balance cap (retirement phase income streams only)
- whether income earned on the fund's assets (including capital gains) is exempt or taxable to the fund (retirement phase income streams only)
- whether a member's tax components should be calculated as if the member is in accumulation phase or pension phase
- whether benefits received by the member are superannuation income stream benefits or superannuation lump sums.

A summary of the issues dealt with by this ruling follows. The ruling has more direct impact for SMSF clients. Advisers should therefore refer to the FirstTech SMSF Guide for further detail about the impact of TR 2013/5.

When a super income stream starts

A superannuation income stream cannot commence until all capital supporting the income stream has been added to the relevant super interest. The commencement date must be determined with reference to the terms and conditions of the income stream as agreed between the member and the trustee. The commencement date may occur before the date of the first payment, but cannot be before the member's request or application.

Accordingly, a pension can only commence after the member has made the request and the trustee has consented to the request and has all of the assets that will be used to commence the pension. As a result, it will not be possible to have a pension commencement date earlier than when the request was made.

When a super income stream ends

A super income stream ceases where there is no longer a member who is entitled, or a dependant beneficiary of a member who is automatically entitled, to be paid a superannuation income stream.

This includes:

- Where an income stream fails to satisfy the requirements for a superannuation pension in the SIS Regulations. For example, an account based pension would have ceased at the beginning of a financial year where the pension failed to satisfy the requirements for an account based pension at any time during the year. For further information about the tax and transfer balance cap consequences of an account based pension failing the pension standards in an SMSF, see section 5 of the FirstTech SMSF guide.
- Where the capital supporting the income stream has been exhausted.
- Where the member has made a request to fully commute the income stream and that request has taken effect. The request must take effect before the time the lump sum is paid. Note, the ruling also states that a pension will not cease in relation to a partial commutation.
- Upon the death of a member receiving a superannuation income stream, unless a dependent beneficiary is automatically entitled to receive an income stream on the death of the member (e.g. an automatic reversionary pension).

Exception where retirement phase income stream ceases due to death

Where a member dies while receiving a retirement phase income stream, and that income stream then automatically reverts to a reversionary beneficiary (or a retirement phase income stream must continue to be paid to a beneficiary under a binding death nomination), it will not cease. This allows the earnings tax exemption to continue at all times during the transition from paying the original pensioner to paying the reversionary beneficiary, and payments from the income stream will maintain the same tax free proportion in the beneficiary's hands.

In other situations (i.e. non-reversionary retirement phase income streams), where a lump sum death benefit is paid or a new retirement phase income stream is commenced, TR 2013/5 states that the original income stream will cease at the time of the recipient's death.

However, the regulations[94] allow the non-reversionary retirement phase income stream to continue to be treated as a retirement phase income stream for tax purposes after the date of death. This treatment continues until the date a lump sum death benefit is paid or a new retirement phase income stream is commenced.

This exemption applies only to the member's balance at the date of death, plus investment earnings that accrue on this balance. Any insurance proceeds added to the member's balance after death do not qualify for this exemption.

Therefore, care should be taken where amounts other than investment earnings are added to the original superannuation interest, such as life insurance proceeds. These amounts will not be treated as a retirement phase income stream for calculating exempt income purposes.

The regulations also allow funds to calculate the tax free and taxable component of such super balances differently. For more information, see section 23.11.

94 *Income Tax Assessment (1997 Act) Regulations 2021*, reg 307-70.02.

21 Transfer balance cap

From 1 July 2017, a transfer balance cap applies to limit the amount of superannuation a member can transfer from accumulation phase to retirement phase. Retirement phase is when the earnings on assets supporting the income stream are not subject to tax within the fund. Not all income streams are retirement phase income streams. See section 21.6 for more information on retirement phase income streams.

Broadly, the transfer balance cap operates by measuring the value of a member's existing retirement phase income streams at 30 June 2017, as well as any new income streams commenced on or after 1 July 2017, against their transfer balance cap.

An important key to understanding the transfer balance cap is that it measures net transfers to retirement phase (i.e. the purchase of retirement phase income streams and commutations from retirement phase income streams). It does not include earnings, losses or income stream benefits that occur within a retirement phase income stream.

Where a member exceeds their transfer balance cap, they are generally subject to tax on a notional earnings amount, and are required to commute the excess plus a notional earnings amount out of the retirement phase. The commutation may be taken as cash or rolled back to accumulation (if the excess is not a death benefit income stream).

21.1 General transfer balance cap

The general transfer balance cap is shown in Table 21.1

Table 21.1 General transfer balance cap

Financial year	2025–26	2024–25	2023–24	2022–23
General transfer balance cap	$2 million	$1.9 million	$1.9 million	$1.7 million

The general transfer balance cap commenced at $1.6 million in 2017--18 and is subject to annual indexation in line with increases in the Consumer Price Index (CPI), but will only increase in increments of $100,000. It increased from $1.9 million to $2 million on 1 July 2025.

Other impacts of increase in general transfer balance cap

Any increase in the general transfer balance cap also impacts a number of other superannuation thresholds and concessions, including:

- Proportional indexation of a member's personal transfer balance cap (see below).
- The total superannuation balance thresholds that determine a member's non-concessional contributions cap, including under the bring-forward rule (see section 3.2).
- The defined benefit income cap (see section 22.7).
- Access to the Government co-contribution (see section 3.5).
- Access to the spouse contribution tax offset (see section 3.5).

21.2 Personal transfer balance cap

Members have their own personal transfer balance cap, which determines the amount they can transfer into retirement phase income streams.

A member's initial personal transfer balance cap is equal to the general transfer balance cap in the year they first have a transfer balance account. A member's personal transfer balance cap may then differ from the general transfer balance cap in future financial years due to proportional indexation – i.e. their personal cap only receiving a proportion of any indexation that applies to the general transfer balance cap.

There have already been three increases in the general transfer balance cap due to indexation (2021–22, 2023–24 and 2025–26) which may see proportional indexation apply to a member's personal transfer balance cap.

As a result, depending on their situation, a member's personal transfer balance cap in 2025–26 may be:

- $2 million (if their first retirement phase income stream is commenced or received in 2025--26).
- Between $1.6 million and $2 million as a result of up to three rounds of proportional indexation (if one or more retirement phase income streams commenced prior to 1 July 2025).
- $1.6 million (if personal transfer balance cap fully used at any point before 1 July 2021).

Proportional indexation of the personal transfer balance cap

Where a member already has a personal transfer balance cap prior to a financial year in which the general transfer balance cap increases, the member will only receive part of the indexation that applies to the general transfer balance cap based on any unused portion of their personal transfer balance cap. This is known as proportional indexation.

Proportional indexation is calculated with reference to the highest transfer balance account value a member has ever previously had – even if their transfer balance account has subsequently reduced.[95]

Where proportional indexation applies, a member's new personal transfer balance cap for a financial year (in which the general transfer balance cap has increased) is calculated using the steps in the following table:

Step 1:	**Highest transfer balance account value** Determine the member's highest transfer balance account value at the end of any day prior to the financial year.[96]
Step 2:	**Used cap percentage** Express their highest transfer balance account value (from Step 1) as a percentage of their personal transfer balance cap on the earliest day on which that highest transfer balance account value occurred, and round that percentage down to the nearest whole number.
Step 3:	**Unused cap percentage** Subtract the used cap percentage (from Step 2) from 100%.[97]
Step 4:	**Proportional increase** Multiply the increase in the general transfer balance cap for the financial year by the unused cap percentage (from Step 3).[98]
Step 5:	**New personal transfer balance cap** Increase the member's existing personal transfer balance cap (immediately prior to the financial year) by the proportional increase (from Step 4).

95 This means that a member cannot access a higher level of proportional indexation by triggering a transfer balance account debit (e.g. commuting an amount out of a retirement phase income stream).

96 Note: This includes any day in the past since the commencement of the transfer balance cap rules, not just since the last proportional indexation of the member's personal transfer balance cap.

97 In rare situations where a member's highest transfer balance account is negative, their unused cap percentage is taken to be 100%.

98 Due to the way the unused cap percentage is calculated, a member's personal transfer balance cap is always indexed in $1,000 increments.

Because the general transfer balance cap has now increased three times since its commencement in 2017–18 due to indexation, a member's personal transfer balance cap on 1 July 2025 may have now been subject to up to three rounds of proportional indexation depending on when they commenced their first retirement phase income stream. An explanation of the steps to calculate a member's 1 July 2025 personal transfer balance cap in these situations is below.

FirstTech comment: Cap information available via myGov

A member can find information about their personal transfer balance cap in ATO online services via myGov.

However, it is important to note that the information may not be completely up to date due to delays in super fund reporting transfer balance cap events – particularly in the case of members with SMSFs.

First retirement phase income stream commenced between 1 July 2023 and 30 June 2025

Where a member commenced their first retirement phase income stream on or after 1 July 2023, but no later than 30 June 2025, their initial personal transfer balance cap was $1.9 million. Proportional indexation needs to be applied once using the steps above, to determine the member's personal transfer balance cap for 2025–26.

First retirement phase income stream commenced between 1 July 2021 and 30 June 2023

Where a member commenced their first retirement phase income stream between 1 July 2021 and 30 June 2023, their initial personal transfer balance cap was $1.7 million. Proportional indexation needs to be applied twice (for the 2023–24 and 2025–26 years) using the steps above each time, to determine the member's personal transfer balance cap for 2025–26.

Depending on a member's situation, the second proportional indexation calculation may involve the same or a different unused cap percentage, compared with the first proportional indexation calculation (see below).

First retirement phase income stream commenced before 1 July 2021

Where a member commenced their first retirement phase income stream before 1 July 2021, their initial personal transfer balance cap was $1.6 million. Proportional indexation needs to be applied three times (for the 2021–22, 2023–24 and 2025–26 years) using the steps above each time, to determine the member's personal transfer balance cap for 2025–26.

Depending on a member's situation, the second and third proportional indexation calculation may involve the same or a different unused cap percentage, compared with the first proportional indexation calculation (see below).

Whether same or different unused cap percentage applies in subsequent round of indexation

Where a subsequent round of proportional indexation applies to a member's personal transfer balance cap, the same unused cap percentage (i.e. percentage of proportional indexation) will apply as the previous round of indexation where the member has not had a new highest ever transfer balance account value after the previous increase.

For example, this would occur where a member commenced their first retirement phase income stream between 1 July 2021 and 30 June 2023 and has not commenced any further retirement phase income streams (or had any other transfer balance account credits) between 1 July 2023 and 30 June 2025. In this case their percentage of proportional indexation on 1 July 2023 and 1 July 2025 would be the same.

Another example would be where a member commenced their first retirement phase income stream between 1 July 2021 and 30 June 2023, but then commuted and rolled over to commence a new retirement phase income stream between 1 July 2023 and 30 June 2025. Provided that the TBA debit and credit are equal, the member would not trigger a new highest ever transfer balance account value and their percentage of proportional indexation on 1 July 2023 and 1 July 2025 would be the same.

In contrast, where a subsequent round of proportional indexation applies to a member's personal transfer balance cap, a different (almost always lower) unused cap percentage (i.e. percentage of proportional indexation) will apply compared to the previous round of indexation where the member has had a new highest transfer balance account value after the previous increase.

For example, this will occur where a member commenced an account based pension between 1 July 2021 and 30 June 2023 and then used their accumulation super savings to commence a new account based pension between 1 July 2023 and 30 June 2025. In this case, the member will have a new highest ever transfer balance account value when their second account based pension commences, and as a result their percentage of proportional indexation on 1 July 2025 will likely be lower than it was on 1 July 2023.

Highest transfer balance account used

As a member's highest transfer balance account value (at the end of any day prior to the time of the general TBC increasing due to indexation) is used for proportional indexation, a subsequent reduction in the member's transfer balance account will not increase the proportional indexation that will apply to their personal transfer balance cap. This prevents members from being able to rollover or commute amounts from retirement phase income streams and increase the indexation of their personal cap.

No indexation if personal cap fully used

As only a member's unused personal transfer balance is indexed, once a member fully utilises their personal transfer balance cap at any time (regardless of whether they make subsequent commutations in the future), they will not be eligible for any future proportional indexation due to an increase in the general transfer balance cap.

While the proportional indexation calculation still technically applies to such a member, their unused cap percentage will always be Nil and therefore their personal transfer balance cap cannot increase.

21.3 Modified transfer balance cap rules for death benefits

Transfer balance cap for child beneficiaries

Where an eligible child receives a death benefit income stream from their parent, a modified transfer balance cap rule applies.

A minor child's transfer balance account also generally ceases by the age of 25 when they are forced to commute their death benefit income streams. A new transfer balance account will be available to them when they commence their own retirement phase income stream in the future. This ensures that the child's personal transfer balance cap at retirement is not impacted by the receipt of the death benefit income stream from their parent.

See section 23.7 for more information.

Transfer balance cap for adult beneficiaries

From 1 July 2017, a surviving spouse or other eligible dependant (other than children) in receipt of a superannuation death benefit pension will have the value of that death benefit pension added to his or her transfer balance account.

Essentially what this means is that a surviving spouse does not inherit his or her spouse's transfer balance cap.

There are also modifications to the timing of transfer balance credits and the valuation timing of death benefit income streams, depending on the date of death and whether the death benefit income stream is reversionary or not.

See section 23.7 for more information.

21.4 Transfer balance account

The transfer balance account tracks the net amounts transferred to retirement phase income streams. The member's transfer balance account is then measured against the member's personal transfer balance cap, to determine whether the member has exceeded their personal cap or is able to commence further retirement phase income streams.

A transfer balance account is created for a member by the ATO at the earliest of:

- 1 July 2017, if a member was in receipt of a retirement phase income stream on 30 June 2017
- the commencement day of a member's first retirement phase income stream on or after 1 July 2017
- the day an income stream enters retirement phase for the first time on or after 1 July 2017. A transition to retirement income stream will enter retirement phase at the earlier of the beneficiary notifying the trustee of meeting a specified condition of release, or on the beneficiary's 65th birthday. See section 21.6 for more information on retirement phase income streams.

A transfer balance account ceases upon the member's death.

A minor child's transfer balance account, created upon receipt of a death benefit income stream from a deceased parent, generally ceases at the age of 25 when they are forced to commute their death benefit income stream, unless the child has a prescribed disability.

The transfer balance account works like a general ledger, with amounts being credited and debited depending on a member's circumstances. Broadly, amounts are credited to the transfer balance account when retirement phase income streams are commenced, and amounts are debited from the transfer balance account when amounts are commuted and withdrawn or rolled over from retirement phase income streams.

Importantly, the value of a credit or debit does not change over time with indexation or market movements.

Transfer balance account reporting

APRA-regulated super funds report most transfer balance account credits and debits (retirement phase events) to the ATO via an event-based reporting system – the Member Account Transaction Service (MATS). MATS is also used by APRA-regulated funds to report contributions made for members. Retirement phase events must be reported through MATS within 10 business days of the event.

An exception applies where an APRA-regulated fund receives a commutation authority from the ATO. The fund's response to a commutation authority, including reporting of a commutation (a transfer balance account debit) must be reported via a Transfer Balance Account Report (TBAR) within 60 days of the issue date of the commutation authority.

Different reporting rules apply for SMSF trustees reporting transfer balance account credits and debits, with reporting generally required 28 days after the end of quarter in which the credit or debit occurred. See section 3.6 of the FirstTech SMSF Guide for further information.

The following transfer balance account events are not reported via super fund trustees and are instead reported to the ATO by the member using a Transfer Balance Event Notification (TBEN) form:

- family law payment splits
- transfer balance account debits associated with fraud, dishonesty or bankruptcy
- structured settlement contributions made prior to 1 July 2007.

21.5 Transfer balance account credits

Generally, a credit arises in a member's transfer balance account when the member commences a retirement phase income stream.

Table 21.2 shows the amounts that are credited to a member's transfer balance account.

Table 21.2 Transfer balance account credits

Type of income stream	Examples of income streams	Amount of credit	Date of credit
Retirement phase income streams commenced before 1 July 2017			
Account based income streams (other than market linked/term allocated income streams)	• account based income streams • allocated pensions • allocated annuities • transition to retirement income streams where, prior to 1 July 2017, the member was age 65 or over, or the member had notified the trustee that they were retired, permanently incapacitated or terminally ill	Account balance at 30 June 2017	1 July 2017

Type of income stream	Examples of income streams	Amount of credit	Date of credit
Capped defined benefit income streams	• complying[99] lifetime income streams • non-commutable lifetime defined benefit pensions that comply with SIS Regulation 1.06(2) • lifetime annuities with no commutation rights at commencement of the policy[100] • complying[99] life expectancy income streams • complying[99] market linked/term allocated income streams • other income streams prescribed by legislation to be capped defined benefit income streams[101]	Special value[102] at 30 June 2017	1 July 2017
Non-account based, non-capped defined benefit income streams	• flexi pensions • non-complying lifetime income streams • non-complying life expectancy income streams • commutable fixed term annuities	Value[103] at 30 June 2017	1 July 2017

99 Purchased complying lifetime, life expectancy and market linked income streams are income streams that commenced prior to 20 September 2007 that may continue to receive either 50% or 100% asset-test exemption for social security purposes (depending on the start date). By definition, complying pensions had to meet the same SIS pension and annuity standards that are required for capped defined benefit income streams.

There may be some purchased lifetime, life expectancy and market linked income streams that are not complying for social security purposes, but still meet the SIS pension and annuity standards required for capped defined benefit income streams. Among other requirements, capped defined benefit income streams have lifetime terms, limited commutation rights and no residual capital value (RCV).

100 Capped defined benefit income streams generally have no commutation rights at commencement of the policy, and no RCV. Lifetime annuities that are not complying for social security purposes, but meet all the requirements of SIS Regulation 1.05(2) will be capped defined benefit income streams.

101 At the time of writing, there are two categories of lifetime pension that have been prescribed to be capped defined benefit income streams. These are:

- lifetime pensions that were in existence at 29 June 2007 and meet the SIS standards in SIS Regulation 1.06(2), but do not meet the rules regarding commutations and the variation and cessation of pension payments to a child of a deceased beneficiary.
- lifetime pensions that commenced at any time and are provided on the grounds of invalidity under a public sector superannuation scheme which meet SIS Regulation 1.06(2), but do not meet certain rules regarding variation, suspension or cessation of pension payments.

102 The special value of a capped defined benefit income stream is: Complying lifetime income streams (annual entitlement × 16). Complying life expectancy or term allocated pensions (annual entitlement × remaining term).

103 The value of a superannuation interest, for transfer balance account credit purposes, which is not a capped defined benefit income stream or account-based income stream, is determined by the regulations. In most cases this amount is the purchase price.

Type of income stream	Examples of income streams	Amount of credit	Date of credit
Reversionary death benefit income streams	• reversionary account based income streams • reversionary transition to retirement income streams • reversionary lifetime pensions • reversionary flexi-pensions	Reversionary pensions that reverted prior to 1 July 2017 are valued at 30 June 2017. The value will be: • account balance of account based incomes streams • special value[102] of capped defined benefit income streams • value[103] of non-account based, non-capped defined benefit income streams	If the deceased died in 2016–17: • 12 months from date of death If the deceased died prior to 2016–17: • 1 July 2017
Retirement phase income streams commenced on or after 1 July 2017			
Account based income streams	• account based income streams • allocated pensions • allocated annuities • market linked income streams/term allocated pensions	Purchase price	Date of commencement[104]
Transition to retirement income streams entering the retirement phase[105]	• transition to retirement income streams	Account balance on starting day (starting day is the day the income stream is first in the retirement phase[106])	Date the income stream is first in the retirement phase

104 A delayed credit date may apply in the case of a market-linked income stream / term allocated pension. See section 21.8 for further information.

105 For TTRs to be in the retirement phase, the trustee must be notified if the member has met any of the following conditions of release: retirement, permanent incapacity or terminal medical condition. If the fund is not notified of the condition of release, the TTR is not in the retirement phase. A TTR is automatically in the retirement phase from the member's 65th birthday.

106 Includes transition to retirement income streams, where the original income stream may have commenced prior to 1 July 2017, but becomes a retirement phase income stream of the current recipient for the first time on or after 1 July 2017.

Type of income stream	Examples of income streams	Amount of credit	Date of credit
Capped defined benefit income streams	• complying lifetime pensions • non-commutable lifetime defined benefit pensions that comply with SIS Regulation 1.06(2) • other income streams prescribed by legislation to be capped defined benefit income streams[101] • Income stream commenced on or after 1 July 2017 due to rollover of an original capped defined benefit income stream as part of a successor fund transfer (see section 21.8)	Special value[102] at starting day	Date of commencement
Deferred superannuation income streams entering the retirement phase	Deferred annuities	The value is the greater of: • the sum of each amount of consideration paid for the interest and associated earnings calculated in accordance with the regulations • the total amount of superannuation benefits that would become payable if the individual voluntarily caused the interest to cease	Date becomes a retirement phase income stream, i.e. member has met a condition of release[107]
Non-account based, non-capped defined benefit income streams	• flexi pensions • all lifetime annuities (commutable or non-commutable) • all life expectancy annuities • commutable defined benefit pensions • commutable fixed term annuities	Value[103] at starting day	Date of commencement

107 Relevant conditions of release for deferred superannuation income streams to be in the retirement phase are retirement, permanent incapacity, terminal medical condition and attaining age 65.

Type of income stream	Examples of income streams	Amount of credit	Date of credit
Reversionary death benefit income streams that reverted on or after 1 July 2017	• reversionary account based income streams • reversionary transition to retirement income streams • reversionary lifetime pension • reversionary life expectancy income streams • reversionary market linked income streams	Reversionary pensions where the deceased died on or after 1 July 2017 are valued at date of death. The value will be: • account balance of account based income streams • special value[102] of capped defined benefit income streams • value[103] of non-account based, non-capped defined benefit income streams	12 months after the date of death

Type of credit	Examples	Amount of credit	Date of credit
Other transfer balance credits			
Notional earnings	Applies when the member's transfer balance account exceeds their personal cap. (Not calculated if member has only capped defined benefit income streams)	Excess balance × GIC rate[108] compounded daily for number of days in breach up to the date of determination	Daily
Repayments of LRBAs from accumulation phase assets[109]	Using money from a segregated accumulation phase bank account to pay down a loan secured against a property that is in the segregated pension asset pool (applies to LRBA entered into on after 1 July 2017)	Amount by which a member's retirement phase interest is increased	Date of repayment
Consideration paid for deferred income streams after entering retirement phase	An instalment is paid for a deferred income stream after it has entered retirement phase	The amount of consideration paid	The time the consideration is paid

108 General Interest Charge (GIC) rate.

109 A transfer balance credit will also arise where repayments are made to a limited recourse borrowing arrangement, arising under contracts entered into on or after 1 July 2017, and where the asset and loan involved in the LRBA arrangement are supporting (including partially) a member's retirement phase income stream interest, but the repayments are sourced from assets that do not support the same income stream. These credits to a member's transfer balance account capture the value that is shifted from the accumulation phase to the assets supporting a retirement phase income stream. For example, if a member in a segregated fund is using SG contributions to their accumulation account to fund the LRBA repayments in their pension account, these repayments will trigger transfer balance credits in the member's transfer balance account.

21.6 Value of retirement phase income streams

What is a retirement phase income stream?

From 1 July 2017, retirement phase income streams include all superannuation income streams, except those listed below:

- Transition to retirement income streams (and older non-commutable allocated income streams) where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release. If the recipient is under age 65 and has satisfied the retirement, terminal medical condition or permanent incapacity condition of release, the income stream will only be in the retirement phase if the recipient has notified the trustee of the income stream provider that they have satisfied a condition of release. However, where a transition to retirement income stream has reverted to a reversionary beneficiary, it will always be a retirement phase income stream.
- Deferred superannuation income streams where the recipient has not satisfied the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release. A deferred superannuation income stream is in the retirement phase if the recipient has met an eligible condition of release regardless of whether income stream payments are currently being paid.
- Income streams where a commutation authority has been issued in relation to an excess transfer balance that a trustee has failed to comply with within the required 60-day period.

If an income stream is in the list of exclusions above, it is considered to be in the accumulation phase of superannuation for the purposes of the earnings tax exemption and does not count against the transfer balance cap. However, it is still considered an income stream for other purposes, including the proportioning of tax components and the taxation of payments from the income stream.

The value of a retirement phase income stream for the purposes of the transfer balance account depends on the type of income stream. The valuation of retirement phase income streams falls into one of four categories detailed below:

- account based income streams
- capped defined benefit income streams
- deferred income streams
- other retirement phase income streams (that are not any of the above).

Account based income streams – transfer balance account value

The value of an account based income stream for transfer balance account purposes is:

- for account based retirement phase income streams commenced prior to 1 July 2017 (excluding term allocated pensions): the account balance at 30 June 2017
- for term allocated pensions commenced prior to 1 July 2017: the special value at 30 June 2017 (see capped defined benefit income streams below)
- for account based retirement phase income streams commenced on or after 1 July 2017 (including TAPs): the purchase price
- for account based income streams that are not in the retirement phase at commencement (e.g. transition to retirement income streams):
  - if commenced prior to 1 July 2017, and in the retirement phase at 1 July 2017: the 30 June 2017 account balance
  - if commenced prior to 1 July 2017, and the income stream enters the retirement phase on or after 1 July 2017: the account balance of the income stream on the day it enters the retirement phase for the first time
  - if commenced on or after 1 July 2017: the account balance on the day the income stream first enters the retirement phase.

Capped defined benefit income streams – transfer balance account value

Special valuation rules, for transfer balance account purposes, apply to certain non-commutable income streams known as capped defined benefit income streams.

See section 21.8 for more information on capped defined benefit income streams, including the value of transfer balance account credits that apply for these income streams.

Deferred superannuation income streams – transfer balance account value

Deferred superannuation income streams were legislated as part of the innovative retirement income products super reform from 1 July 2017. An example of a deferred superannuation income stream is a deferred annuity, which may be purchased at age 60, but not commence paying an income stream until age 80.

The value of a deferred superannuation income stream will count as a credit for transfer balance account purposes when the deferred superannuation income stream becomes a retirement phase income stream. This occurs when the member has met the retirement, reaching age 65, terminal medical condition or permanent incapacity condition of release. A deferred superannuation income stream is in the retirement phase if the recipient has met an eligible condition of release regardless of whether income stream payments are currently being paid.

The value at a particular time of an individual's superannuation interest that supports a deferred superannuation income stream is the greater of:

- the sum of each amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings, as worked out under the income tax regulations, and
- the total amount of the superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time.

Where a deferred income stream is paid for by instalments, an additional transfer balance account credit will also arise where any instalments are paid after the time the income stream enters retirement phase (as these instalments have not already been counted in the original credit value of the income stream). The value of the credit is the amount of consideration paid and it arises at the time the consideration is paid.

See section 18.4 for more information on deferred superannuation income streams.

Other retirement phase income streams – transfer balance account value

The value of a retirement phase income stream that is not:

- account based, or
- a deferred superannuation income stream, or
- a capped defined benefit income stream

depends on whether it is possible to identify a lump sum equivalent for the income stream at valuation. Table 21.3 sets out the value of these income streams for transfer balance cap purposes:

Table 21.3 Other retirement phase income streams

Examples	Value for transfer balance cap
Income streams commenced prior to 1 July 2017	
• Non-complying annuities (lifetime and fixed term) • Flexi-pensions • Annuities where the purchase price is not wholly converted into annuity income	Value determined by the regulations . In most cases, this value is the purchase price.
All other income streams	Total amount of all the superannuation lump sums that could be payable from the interest at 30 June 2017
Income streams commenced on or after 1 July 2017	
Purchased income streams (e.g. a commutable lifetime annuity or term/life expectancy income stream)	Purchase price
Non-purchased income streams (e.g. a commutable defined benefit pension)	Value determined by the regulations

21.7 Transfer balance account debits

Generally, a debit arises in a member's transfer balance account when the member commutes a retirement phase income stream.

Table 21.4 shows the amounts that are debited from a member's transfer balance account.

Table 21.4 Transfer balance account debits

Type of debit	Amount of debit	Date of debit
Commutation of retirement phase income stream	Value of commutation[110]	Date superannuation lump sum received[111]
Structured settlement contribution	Amount of contribution (note, an alternative debit value may apply under transitional rules – see below)	The later of: date contribution is made date transfer balance account created
Loss due to fraud or dishonesty or certain payments under the *Bankruptcy Act 1966*	Amount of loss or payment	At time of loss or payment
Retirement phase income stream subject to a payment split where member spouse and non-member spouse are both recipients of the income stream	• Debit for member spouse: proportion of income stream paid to non-member spouse • Debit for non-member spouse: proportion of income stream paid to member spouse	The later of: • operative time for the payment split or • date transfer balance account created
A superannuation income stream failing to comply with the relevant annuity or pension standards	Value of income stream at the time the income stream fails the pension standards and stops being a retirement phase income stream	At the time the income stream stops being a retirement phase income stream
A superannuation income stream failing to comply with a commutation authority	Value of income stream just before commutation authority required to be complied with	End of period commutation authority required to be complied with
The ATO issues a notice notifying the member of an outstanding excess transfer balance but the member no longer holds any retirement phase income streams or only holds capped defined benefit income streams	Amount of excess transfer balance stated in s 136-70 notice	At the time the Commissioner issues notice

110 Different valuation rules apply where a capped defined benefit income stream is commuted. See section 21.8 for further information.

111 A delayed debit date may apply where a capped defined benefit income stream is commuted. Refer to section 21.8 for further information.

Type of debit	Amount of debit	Date of debit
Reduction in amount of capped defined benefit lifetime income stream payments (see section 21.8 for further information)	The special value just before the last higher payment less the special value just before the first reduced payment	Just prior to the reduction in payments
Reduction in amount of deferred superannuation income stream benefit when it ceases to be in retirement phase under regulation 294–80.02	Total amount of the superannuation benefits that would be payable if you voluntarily caused the superannuation interest to cease at that time	At the time it ceases to be in retirement phase

Structured settlement contribution: alternative debit under transitional rules

Transitional rules apply where a structured settlement contribution was made prior to 1 July 2017, and the member had a retirement phase interest on 1 July 2017. In this case, an alternative debit rule is applied to the amount that is debited to their transfer balance account. If the transfer balance account credits for the total values of the retirement phase superannuation interests they had on 1 July 2017 are more than the amount of the structured settlement contribution, the debit will be equal to the total of the credit. This is to ensure that there is no disadvantage in the situation where the value of a member's retirement phase superannuation interests on 1 July 2017 is greater than the amount of the original structured settlement contribution.

However, note that for total superannuation balance purposes, any transitional structured settlement contribution value does not apply. This is because in calculating a member's total superannuation balance, any transfer balance debit for a structured settlement contribution (e.g. alternative debit calculated under the transitional rules) is ignored, and their total superannuation balance is then reduced by the actual value of their structured settlement contribution. For further information about structured settlement contributions and total superannuation balance, refer to section 5.8.

21.8 Capped defined benefit income streams

Capped defined benefit income streams are a special category of retirement phase income stream created from 1 July 2017 as part of superannuation reform.

Complying income streams for social security purposes, as described in section 24, will be capped defined benefit income streams if they commenced prior to 1 July 2017 (except for lifetime pensions, which may commence at any time) since they have to meet the same SIS pension and annuity standards.

Due to the non-commutable nature of capped defined benefit income streams, it is not possible to commute any excess transfer balance they may create.[112] For this reason, capped defined benefit income streams have modified rules for transfer balance cap purposes.

Note that it is now possible to fully commute certain legacy income streams (which are generally capped defined benefit income streams) under a five-year window that applies from 7 December 2024. See section 14.2 for further information.

Table 21.5 shows the income streams that are capped defined benefit income streams.

Table 21.5 Capped defined benefit income streams

Income stream	Must meet SIS Regulations
Lifetime pensions commenced at any time	1.06(2)
Lifetime pensions prescribed in tax regulation 294-130.01(2) or (3), and in existence at 29 June 2007 (or such a pension paid from a successor fund at a later date)	1.06(2) excluding the rules concerning: commutations and the variation or cessation of pension payments to the child of a deceased or reversionary beneficiary
Lifetime pensions prescribed in tax regulation 294-130.01(6) that are provided on the grounds of invalidity under a public sector superannuation scheme	1.06(2) excluding certain rules concerning the variation, suspension or cessation of pension payments
Lifetime annuities commenced prior to 1 July 2017	1.05(2)
Life expectancy pensions and annuities commenced prior to 1 July 2017	1.06(7) 1.05(9)
Market-linked pensions and annuities commenced prior to 1 July 2017	1.06(8) 1.05(10)
Any income streams prescribed by the regulations to be capped defined benefit income streams	As set out in regulations

Note: An income stream that would not normally qualify as a capped defined benefit income stream due to commencing on or after 1 July 2017 may still qualify if it is commenced from the transfer of an existing capped defined benefit income stream under a successor fund transfer. See later in this section for further information.

112 However, some otherwise non-commutable income streams are able to be commuted to the extent required to comply with a commutation authority issued for an excess transfer balance. See later in this section for further information.

From 1 July 2017, the only type of income stream that can be commenced that will meet the definition of capped defined benefit income stream is a non-commutable lifetime pension or a lifetime pension specifically included in the regulations. Lifetime pensions are often provided to Commonwealth, state and territory public office holders, and military and civilian employees. Most of these schemes are closed to new members.

Capped defined benefit income streams have modified rules for:

- the transfer balance cap
- total superannuation balance (see section 5), and
- the taxation of pension/annuity payments (see section 22.7).

Transfer balance cap modifications for capped defined benefit income streams

Due to the non-commutable nature of capped defined benefit income streams, the following modifications to the transfer balance cap rules apply:

- The special value of the capped defined benefit income stream is the value credited to a member's transfer balance account and measured against the member's transfer balance cap (modified transfer balance account debit rules also apply where a capped defined benefit income stream is commuted).
- Where a member would otherwise have an excess transfer balance due only to one or more capped defined benefit income streams, a modification applies to disregard that excess transfer balance and ensure that they will not be subject to excess transfer balance tax or have to commute the excess amount (see section 21.16).
- Where a member has an excess transfer balance attributable to one or more capped defined benefit income streams as well as one or more types of non-capped defined benefit income streams, such as an account based pension, they will generally have an excess transfer balance to the extent that it can be attributed to a non-capped defined benefit income stream (see section 21.16).

Special value of capped defined benefit income streams for transfer balance account credits

The value of a capped defined benefit income stream for the purpose of crediting a member's transfer balance account is known as the special value. The special value of capped defined benefit income streams is summarised in Table 21.6.

Table 21.6 Special value of capped defined benefit income streams

Income stream	Must meet SIS Regulations	Special value for transfer balance cap
Lifetime pensions commenced at any time	1.06(2)	Annual entitlement × 16
Lifetime pensions prescribed in tax regulation 294–130.01(2) or (3), and in existence at 29 June 2007 (or such a pension paid from a successor fund at a later date)	1.06(2), excluding the rules concerning commutations and the variation or cessation of pension payments to the child of a deceased or reversionary beneficiary	
Lifetime pensions prescribed in tax regulation 294–130.01(6) that are provided on the grounds of invalidity under a public sector superannuation scheme	1.06(2), excluding certain rules concerning the variation, suspension or cessation of pension payments	
Lifetime annuities commenced prior to 1 July 2017	1.05(2)	
Life expectancy pensions and annuities commenced prior to 1 July 2017	1.06(7) 1.05(9)	Annual entitlement × remaining term
Market-linked pensions and annuities commenced prior to 1 July 2017	1.06(8) 1.05(10)	
Any income streams prescribed by the regulations to be capped defined benefit income streams	As set out in the regulations	

Note: An income stream that would not normally qualify as a capped defined benefit income stream due to commencing on or after 1 July 2017 may still qualify if it is commenced from the transfer of an existing capped defined benefit income stream under a successor fund transfer. A modified TBA credit also applies in this situation. See later in this section for further information.

Annual entitlement is first payment an individual is entitled to receive after the valuation is required ÷ number of days in period relating to payment × 365.

Remaining term is number of years (rounded up to the nearest whole number) remaining on the term of the product.

Due to the specific product features required to meet the specified SIS Regulations in the table above, advisers should confirm with the product provider whether the income stream is a capped defined benefit income stream.

Example: Special value of a lifetime pension

On 30 June 2017, Joan was receiving a lifetime pension (a capped defined benefit income stream). The first payment Joan received after 30 June 2017 was a fortnightly payment of $3,000.

The special value of Joan's lifetime pension is:

- **annual income** = ($3,000/14) × 365 = $78,214.29
- **special value** = $78,214.29 × 16 = $1,251,428.57

Joan will have an opening balance of $1,251,428.57 in her transfer balance account on 1 July 2017.

Example: Special value of a term allocated pension

On 30 June 2017, Tony had a term allocated pension (also known as a market linked pension) with an account balance of $319,800, and a remaining term of 5.5 years.

The minimum annual payment from the term allocated pension (TAP) at 1 July 2017 was $60,000. Tony was able to select an annual payment of +/- 10% (i.e. between $54,000 and $66,000).

Tony's TAP is a capped defined benefit income stream. Tony chose to receive $5,000 per month, on the last day of each month in 2017–18.

The value of Tony's term allocated pension for the purposes of the transfer balance cap was calculated as follows:

- **annual entitlement** = ($5,000/31) × 365 = $58,870.97
- **special value** = $58,870.97 × 6 = $353,225.81

Note, the remaining term of 5.5 years is rounded up to 6 years for the purposes of this calculation.

The special value of Tony's TAP is $353,225.81. It is interesting to note that this value exceeds the account balance of Tony's pension by $33,425.81. Tony had an opening balance of $353,225.81 in his transfer balance account on 1 July 2017.

Debit value modification for capped defined benefit income streams

When a capped defined benefit income stream is fully commuted, Table 21.7 shows the debit value used to reduce the member's transfer balance account.

Table 21.7 Debit value for capped defined benefit income streams

Income stream	Must meet SIS Regulation	Debit value
Lifetime pensions commenced at any time	1.06(2)	Original special value less any debits
Lifetime annuities commenced prior to 1 July 2017	1.05(2)	
Lifetime pensions prescribed in tax regulation 294-130.01(2) or (3), and in existence at 29 June 2007 (or such a pension paid from a successor fund at a later date)	1.06(2), excluding the rules concerning commutations and the variation or cessation of pension payments to the child of a deceased or reversionary beneficiary	
Lifetime pensions prescribed in tax regulation 294-130.01(6) that are provided on the grounds of invalidity under a public sector superannuation scheme	1.06(2), excluding certain rules concerning the variation, suspension or cessation of pension payments	
Life expectancy pensions and annuities commenced prior to 1 July 2017	1.06(7) 1.05(9)	Original special value, less any debits, less certain income stream payments (see below).
Market-linked pensions and annuities commenced prior to 1 July 2017	1.06(8) 1.05(10)	
Any income streams set out in the regulations to be capped defined benefit income streams	As set out in the regulations	

Where a capped defined benefit income stream that is a lifetime pension or annuity is fully commuted, the transfer balance account debit is amount of the original transfer balance account credit (i.e. original special value), less any previous transfer balance account debits for that income stream (excluding debits due to a family law payment split).

Where a capped defined benefit income stream that is a life expectancy or market-linked pension or annuity is fully commuted, the transfer balance account debit is:

- the amount of the original transfer balance account credit for the income stream, less
- the sum of:
  - the amount of any transfer balance account debits for the income stream (excluding debits due to a family law payment split), and
  - the total amount of superannuation income stream benefits (since 1 July 2017) the person was entitled to receive from the income stream before the start of the financial year in which the commutation takes place, and
  - the greater of the income stream benefits paid to the person from the income stream during the financial year of commutation and the minimum amount required to be paid from the income stream during the part-financial year in which the commutation takes place.

Partial commutation of a capped defined benefit income stream

Where a partial commutation is made from a capped defined benefit income stream that is a lifetime pension or annuity, the transfer balance account debit is the debit that would apply for a full commutation (i.e. original special value, less any previous debits for that income stream excluding due to family law payment split), multiplied by:

> 1 – Special value of income stream just after commutation/Special value of income stream just prior to commutation

Where a partial commutation is made from a capped defined benefit income stream that is a life expectancy or market-linked pension or annuity, the transfer balance account debit is the lesser of:

- the debit value that would arise if the commutation was a full commutation, and
- the amount of the superannuation lump sum that results from the partial commutation.

Delayed timing may apply to transfer balance account debit and credit where capped defined benefit income stream is rolled over

Prior to regulatory changes in 2022, where a capped defined benefit income stream was commuted on or after 1 July 2017 and the commuted amount was used to commence a new income stream (such as a TAP), a member may have had a perpetual excess transfer balance. This is because the new income stream:

- is not a capped defined benefit income stream (and therefore does not receive modified excess transfer balance rules (see section 21.16), but
- is still a non-commutable income stream.

To rectify this issue, the SIS Regulations were amended[113] from 5 April 2022 to allow otherwise non-commutable life-expectancy income streams and TAPs to be commuted to the extent required to comply with a commutation authority issued for an excess transfer balance.

113 *Treasury Laws Amendment (Allowing Commutation of Certain Income Streams) Regulations 2022.*

To avoid disadvantaging members who had already transferred from a capped defined benefit income stream to a new (non-capped defined benefit) income stream, the following modified transfer balance account debit and credit timing applies where a capped defined benefit income stream is partially or fully commuted on or after 1 July 2017 and the resulting lump sum is used to purchase a non-commutable life-expectancy pension or annuity or market-linked pension (TAP) or annuity:

- The debit for the commutation of the capped defined benefit income stream arises at the later of:
  - 5 April 2022
  - immediately after the commutation occurs
- The credit for the commencement of the new income stream arises immediately after the debit.

The modified rules essentially ensure that members do not have an excess transfer balance caused by a non-commutable income stream, during the time prior to the regulations allowing the income stream to be commuted in response to a commutation authority.

Example: Modified debit and credit timing

On 1 July 2017, Fred had an existing TAP (a capped defined benefit income stream with TBA value of $2 million). On 1 July 2018, Fred fully commuted his existing TAP and commenced a new TAP with another provider. The transfer balance account debit and credit values are $1.9 million and $1.8 million respectively.

Prior to the modification of debit and credit timing discussed above, Fred would have had an excess transfer balance of $300,000 from 1 July 2018 (his personal transfer balance cap is $1.6 million).

With the modified timing of credits and debits in respect of his TAPs, Frank's transfer balance account is as follows:

- 1 July 2017: Credit of $2 million for TAP (no excess as attributed only to a capped defined benefit income stream).
- 5 April 2022: Debit of $1.9 million for TAP commutation.
- 5 April 2022: Credit of $1.8 million for TAP commencement.

Fred has an excess transfer balance of $300,000 from 5 April 2022. However, once notified of his excess transfer balance by the ATO, he can elect for a commutation authority to be issued to his TAP provider, facilitating a $300,000 commutation from his TAP to resolve his excess transfer balance.

Other modified debit rules for capped defined benefit income streams

Modified debit rules for capped defined benefit income streams also apply to debits occurring as a result of:

- loss due to fraud or dishonesty or certain payments under the *Bankruptcy Act 1966*
- the income stream being subject to a payment split where the member spouse and non-member spouse are both recipients of the income stream
- the income stream failing to comply with the relevant annuity or pension standards, or
- the income stream failing to comply with a commutation authority.

Contact the FirstTech team for further information about calculating the modified debit value where one of these events occurs in respect of a capped defined benefit income stream.

TBC debit to correct inflated value of reversionary pensions

Where a lifetime pension or annuity that is a capped defined benefit income stream reverts to a reversionary beneficiary, the special value of that income stream at the time of death (the next payment (annualised) × 16) is a credit to the reversionary beneficiary's transfer balance account.

However, some lifetime income streams (particularly some Government super fund lifetime defined benefit pensions) may initially continue a higher level of income stream payments upon reversion, but then reduce those payments permanently to a lower level. This reduction in payments occurs not due to commutations or investment earnings, but due to the rules of the fund/income stream. To prevent an inflated transfer balance account value not reflective of the true ongoing payments for the income stream applying, the regulations allow a transfer balance account debit for a member where:

- they are a retirement phase recipient of a lifetime pension or annuity that is a capped defined benefit income stream, and
- they were entitled to receive a superannuation income stream benefit at an earlier time, and the amount of the next superannuation income stream benefit is reduced, and
- the reduction is not attributable to any other type of transfer balance debit or a Consumer Price Index adjustment.

The value of the transfer balance account debit is the special value of the income stream just before the last higher payment, less the special value of the income stream just before the first lower payment. The debit applies to the member's transfer balance account just prior to the reduction in payments.

Example

A lifetime defined benefit pension (capped defined benefit income stream) recently reverted to Maria upon the death of her spouse. The first eight payments she received were $1,500 per fortnight, after which payments reduce to $1,000 per fortnight.

The credit for the income stream to Maria's transfer balance account is $625,714 (($1,500/14 x 365) × 16) – note that as the income stream reverted to her this credit will not arise until 12 months after the date of death.

Just prior to Maria's reduction in payments, a debit of $208,571 will arise in Maria's transfer balance account. This debit is calculated as:

- special value just before last higher payment: $625,714 (($1,500/14 x 365) × 16), less
- special value just before first lower payment: $417,143 (($1,000/14 x 365) × 16).

Modifications where capped defined benefit income stream subject to SFT

A successor fund transfer (SFT) is effectively a bulk transfer of members' benefits from one superannuation fund to another without requiring members' consent.

Where a member has a capped defined benefit income stream that is transferred as part of an SFT, the tax regulations allow the new income stream to also be a capped defined benefit income stream, notwithstanding that it commenced on or after 1 July 2017.

In addition, to avoid potentially disadvantaging such a member where an SFT occurs, the TBA credit for the commencement of the new income stream is modified to equal the debit for the original income stream being transferred/commuted.

This modification ensures that there is no net change to a member's transfer balance account as the result of their capped defined benefit income stream being subject to an SFT, which can particularly benefit members receiving lifetime indexed pensions whose payments have increased between the time of their original credit and the SFT date.

21.9 Exceeding the transfer balance cap

A member's transfer balance account is measured against their personal transfer balance cap on a daily basis. Where a member's transfer balance account exceeds their personal transfer balance cap on a particular day, the amount of excess plus a notional earnings amount, representing the earnings the excess amount generated in the tax free pension environment, will be required to be commuted from one or more retirement phase income stream(s), either back to accumulation or out of the superannuation environment.

In addition, the member is required to pay 15% excess transfer balance tax on the amount of notional earnings for breaches in the 2017–18 financial year. From the 2018–19 financial year, the tax rate is 15% for a first breach, and increases to 30% for second and subsequent breaches. In some circumstances the amount of notional earnings subject to excess transfer balance tax may exceed the amount of notional earnings that had to be commuted from the retirement phase.

21.10 Excess transfer balance determinations

Where a member has an excess transfer balance, the ATO will issue an excess transfer balance determination to the member.

The determination will specify the amount (known as the crystallised reduction amount) that must be commuted and removed from commutable retirement phase income streams.

The crystallised reduction amount is generally the amount of the excess plus the amount of notional earnings credited to the member's transfer balance account.

The determination will also include a default commutation notice. The ATO will issue a compulsory commutation authority to the superannuation fund listed in the default commutation notice (generally the superannuation income stream provider that caused the excess transfer balance) to commute the crystallised reduction amount, unless the member makes a voluntary commutation within 60 days of the determination or makes a valid election to nominate another superannuation income stream for the compulsory commutation.

21.11 Seven steps to reducing excess transfer balances prior to determination

Prior to an excess transfer balance determination being issued by the ATO, if a member wishes to clear their excess transfer balance as quickly as possible, and thereby minimise any excess transfer balance tax, the following steps should be taken:

1 Confirm the member's transfer balance account balance

The member can check their transfer balance account balance by logging into the myGov website and using the ATO-linked service. It should be noted that this information may be delayed by up to two months and therefore may not accurately represent the member's transfer balance account. Alternatively, the member could contact the ATO and/or the retirement phase income stream provider(s) directly. Note, the income stream provider will only be able to advise on the retirement phase income streams the member holds with that income stream provider.

2 Notify the ATO of any missing transfer balance debits

Members are required to report certain transfer balance account events to the ATO themselves. Consult with the member to identify any missing transfer balance debits. Use the ATO Transfer balance event notification form to report any of the events below directly to the ATO:

- structured settlement contributions made before 1 July 2007
- any of the following events that occurred on or after 1 July 2017:
  - family law payment split
  - the value of the member's retirement phase income stream reduced because of an act of fraud or dishonesty where the offender has been convicted
  - the value of the member's retirement phase income stream reduced because some or all of the assets supporting the retirement phase income stream have been made available to the member's trustee in bankruptcy.

3 Determine excess amount (not including earnings)

Determine the amount of the member's transfer balance account that exceeds their personal transfer balance cap using the information from steps 1 and 2 above.

4 Check for capped defined benefit income streams

Confirm whether the member has any capped defined benefit income streams.

If the member is in receipt of any capped defined benefit income streams, the member's excess transfer balance (excluding notional earnings) is the lesser of:

- the excess amount (step 3) or
- the value of their transfer balance account minus the transfer balance account value of all capped defined benefit incomes streams.

5 Calculate notional earnings

Calculate the member's notional earnings that must be commuted. Notional earnings need to be calculated on the excess transfer balance up to the day the voluntary commutation will be processed (not the date of application for the commutation). See the Notional earnings section below for more detail.

6 Commute

Commute the excess transfer balance amount plus notional earnings by the usual commutation processes required by the particular income stream provider. The timing of this process should be confirmed ahead of time to ensure a sufficient amount of notional earnings is commuted in the timeframe expected. The amount commuted may be rolled back to accumulation (if not a death benefit) or withdrawn from superannuation.

7 Notify the ATO

If the commutation is made from an SMSF, report the voluntary commutation and the credit value of the income stream to the ATO as soon as possible. If the commutation is made from a large APRA fund, the fund will report the commutation to the ATO within 10 business days from when the commutation was made.

21.12 What to do if an excess transfer balance determination is issued

Where a member receives an excess transfer balance determination from the ATO, tax will be minimised by taking action as soon as possible.

How long does a member have to respond to an excess transfer balance determination?

A member has 60 days from the issue date shown on the excess transfer balance determination to take any action. This 60-day period is known as the determination period.

What happens if the member does nothing in the determination period?

If no action is taken by the member, the ATO will issue a compulsory commutation authority to the income stream provider(s) at the end of the 60-day determination period, requiring the excess amount and notional earnings to be commuted within a further 60 days. This delay in commuting the required amount will mean notional earnings will accrue for up to an extra 120 days. This means the member will pay more excess transfer balance tax than if they had voluntarily commuted the amount as soon as possible.

Recommended action to take upon receiving an excess transfer balance determination

The following actions are recommended to minimise excess transfer balance tax:

Voluntarily commute the amount indicated in the determination as soon as possible

Within 60 days of the issue date of the excess transfer balance determination, the member may instruct one or more of their retirement phase income stream providers to commute the amount indicated in the determination. The commutation may be received as a lump sum or rolled back to the accumulation phase (if not a death benefit income stream) and must be processed within the 60-day determination period.

The voluntary commutation may be made from one or more of any of the member's retirement phase income streams and does not have to be the income stream specified in the default commutation notice included with the excess transfer balance determination.

Pension payments do not reduce a member's excess transfer balance account.

Remember that a reduction in the member's transfer balance account arises at the time a superannuation lump sum is received by a member (either as a lump sum or credited to their superannuation accumulation account) and not at the time a member instructs the superannuation income stream provider to commute a superannuation income stream. Members will need to account for any processing time required to receive the commutation within the 60-day period.

In the case of an account based pension, prior to a full or partial commutation, either a prorated minimum income payment must have already been paid during the financial year or the remaining account balance must be sufficient to ensure that at least the minimum annual payment could be paid.

Notify the ATO, in the approved form, of voluntary commutations made in the 60-day determination period

If a voluntary commutation is made within the 60-day determination period, in response to an excess transfer balance determination, the income stream provider's reporting of that event may not be submitted to the ATO within the 60-day determination period. This could lead to the ATO issuing an irrevocable commutation authority to the fund for an amount that has already been commuted.

To eliminate the possibility of this scenario, members should notify the ATO, in the approved form, of transfer balance debits made during the 60-day determination period.

Alternative courses of action

Elect to have the amount commuted from an alternative retirement phase income stream(s)

An excess transfer balance determination will include a default commutation notice. If a member has more than one retirement phase income stream, and does not want commutations made from the income stream specified in a default commutation notice, the member may elect which of their other retirement phase income streams is to be fully or partially commuted. This election is a section 136–20 election.

However, by simply making a voluntary commutation directly with the preferred retirement phase income stream provider (rather than submitting a section 136–20 election), the member can minimise the time taken to commute the required amount, which will minimise accrued notional earnings and minimise excess transfer balance tax.

Objecting to an excess transfer balance determination

Where it is apparent that the ATO did not know about, or did not take into account, certain debits that arose prior to the ATO issuing an excess transfer balance determination, or made an error in making the determination, a member may wish to lodge an objection.

Members have 60 days from the date the determination was served on them to lodge an objection against the determination. See the ATO Objection form for taxpayers for further details.

Keep in mind that excess transfer balance tax may continue to accrue in the time it takes to process an objection. If the member's objection fails, there will be more excess transfer balance tax to pay.

Members are required to report certain transfer balance account events to the ATO themselves. Consult with the member to identify any missing transfer balance debits. Use the ATO Transfer balance event notification form to report any of the events below directly to the ATO:

- structured settlement contributions made before 1 July 2007
- any of the following events that occurred on or after 1 July 2017:
  - family law payment split
  - the value of the member's retirement phase income stream reduced because of an act of fraud or dishonesty where the offender has been convicted
  - the value of the member's retirement phase income stream reduced because some or all of the assets supporting the retirement phase income stream have been made available to the member's trustee in bankruptcy.

21.13 Notional earnings

Notional earnings are calculated, on a daily basis, from the date the member first exceeds their transfer balance cap using the general interest charge (GIC) rate. The GIC rate is updated quarterly and is available on the ATO website: www.ato.gov.au/tax-rates-and-codes/general-interest-charge-rates. For the July to September quarter of the 2025–26 financial year, the annual GIC rate is 10.78%.

Notional earnings are used to determine how much excess transfer balance tax must be paid, and are themselves also a credit to a member's transfer balance account.

However, the amount of notional earnings credited to a member's transfer balance account, and the amount of notional earnings a member pays tax on, may differ.

Notional earnings for transfer balance account credits

The amount of notional earnings credited to a member's transfer balance account is the amount of notional earnings, calculated on a compounding basis, for the period from the date of breach to the earlier of:

- the date of rectification, or
- the date of the excess transfer balance determination from the ATO.

To rectify a breach, a member needs to commute the total of the original excess transfer amount plus the notional earnings credited to their transfer balance account. This total is the crystallised reduction amount.

If a member is rectifying an excess transfer balance **prior** to receiving an excess transfer balance determination from the ATO, they will need to calculate the amount of notional earnings that need to be commuted.

If a member is rectifying an excess transfer balance **after** receiving an excess transfer balance determination from the ATO, the crystallised reduction amount is shown on an excess transfer balance determination in the box titled 'You need to commute'.

Notional earnings subject to excess transfer balance tax

Excess transfer balance tax of 15% or 30% (see section 21.14 Excess transfer balance tax for details) applies to the amount of notional earnings accrued from the date of the breach to the date the excess amount is removed (i.e. partial or full commutation of a retirement phase income stream(s)).

The amount of notional earnings used to calculate excess transfer balance tax may be higher than the amount credited to the member's transfer balance account and included in the ATO notice, where the retirement phase income stream is commuted after the ATO excess transfer balance determination is issued. In other words, tax applies to notional earnings accrued between the date of breach and the date the breach is rectified.

21.14 Excess transfer balance tax

Excess transfer balance tax applies to notional earnings at the standard rate of 15%, as it is intended to neutralise the advantage of the tax free pension environment.

However, a tax rate of 30% applies to additional breaches to discourage members from intentionally breaching the cap.[114]

The ATO will issue an excess transfer balance tax assessment imposing the above mentioned tax liability after the breach has been rectified. An excess transfer balance tax assessment is due and payable 21 days after the ATO issues the assessment.

Where the amount of excess transfer balance tax is not paid by the required time, the GIC will start accruing on the unpaid amount.

21.15 Fund compliance with commutation authorities

If a member who has received an excess transfer balance determination:

- has not made a voluntary commutation of the crystallised reduction amount, or
- has not made an election to choose a different fund for a compulsory commutation

within the 60-day determination period, the ATO will issue a compulsory commutation authority to the fund provider identified in the default commutation notice.

The trustee must generally comply and commute the amount specified in the compulsory commutation authority within 60 days. A superannuation provider may choose not to comply with the commutation authority if the income stream is a capped defined benefit income stream or if the member is deceased.

The trustee is also required to notify the ATO and the member of compliance with the notice within 60 days after the commutation authority was issued. During the 60-day period, there is an expectation that the fund will make reasonable efforts to contact the member to seek instructions (e.g. which investment option/product does the member want commuted). The commuted amount can then be rolled back to accumulation phase (if it is not a death benefit income stream) or paid as a superannuation lump sum benefit payment.

Where a fund fails to comply with a commutation authority, the entire income stream will cease to be in retirement phase (and no longer qualify for the earnings tax exemption), from the start of the financial year in which the fund failed to comply with the commutation authority and all later financial years. In this case, the member's transfer balance account will be debited by the value of the income stream.

114 This higher rate did not apply to excess transfer balance tax assessments in the 2017–18 financial year, where a rate of 15% applied to all assessments. In addition, only breaches on or after 1 July 2018 are counted when determining whether a breach is an additional breach and therefore subject to the higher tax rate.

21.16 Modifications to excess transfer balance for capped defined benefit income streams

Where a member would otherwise have an excess transfer balance due only to one or more capped defined benefit income streams, a modification applies to disregard that excess transfer balance and ensure that they will not be subject to excess transfer balance tax or have to commute the excess amount.

However, where a member has an excess transfer balance attributable to one or more capped defined benefit income streams as well as one or more non-capped defined benefit income streams, such as an account based pension, they will generally have an excess transfer balance to the extent that it can be attributed to non-capped defined benefit income streams.

Modified excess transfer balance

Where a member holds a capped defined benefit income stream, the value of the member's excess transfer balance is calculated as the lesser of:

- the value of their transfer balance account minus their personal transfer balance cap, or
- the value of their transfer balance account minus their capped defined benefit balance.

The capped defined benefit balance is the sum of all transfer balance credits and debits for all of their capped defined benefit income streams.

Example: Excess transfer balance, capped defined benefit income streams and no other income streams held

At 30 June 2017, Alice was receiving a lifetime pension (capped defined benefit income stream) with a special value of $1,700,000. She did not have any other income streams.

As Alice held a capped defined benefit income stream, the amount of excess transfer balance was calculated as the lesser of her:

- transfer balance account - personal transfer balance cap, or
- transfer balance account - capped defined benefit balance.

Therefore, the amount of her excess was the lesser of:

- $1,700,000 - $1,600,000 = $100,000
- $1,700,000 - $1,700,000 = $0

Although Alice's transfer balance account exceeded her $1.6 million transfer balance cap by $100,000 on 1 July 2017, she does not have an excess transfer balance as the excess is entirely attributable to a capped defined benefit income stream.

Example: Excess transfer balance, capped defined benefit income streams and other income streams

Continuing on from the previous example, if Alice commenced a $200,000 account based pension on 1 June 2020, her transfer balance account would be:

- Lifetime pension $1,700,000
- Account based pension $200,000
- Total $1,900,000

As Alice holds a capped defined benefit income stream, the amount of excess transfer balance is calculated as the lesser of:

- transfer balance account - personal transfer balance cap, or
- transfer balance account - capped defined benefit balance.

Therefore, the amount of excess is the lesser of:

- $1,900,000 - $1,600,000 = $300,000
- $1,900,000 - $1,700,000 = $200,000.

Alice has an excess transfer balance of $200,000, attributable to her account based pension. Alice needs to commute the $200,000 plus any notional earnings, and may be subject to excess transfer balance tax.

What if the balance of the other income streams is less than the excess?

Where a member has both capped defined benefit income streams and other income streams, and they have an excess transfer balance, they will be required to commute the excess amount from their non-capped defined benefit income streams.

However, where the value of their non-capped defined benefit income streams is less than the amount of excess (e.g. due to paying income stream payments or investment losses), and they only have superannuation remaining in capped defined benefit income streams, the ATO will issue a notice creating a debit equal to the amount of the excess in the member's transfer balance account. The result is that the member will cease to have an excess.

Example: Excess transfer balance when other income streams are nil

Following on from the previous example, if the balance of Alice's account based pension was insufficient to transfer the full $200,000 plus notional earnings back to accumulation, her account based pension provider would act upon the commutation authority by commuting her pension in full and notifying the ATO.

Let's say that after the commutation of the account based pension, Alice had a remaining excess transfer balance of $2,000. In this case, the ATO would debit $2,000 from Alice's transfer balance account, effectively writing off the remainder of the excess.

22 Taxation of superannuation income stream benefits

Section 22 summarises the taxation of member benefits from superannuation income streams. For further detail about the specific tax treatment that applies to member benefits paid from particular types of superannuation income streams, refer to sections 15 to 19.

For information about the taxation of payments from death benefit income streams, refer to section 23.

For details about the tax treatment of lump sums paid from superannuation accumulation interests, refer to section 9 (member benefits) and section 10 (death benefits).

22.1 What is a super income stream benefit?

A superannuation income stream benefit is any payment from a superannuation income stream, apart from a partial or full commutation.

Partial or full commutations from income streams are taxed as superannuation lump sums – refer to section 22.4.

22.2 Taxation of super income stream benefits

This section outlines the tax treatment of superannuation income streams commenced with member benefits, but excluding benefits paid from death benefit income streams, disability super benefit income streams and capped defined benefit income streams.

Refer to:

- section 22.3 for the tax treatment of income stream benefits paid from disability super benefit income streams.
- section 22.7 for the tax treatment of income stream benefits paid from capped defined benefit income streams.

Taxation of tax free component

In all cases, regardless of age, the tax free component of a superannuation income stream benefit is not assessable income and not exempt income. No tax is paid on these amounts.

Taxation of taxable component

Table 22.1 shows the tax treatment of the taxable component of a superannuation income stream benefit.

Table 22.1 Tax treatment of taxable component (excluding benefits paid from death benefit income streams, disability super benefit income streams and capped defined benefit income streams)

Age of income stream recipient	Taxable component (taxed element)	Taxable component (untaxed element)
60 or above	Non-assessable non-exempt income: No tax	Assessable income: taxed at marginal tax rate less 10% tax offset
Below 60	Assessable income: taxed at marginal tax rate	Assessable income: taxed at marginal tax rate (no tax offset)

10% tax offset

A 10% non-refundable income tax offset applies where the taxable component (untaxed element) forms part of the recipient's assessable income, and the recipient is age 60 or above. The tax offset is calculated as 10% of the assessable taxable component (untaxed element).

22.3 Taxation of income stream benefits paid from disability super benefit income streams

This section outlines the tax treatment of superannuation income stream benefits paid from disability super benefit income streams.

Modified tax treatment may apply where the income stream is a capped defined benefit income stream – see section 22.7 for further information.

What is a disability super benefit?

A disability super benefit is a super benefit where:

- the benefit is paid to a person because he or she suffers from ill health (whether physical or mental), and
- two legally qualified medical practitioners have certified that, because of the ill health, it is unlikely that the person can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

A member must meet the permanent incapacity or an alternative condition of release in the SIS Regulations to receive a disability super benefit. A disability super benefit can include proceeds from an insurance payout held within the fund, where the member meets the insurer's total and permanent disablement definition.

A disability super benefit may be paid as a lump sum or an income stream. For information about lump sum disability super benefits, refer to section 9.4.

How are income stream benefits from disability super income streams taxed?

Income stream benefits paid from disability super income streams are taxed in the same way as normal income stream benefits (see section 22.2 for further information), with one important modification.

15% tax offset applies to reduce tax on taxable component

Where an income stream benefit is received from a disability super income stream while under age 60, a 15% non-refundable income tax offset applies to any taxable component (taxed element) received. The tax offset is calculated as 15% of the assessable taxable component (taxed element)

22.4 Taxation of commutations from superannuation income streams

The partial or full commutation of a superannuation income stream (assuming it is then withdrawn or rolled over) is a superannuation lump sum for tax purposes.[115]

Note: This section discusses the taxation of commutations from superannuation income streams that are not death benefit income streams. For information about the taxation of commutations from death benefit income streams, refer to section 23.

Lump sum member benefits

The default situation is that the commutation (and withdrawal) of a superannuation income stream is a lump sum member benefit. For further information about the taxation of lump sum member benefits, refer to section 9.2.

Lump sum terminal illness benefits

Where a terminal medical condition exists at the time a commutation is made, the resulting withdrawal is a lump sum terminal medical condition payment which is non-assessable non-exempt income and not subject to tax. For further information about the taxation of lump sum terminal medical condition payments, refer to section 9.3.

Lump sum disability super benefits

Where a superannuation income stream is commuted and the resulting lump sum qualifies as a disability superannuation benefit, the tax free and taxable components are taxed in the same way as a lump sum member benefit (see section 9.2 for further information).

However, if a person receives a lump sum disability super benefit, the tax free component of the benefit may be increased for their future service benefit – broadly reflecting the period where they would have expected to have been gainfully employed. For further information about this tax free component uplift, refer to section 9.4.

115 Partial commutations are considered income stream benefits for the purposes of determining whether a super fund is able to claim an earnings tax exemption when paying a retirement phase income stream.

Rollovers

Where a superannuation income stream is commuted and rolled over to another complying superannuation fund, it is treated as a rollover super benefit for tax purposes. For further information about rollovers, refer to section 9.6.

It is important to note that where a member has notified the super fund that they have a terminal medical condition and subsequently partially or fully commutes their income stream within the medical certificate period, the resulting lump sum cannot be considered a rollover for tax purposes. Refer to section 9.3 for further information.

22.5 Determining the tax-free and taxable proportions of payments from superannuation income streams

The tax-free and taxable proportions of a super benefit are determined by the tax-free and taxable proportions of the superannuation interest from which it is paid. This is also known as the 'proportioning rule'. See section 9.7 for the definition of superannuation interest.

The tax-free and taxable proportions of a superannuation income stream interest are determined at the time the income stream commences. These tax-free and taxable proportions then apply to all subsequent benefits paid from that income stream, including income stream benefits and lump sums (i.e. commutations).

Example

The super interest used to purchase an account based pension on 1 January 2019 consisted of the following components:

- $60,000 tax-free, and
- $40,000 taxable component.

The account based pension is valued and proportioned at commencement (prior to fees and charges).

The account based pension is 60% tax-free proportion and 40% taxable proportion. Every income stream benefit and lump sum benefit from this pension will be 60% tax-free proportion and 40% taxable proportion.

Exception: deferred super income streams

An exception applies to a deferred superannuation income stream where income stream payments have not yet commenced. In that case, where determining the tax free and taxable proportions of a lump sum (commutation), the tax free and taxable proportions of the deferred super income stream interest are determined just before a lump sum is paid.

However, the tax free and taxable proportions of income stream benefits paid from a deferred income stream (as well as commutations that occur after income stream benefits have commenced) are calculated based on the tax free and taxable proportions of the deferred super income stream interest valued at the time income stream payments commence.

Commutations from disability super income streams

While commutations from disability income streams have their tax free and taxable proportions determined based on the tax free and taxable proportions of the income stream interest at the time it commences, a lump sum disability superannuation benefit may then have its tax free component uplifted and taxable component decreased (refer to section 9.4 for further information).

Tax free component

The tax free component of a super interest is:

- the contributions segment, plus
- the crystallised segment (fixed at 30 June 2007).

Contributions segment

The contributions segment of a super interest consists of the contributions made after 30 June 2007, to the extent that they have not been and will not be included in the assessable income of the super provider (e.g. non-concessional contributions).

Other contributions not included in the assessable income of the fund can be found in the two tables in sections 3.5 and 3.6, with the exception of excess concessional contributions (which are included in the assessable income of the fund).

Crystallised segment

The crystallised segment of a super interest is a fixed dollar figure. It is the 30 June 2007 value of the following pre-1 July 2007 components:

- concessional
- post-June 1994 invalidity
- undeducted contributions
- CGT exempt, and
- pre-July 1983.

Tax free component reduced where lump sum withdrawal occurs

The tax free component of a member's superannuation interest is reduced by the tax free component of any lump sum withdrawals prior to the time when the tax free and taxable proportions of the income stream are determined (e.g. the commencement of the income stream, except in the case of deferred income streams). This reduction is applied as a priority to any crystallised segment (where available), then to the contributions segment (where there is no crystallised segment left to reduce).

Taxable component

The taxable component of a super interest is the value of the super interest, less the tax free component.

Income streams commenced prior to 1 July 2007

Different tax proportioning rules (including the use of a flat dollar tax free/deductible amount) applied to superannuation income streams commenced prior to 1 July 2007.

These existing arrangements continue to apply to that income stream after 1 July 2007 until a trigger event occurs, which includes:

- being age 60 or over at 1 July 2007
- reaching age 60
- partially or fully commuting the income stream
- death.

For further information about the tax arrangements for superannuation income streams commenced prior to 1 July 2007, contact the FirstTech team.

22.6 Taxation of defined benefit income streams

There are two key issues for the taxation of defined benefit pensions – the amounts, if any, of tax free component and untaxed element in the taxable component. See section 22.7 for the modified tax treatment of defined benefit income streams that are capped defined benefit income streams.

Tax free component

It is necessary to look closely at all aspects of a defined benefit pension and the member's circumstances to confirm whether there is, in fact, a tax free component and its amount, as outlined in Tables 22.2 and 22.3. Of particular note is the fact that many defined benefit pensions are not eligible for a tax free component.

Table 22.2 Tax free component of defined benefit pensions commenced on or after 1 July 2007

Type of pension	Tax free component calculation
Entirely employer-financed, i.e. no member contributions	Pre-July 1983 component, as at date pension commenced
Partly member-financed	Pre-July 1983 component plus undeducted contributions component as at date pension commenced plus non-concessional contributions made on or after 1 July 2007

Table 22.3 Tax free component of defined benefit pensions commenced before 1 July 2007, following a trigger event

Type of pension	Tax free component calculation for defined benefit pension commenced prior to 1 July 1994	Tax free component calculation for defined benefit pension commenced between 1 July 1994 and 30 June 2007
Entirely employer-financed, i.e. no member contributions	Nil	Pre-July 1983 component, as at date of trigger event
Partly member-financed	Unused undeducted purchase price (UUPP) as at date of trigger event	Unused undeducted purchase price (UUPP) + pre-July 1983 component, as at date of trigger event

Note: The formula under section 27A(1) of the Income *Tax Assessment Act 1936* for calculating the UUPP of pensions commenced on or after 1 July 1994 excludes any pre-July 1983 component. An allowance for this amount is then added back to determine the tax free component when such a pension is triggered. However, pensions commenced before 1 July 1994 include pre-July 1983 component in their UUPP. Accordingly, section 307.125(6A) of the *Income Tax (Transitional Provisions) Act 1997* does not allow any additional pre-July 1983 component to be added back.

Note: The UUPP will be nil if at 1 July 2007 the member had already exceeded their life expectancy.

Note: Refer to section 22.5 for more details on trigger events.

Taxable component (untaxed element)

Defined benefit pensions with an untaxed element of the taxable component are subject to tax at the member's marginal tax rate less a 10% tax offset when age 60 and above. Under age 60, they are subject to tax at the member's marginal tax rate with no tax offset applying.

22.7 Taxation of capped defined benefit income streams

Many defined benefit income streams are also capped defined benefit income streams, but capped defined benefit income streams also include other income streams such as term allocated pensions commenced prior to 1 July 2017.

See section 21.8 for more information on capped defined benefit income streams.

Certain incomes stream payments from capped defined benefit income streams exceeding the defined benefit income cap are subject to additional taxation.

Defined benefit income cap

A member's defined benefit income cap for a financial year is:

General transfer balance cap/16

The defined benefit income cap for 2025–26 is $125,000.

Defined benefit income cap amounts

The following income stream payments from capped defined benefit income streams count towards the defined benefit income cap, and are known as defined benefit income cap amounts:

- payments to those age 60 or over, or
- payments paid to members under age 60 from a death benefit income stream where the deceased member was age 60 or over at the time of death.

Modified tax on defined benefit income cap amounts

Where a member receives defined benefit income cap amounts above their defined benefit income cap, the excess amount is subject to additional taxation.

There will be no modification to the income tax treatment of any other payments from a capped defined benefit income stream.

Where defined benefit income cap amounts consist of both taxed source and untaxed source benefits, these payments are assessed against the defined benefit income cap in the following order:

1. tax free component and taxable component (taxed element)
2. taxable component (untaxed element).

The modified tax treatment is outlined in Table 22.4.

Table 22.4

<table>
<tr><th>Defined benefit income cap amounts</th><th>Component</th><th>Standard taxation</th><th>Modified tax treatment</th></tr>
<tr><td rowspan="3">Defined benefit income paid to a member:
• age 60 or over, or
• under age 60 from a death benefit income stream where the deceased member was age 60 or over at the time of death</td><td>Tax free</td><td>Non-assessable non-exempt income: No tax</td><td rowspan="2">If (tax free + taxable (taxed element)) is:
• within defined benefit income cap: non-assessable non-exempt income
• over defined benefit income cap: 50% × (tax free + taxed element) in excess of cap is included in assessable income</td></tr>
<tr><td>Taxable (taxed element)</td><td>Non-assessable non-exempt income: No tax</td></tr>
<tr><td>Taxable (untaxed element)</td><td>Marginal tax rate less 10% tax offset</td><td>If the total of (tax free + taxable (taxed) element + taxable (untaxed) element) is:
• within defined benefit income cap: untaxed element taxed at MTR less 10% tax offset (any tax free and taxable (taxed element) is non-assessable non-exempt income)
• over defined benefit income cap: taxable (untaxed element) taxed at MTR. 10% tax offset not applicable to amount exceeding cap. Effectively, if the payment is 100% untaxed element, the whole payment is assessable and the 10% tax offset is limited to a maximum of $12,500 in the 2025–26 financial year</td></tr>
</table>

Example: Taxation of capped defined benefit income

Josh is age 63 and receives a capped defined benefit income stream of $200,000 pa in 2025–26, made up of the following components:

- $20,000 tax free
- $130,000 taxable (taxed element)
- $50,000 taxable (untaxed element).

All of these amounts count towards the defined benefit income cap as they are paid from a capped defined benefit income stream, and Josh is age 60 or over.

Step 1: Consider tax free and taxable (taxed element)

- 50% × (tax free + taxed element) in excess of defined benefit income cap is included in assessable income.
- 50% × (($20,000 + $130,000) - $125,000)= $12,500
- Therefore, $12,500 is included in Josh's assessable income and $137,500 remains not assessable and not exempt income.

Step 2: Consider untaxed element

- The untaxed element in excess of the defined benefit income cap is not eligible for the 10% tax offset.
- As the defined benefit income cap is already fully utilised by the tax free and taxable (taxed element), the entire untaxed element of $50,000 exceeds the defined benefit income cap.
- Therefore, the $50,000 untaxed element is included in assessable income, and no tax offset applies.

Part-year reduction of defined benefit income cap

A member's defined benefit income cap will be prorated where:

- the capped defined benefit income stream commences part way through the year, or
- the member becomes entitled to concessionally taxed payments from a defined benefit income stream part way through a year, (i.e. they turn age 60 part way through a year).

Example

Sanjay is age 65. He commences a capped defined benefit income stream on 24 November 2025.

Sanjay's defined benefit income cap for 2025–26 is:

$2 million/16 × (219 days/ 365 days) = $75,000

23 Superannuation income stream estate planning

Section 23 summarises the estate planning rules that apply to superannuation income streams and the rules that apply to death benefits paid as income streams. It also discusses the tax treatment of benefits paid from death benefit income streams.

For further details about the specific estate planning rules and death benefit tax treatment that apply to particular types of superannuation income streams, refer to sections 15 to 19.

For details about general superannuation estate planning rules as well as the specific estate planning rules that apply to superannuation accumulation interests, and the taxation of lump sum death benefits, refer to section 10.

23.1 What happens when a superannuation income stream recipient dies?

The estate planning options when a member who is receiving a superannuation income stream dies depends on:

- whether any amount remains payable beyond their death, and if so:
- whether:
  - it is a reversionary income stream, or
  - there is a valid binding or non-lapsing death benefit nomination in place.

No amount remains payable beyond death

Where there is no ongoing liability for further benefits to be paid once an income stream recipient dies, the income stream ceases and no superannuation death benefit is payable.

An example of where this would occur is a non-reversionary lifetime annuity with no residual capital value, where the member dies after any guaranteed period has lapsed.

Amount payable on death and a reversionary income stream

Where a member receiving a superannuation income stream dies and there is a valid reversionary beneficiary, the income stream automatically reverts to the reversionary beneficiary and any future income stream payments are then made to the reversionary beneficiary.

An example of this is a reversionary term annuity where the member dies prior to the expiry of the term, in which case payments would continue to be made to the reversionary beneficiary for the remainder of the term.

Depending on the type of income stream, the reversionary beneficiary may be able to commute part or all of their income stream to a lump sum death benefit at a future time.

Since 1 July 2007, an income stream can only revert upon death where the reversionary beneficiary is an eligible dependant able to receive a death benefit as an income stream under the SIS Regulations. See section 23.2 for further information.

Any reversionary income stream that continues to be paid must comply with death benefit income stream rules. Refer to section 23.3 for further information.

Amount payable on death and not a reversionary income stream

Where a member receiving a superannuation income stream dies and there is no valid reversionary beneficiary, the income stream ceases at the time of death. Any remaining benefit must be cashed as soon as practicable as a death benefit.

An example could include a member receiving a non-reversionary account based pension who dies while their remaining balance is $200,000.

How and to whom benefits must be cashed

As detailed in section 10.4, under the SIS Regulations a death benefit can generally only be cashed to:

- the member's LPR, and/or
- one or more of the member's dependants.

Dependants for SIS purposes include a spouse, child, financial dependant or interdependent relation.

Superannuation death benefits may, under the SIS Regulations, be cashed in any one or more of the following forms:

- a single lump sum
- an interim lump sum (not exceeding the amount of the benefits ascertained at the date of death) and a final lump sum (not exceeding the balance of the benefits as ascertained in relation to the member's death)
- one or more pensions which are retirement phase income streams
- rollover for the purchase of one or more pensions or annuities which are retirement phase income streams.

While the LPR and any dependant can receive a lump sum death benefit (see section 10.5 for further information), there are restrictions around who can receive a death benefit income stream such as a pension or annuity (e.g. most adult children are unable to receive a death benefit as an income stream, unless they have a prescribed disability). See section 23.2 for further information.

Any death benefit income stream paid must comply with death benefit income stream rules. Refer to section 23.3 for further information.

It is important to note that while a trustee must at all times comply with the SIS cashing rules above, it can put in place (e.g. via the trust deed or terms of the income stream) more strict death benefit cashing requirements. For example, a lifetime income stream provider may choose to only allow a spouse to be nominated as a reversionary beneficiary.

Where there is a valid binding or non-lapsing death benefit nomination in place

Where a valid binding or non-lapsing death benefit nomination is in place, the death benefit must be cashed to the nominated beneficiaries.

However, such a nomination in most cases does not bind the trustee in relation to whether the death benefit is paid as a lump sum or income stream. Where this is the case and a nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

Where no valid binding or non-lapsing death benefit nomination is in place

Where no valid binding or non-lapsing death benefit nomination is in place, the super fund's default provisions apply. This may include the trustee having discretion regarding the payment of the member's death benefit (possibly allowing it to take into account any non-binding nomination made by the member), or automatic payment to a specific eligible beneficiary such as the LPR.

Importantly, any action by the trustee must comply with the above SIS death benefit cashing rules.

Where the trustee decides or is required to pay a death benefit to a particular eligible beneficiary, and the nominated beneficiary is able to receive either a death benefit lump sum or income stream under the SIS Regulations, the trustee will generally have discretion to pay either, and may allow the beneficiary to choose.

23.2 Death benefit income stream eligibility

A deceased income stream recipient's benefits may only be paid in the form of a pension or annuity (and also must be a retirement phase income stream) to an eligible dependent beneficiary of the member. Any superannuation death benefit paid to a deceased member's LPR must be paid as a lump sum.

In addition, a child of the deceased member can only receive a death benefit as an income stream in limited circumstances. See section 23.6 for further information.

An eligible beneficiary's transfer balance cap may also restrict the amount of super death benefit that can practically be taken as an income stream. See section 23.7 for further information.

23.3 Death benefit income stream rules

A death benefit income stream can include either:

- a pension that complies with the SIS Regulations, or
- the purchase of an annuity that complies with the SIS Regulations.

This means that a death benefit income stream can include all specific types of superannuation income streams discussed further in sections 15 to 19.

Death benefit income stream must be in retirement phase

From 1 July 2017, the SIS Regulations include a requirement that a death benefit paid as an income stream must also be a retirement phase income stream. For the definition of a retirement phase income stream, see section 21.6.

While most superannuation income streams are always retirement phase income streams, transition to retirement (TTR) income streams and deferred income streams are exceptions.

A TTR income stream will always be a retirement phase income stream where it is payable to a reversionary beneficiary. This allows a TTR income stream to revert to an eligible reversionary beneficiary even if the reversionary beneficiary has not reached age 65 or met another eligible condition of release.

A deferred superannuation income stream will not be a retirement phase income stream where payments have not commenced, and the recipient has not reached age 65 or met an eligible condition of release (i.e. retirement, terminal medical condition or permanent incapacity). This means that:

- An existing deferred income stream cannot revert to an eligible reversionary beneficiary unless the beneficiary has reached age 65 or satisfied the retirement, terminal medical condition or permanent incapacity condition of release.
- A new deferred death benefit income stream cannot be paid to a beneficiary unless they have reached age 65 or satisfied the retirement, terminal medical condition or permanent incapacity condition of release.

For further information about when a TTR income stream or deferred income stream is a retirement phase income stream, refer to section 21.6.

23.4 Commuting death benefit income streams

A death benefit income stream may be partially or fully commuted where the income stream rules allow for such a commutation. Any lump sum commuted from a death benefit income stream is a lump sum death benefit. A lump sum death benefit may be cashed to the beneficiary or rolled over to immediately commence a new death benefit income stream (see section 23.5 for information about death benefit rollovers).

Ongoing death benefit cashing requirement continues to apply on commutation

It is important to note that due to the ongoing SIS Regulations cashing requirement that applies to death benefits, any commutation from a death benefit income stream must remain cashed. This could include the income stream recipient:

- receiving the commutation as a lump sum death benefit payment
- using the commutation to immediately commence a new death benefit income stream within the fund
- rolling over the commuted death benefit to immediately commence a new death benefit income stream in another fund (see section 23.5 for further information about the rollover of death benefits).

Due to the ongoing SIS Regulations cashing requirement that applies to death benefits, any commutation from a death benefit income stream cannot:

- be moved back (or rolled over) to accumulation phase, or
- be mixed with the beneficiary's other superannuation benefits.

Transfer balance cap considerations

Members will need to carefully consider the impact of receiving a death benefit income stream on their transfer balance account. As mentioned in section 23.7, all death benefit income streams are credited to the beneficiary's transfer balance account. However, a deferral period of 12 months applies to reversionary income streams.

Where a member exceeds their transfer balance cap as a result of receiving a death benefit income stream, they must commute an amount from a retirement phase income stream. With death benefit income streams unable to be moved back to accumulation phase, members wanting to maximise the amount of benefits held within super should consider commuting the excess from other (non-death benefit) retirement phase income streams, as these commutations can be rolled back to accumulation phase.

23.5 Death benefit rollovers

From 1 July 2017, the taxation definition of a 'rollover superannuation benefit' was amended to allow a superannuation lump sum death benefit to be rolled over where the beneficiary of a deceased member's superannuation interest is a dependant eligible to receive a death benefit income stream.

This change allows an eligible beneficiary to:

- roll over a death benefit entitlement to another superannuation fund for the commencement of a death benefit income stream
- commute and roll over an existing death benefit income stream to commence a new death benefit income stream.

As mentioned in section 23.4, due to the ongoing SIS Regulations cashing requirement, death benefits cannot be rolled over to accumulation phase or be mixed with the beneficiary's other superannuation benefits.

Where a beneficiary is not eligible to receive a death benefit income stream, any death benefit payable to them cannot be a rollover superannuation benefit. These beneficiaries can only receive a death benefit lump sum cashed out of the superannuation system.

Where an individual's superannuation death benefit interest is rolled over, the superannuation provider that originally held the superannuation interest is required to provide the receiving fund with specified information about the superannuation interest and the individual (including identifying the rollover as a superannuation death benefit) electronically via the SuperStream data standard. This ensures that these rollovers continue to receive death benefit treatment under both regulatory and tax provisions in the receiving fund.

The ATO has confirmed that a member in receipt of two death benefit income streams may commute both income streams and start a new, consolidated death benefit income stream. However, if considering this strategy it would be important to confirm with a client's specific fund whether it allows multiple death benefit income streams to be combined.

It should also be noted that it is not possible to combine a death benefit income stream with the members own income stream, as death benefits must always be kept separate from the member's own superannuation interests.

It is unlikely that multiple child death benefit income streams can be commuted and combined into a new child death benefit income stream.

23.6 Child death benefit income streams

Eligibility to commence a child death benefit income stream

Since 1 July 2007, to be eligible to receive a death benefit as an income stream, a child, at the time of the member's death, must:

- be under 18, or
- be financially dependent on the member and less than 25 years of age, or
- have a disability that:
  - is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments,
  - is permanent or likely to be permanent, and
  - results in a substantially reduced capacity of the person for communication, learning or mobility, and the need for ongoing support services.

In other circumstances, the death benefit must be paid to the child as a lump sum.

Compulsory cashing of child death benefit income streams

If death benefits are paid to a child as a death benefit income stream, the income stream must be cashed as a lump sum on the earlier of:

- the day on which the annuity or pension is commuted, or the term of the annuity or pension expires, and
- the day on which the child attains age 25,

unless the child has a disability, as described above.

Any lump sum received by the child in this situation is tax free (non-assessable non-exempt income).

Children receiving death benefit income streams commenced prior to 1 July 2007

Prior to 1 July 2007, the restriction on children being able to receive death benefit income streams did not exist, and existing death benefit income streams in place at that time are unaffected by this change.

Therefore, any child (including independent adult children) who commenced to receive a death benefit income stream prior to 1 July 2007 can continue the income stream and is not subject to the requirement for compulsory commutation at age 25.

23.7 Transfer balance cap for death benefit income streams

A member's personal transfer balance cap (see section 21.2) limits the amount of superannuation they can transfer from accumulation phase to retirement phase.

Where a beneficiary is in receipt of a superannuation death benefit income stream, the value of that income stream will count towards the beneficiary's transfer balance account. Essentially, this means that a beneficiary does not inherit the deceased's transfer balance cap.

Where the value of the death benefit income stream causes the beneficiary to exceed their personal transfer balance cap, the excess (if commuted from that income stream) will need to be cashed out of the superannuation environment as it is not possible to move a death benefit income stream to accumulation phase. However, members wanting to maximise the amount of benefits held within super could instead consider commuting the excess from other (non-death benefit) retirement phase income streams, as these commutations can be moved to accumulation phase. See section 23.4 for further information.

Where a child receives a death benefit income stream from their parent, a modified transfer balance cap rule applies, as discussed later in this section.

Table 23.1 summarises the transfer balance cap assessment of death benefit income streams.

Table 23.1 Transfer balance cap assessment of death benefit income streams

Commencement date	Value	Time of transfer balance account credit
Non-reversionary death benefit income stream		
Existing prior to 1 July 2017	Value at 30 June 2017	1 July 2017
Commencing on or after 1 July 2017	Commencement value of death benefit income stream	Death benefit income stream commencement date
Reversionary death benefit income stream		
If reverted prior to 1 July 2016	Value at 30 June 2017	1 July 2017
If reverted between 1 July 2016 and 30 June 2017	Value at 30 June 2017	12 months after date of death
If reverted on or after 1 July 2017	Value at date of death	12 months after date of death

Reversionary death benefit income streams

Where an income stream automatically reverts to a nominated beneficiary on the death of the original recipient, the value of the pension as at the time of death will count as a credit to the beneficiary's transfer balance account.

However, to give the beneficiary time to arrange their affairs, the credit will be deferred and will not arise in the beneficiary's transfer balance account until 12 months from the date of death.

Example

Lance died on 1 December 2024. Lance had an account based pension with an account balance of $1.6 million at the time of his death. The pension reverted to his wife, Linda.

Over a period of 12 months, due to investment returns the pension increases to $1.8 million.

On 1 December 2025, Linda's transfer balance account will receive a credit of $1.6 million for the reversionary pension. This represents the value of the pension at the date of death.

The value of the pension at 1 December 2025 does not impact Linda's transfer balance account.

Non-reversionary death benefit income streams

The delay of the transfer balance credit is not available where the death benefit income stream is not paid to a reversionary beneficiary.

For non-reversionary death benefit income streams that commence on or after 1 July 2017, the value of the new death benefit income stream at the date of commencement is a credit to the beneficiary's transfer balance account at the date of commencement.

For existing non-reversionary death benefit income streams at 30 June 2017, the value of the income stream at 30 June 2017 was credited to the beneficiary's transfer balance account on 1 July 2017.

It is not possible to roll over a death benefit income stream to accumulation (see section 23.5 for further information). Therefore, members will need to carefully consider the impact of receiving a death benefit income stream on their transfer balance account.

Child beneficiary's transfer balance cap

Where a child receives a death benefit income stream, a modified transfer balance cap applies so that the child, to some extent, inherits the deceased's transfer balance cap.

The modified transfer balance cap depends on the deceased parent's super interest.

In the event that a death benefit income stream exceeds the child's transfer balance cap, any excess amount must be cashed out to the child as a lump sum death benefit payment. The child is not able to retain this amount in the superannuation system.

Once the child cashes out the death benefit income stream at age 25 (unless disabled) or when the capital of the income stream is exhausted, the child's transfer balance account ceases. This ensures the child's ability to commence income streams in retirement is not impacted by the death benefit income streams received as a child.

Transfer balance cap increment

The amount of transfer balance cap applicable to a child death benefit income stream is referred to as a 'transfer balance cap increment'. A transfer balance cap increment applies for each death benefit income stream the child receives from a parent. In the case of reversionary superannuation income streams, the transfer balance cap increment is deferred for 12 months.

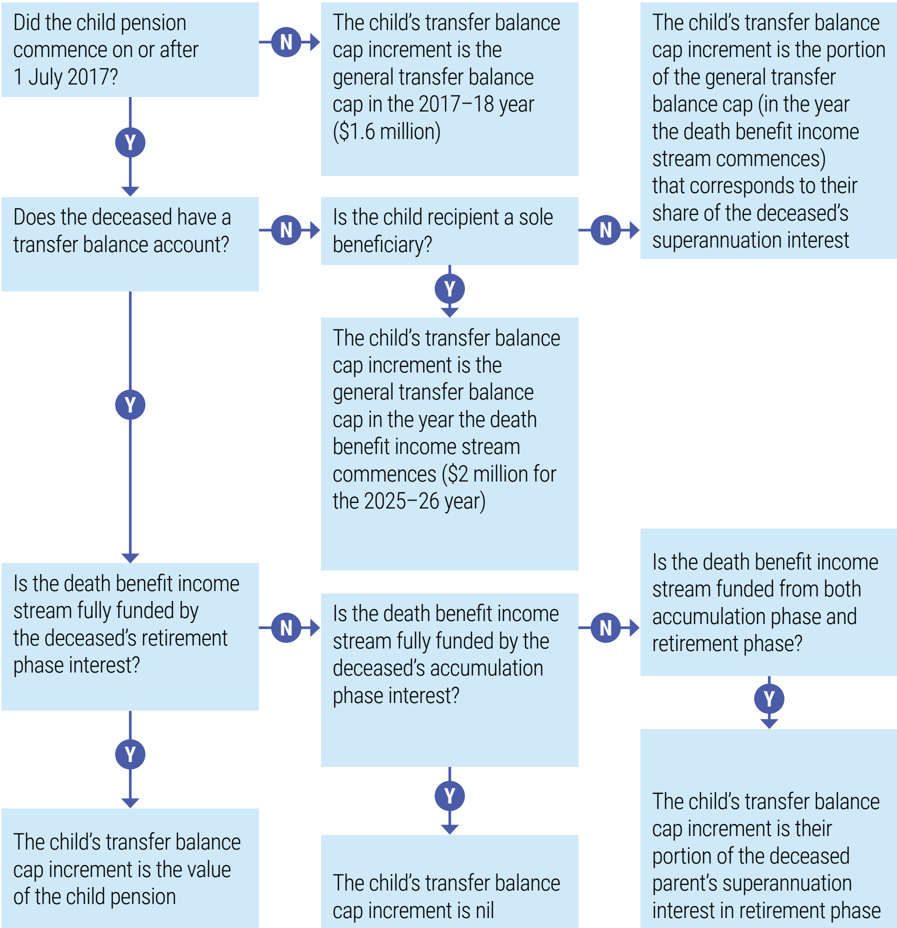
The amount of transfer balance cap increment applicable depends on a range of factors[116] such as:

- whether the child pension was commenced before 1 July 2017
- whether or not the deceased had a transfer balance account, and
- whether the child is the sole beneficiary of the death benefit.

Refer to the flowchart below to determine the applicable transfer balance cap increment for recipients of a child pension.

116 A transfer balance cap increment that applies to the recipient of a child death benefit income stream does not increase when the general transfer balance cap increases due to indexation.

Transfer balance cap and child pensions



Note: If the deceased parent had any excess transfer balance, it reduces the child's transfer balance increment by their proportionate share.

Child pension commenced prior to 1 July 2017

If the child pension commenced prior to 1 July 2017, the child's transfer balance cap increment is $1.6 million (equal to the general transfer balance cap in the 2017–18 financial year).

If the balance of the child pension at 30 June 2017 was in excess of $1.6 million, any excess amount had to be cashed out of superannuation. Tax is not payable on the commutation.

Child pension commenced after 1 July 2017: deceased does not have a transfer balance account

If the deceased parent did not have a transfer balance account at the time of their death, as they had not commenced a retirement phase income stream, the child's transfer balance cap increment is:

- if the child is the sole beneficiary – the general transfer balance cap in the year in which their death benefit income stream commences ($2 million in 2025–26), or
- if the child is not the sole beneficiary – the child's proportionate share of the deceased's superannuation interests multiplied by the general transfer balance cap in the year in which their death benefit income stream commences.

Child pension commenced after 1 July 2017: deceased had a transfer balance account

Where the deceased parent had a transfer balance account just before their death, the child beneficiary's transfer balance cap increment is determined by their portion of the deceased parent's retirement phase income streams that the child receives as an income stream. In other words, each death benefit income stream the child receives must be sourced solely from the retirement phase interest of the deceased parent.

Where the child's death benefit income stream is partly sourced from accumulation phase and partly sourced from retirement phase, the amount of the child's transfer balance cap increment will equal the portion sourced from retirement phase.

If any part of the child pension is sourced from accumulation interests, the child will have an excess transfer balance.

Earnings accrued after death

Earnings that accrue on the deceased's retirement phase interest between date of death and commencement of a death benefit income stream are considered part of the deceased's retirement phase interest.

Therefore, the child's transfer balance cap increment includes accrued earnings.

Life insurance proceeds

Where life insurance is held within superannuation and the premiums are funded from accumulation phase, the proceeds from the insurance policy are not considered to form part of the deceased's retirement phase interests.

In this case, the life insurance proceeds form part of the deceased's accumulation interest.

Where both parents die

Where both parents die, the child's transfer balance cap increment is the sum of amounts worked out in relation to each parent.

23.8 Recontribution strategy

A recontribution strategy seeks to increase the tax free portion of a member's superannuation interest either just prior to, or in some cases after, commencing a superannuation income stream.

One of the main estate planning benefits of a recontribution strategy is to minimise tax on future death benefits paid to non-death benefits dependants (e.g. adult children). This strategy can also be used to equalise superannuation balances between members of a couple.

For information and strategy analysis about recontribution strategies, refer to the FirstTech Superannuation Death Benefits Guide.

23.9 Taxation of income stream benefits paid from death benefit income streams

This section outlines the tax treatment of superannuation income stream benefits paid from death benefit income streams. An income stream benefit includes any payment from a death benefit income stream, except a full or partial commutation (which is a lump sum death benefit – see section 23.10).

Modified tax treatment may apply where the death benefit income stream is a capped defined benefit income stream – see section 22.7 for further information.

Taxation of tax free component

In all cases, regardless of the age of the recipient or deceased member, the tax free component of a superannuation income stream benefit paid from a death benefit income stream is non-assessable non-exempt income. No tax is paid on these amounts.

Taxation of taxable component

Table 23.2 shows the tax treatment of the taxable component of a superannuation income stream benefit.

Table 23.2

Age of deceased (at time of death)	Age of recipient	Taxable component (taxed element)	Taxable component (untaxed element)
Age 60 or above	Any age	Non-assessable non-exempt income: No tax	Assessable income: taxed at marginal tax rate less 10% tax offset
Under 60	60 or above	Non-assessable non-exempt income: No tax	Assessable income: taxed at marginal tax rate less 10% tax offset
	Under 60	Assessable income: taxed at marginal tax rate less 15% tax offset	Assessable income: taxed at marginal tax rate (no tax offset)

Note: For all non-zero tax rates, Medicare levy may also apply.

15% tax offset

A 15% non-refundable income tax offset applies where the taxable component (taxed element) forms part of the death benefit income stream recipient's assessable income (this occurs where both the deceased was under age 60 at the date of death and the recipient is under age 60). The tax offset is calculated as 15% of the assessable taxable component (taxed element).

10% tax offset

A 10% non-refundable income tax offset applies where the taxable component (untaxed element) forms part of the death benefit income stream recipient's assessable income, and either the deceased was age 60 or over at the date of death or the recipient is age 60 or over. The tax offset is calculated as 10% of the assessable taxable component (untaxed element).

23.10 Taxation of commutations from death benefit income streams

Lump sum death benefit payments

Where a death benefit income stream recipient makes a commutation from their income stream, the resulting withdrawal is a lump sum death benefit.[117] For further information about the taxation of lump sum death benefits, refer to section 10.9.

Since 1 July 2007, where an eligible child receives a death benefit income stream, they are required to commute it and cash it out as a lump sum by age 25 unless they have a prescribed disability. A commutation made by the child from their death benefit income stream (including if they elect to voluntarily commute the income stream earlier than age 25) is always non-assessable non-exempt income and therefore tax-free. For further information about child death benefit income streams, refer to section 23.6.

Death benefit rollovers

Where a death benefit income stream recipient partially or fully commutes their income stream, in most cases they can elect to roll over the resulting lump sum to another complying superannuation fund to immediately commence a new death benefit income stream. Refer to section 23.5 for further information.

23.11 Determining the tax free and taxable proportions of payments from death benefit income streams

The tax free and taxable proportions of payments from death benefit income streams are broadly determined in the same way as for payments from other superannuation income streams. See section 22.5 for further information. However, some modifications apply as follows.

117 Partial commutations are considered income stream benefits for the purposes of determining whether a super fund is able to claim an earnings tax exemption when paying a retirement phase income stream.

Determining tax free and taxable proportions where a pensioner dies

Where a member who is in receipt of an account based, allocated or term allocated pension dies, the existing 'pension' proportioning rules continue to apply to the super interest following the member's death provided either:

- the pension is automatically reversionary, or
- a valid binding death nomination is in place, which requires the trustee to continue to pay the death benefit as an income stream.

Where no such reversion or nomination is in place, special proportioning rules apply on the death of a pensioner, provided:

- no amounts other than investment earnings or insurance proceeds have been added to their super interest, and
- their death benefit is paid as a lump sum or income stream (or combination of both) on or after 4 June 2013.

These special rules allow the deceased member's super balance at the date of death (plus earnings on that balance between death and benefits being paid) to retain its existing tax free proportion during the period between the member's death and the payment of their death benefits. However, any insurance proceeds will form part of the taxable component.

Example

Gina dies on 1 July in a financial year with an existing account based pension balance of $300,000 and a tax free proportion of 50%. Her death benefit is paid as a lump sum as soon as practicable on 1 January in that financial year, at which time earnings have increased her existing balance to $350,000. Life insurance proceeds of $200,000 are also then added to her benefit just prior to her death benefit being paid.

Under the special proportioning rules, the existing tax free proportion of 50% applies to Gina's super balance at her date of death plus investment earnings. This would provide for $175,000 of tax free component and $175,000 of taxable component. The life insurance proceeds are then added to the taxable component.

The lump sum death benefit paid will therefore consist of $175,000 tax free component and $375,000 taxable component.

Commutations from death benefit income streams

While commutations from a death benefit income stream have their tax free and taxable proportions determined based on the tax free and taxable proportions of the income stream interest at the time it commences, a lump sum death benefit may have its taxable component modified to include an untaxed element (refer to section 10.9 for further information).

24 Social security treatment of retirement income streams

Prior to 1 July 2019, retirement income streams were classified into three categories based on their product features for social security means test purposes.

These categories applied regardless of whether they were purchased with superannuation or non-superannuation moneys:

- asset-tested (long-term) – generally have a term greater than five years or an account based income stream
- asset-tested (short-term) – term of five years or less
- asset-test exempt – generally purchased pre-20 September 2007, commutable in very limited circumstances and nil residual capital value.

From 1 July 2019, a fourth category of income stream called 'lifetime income streams' was added. Lifetime income streams must be purchased on or after 1 July 2019, and once payments commence they must continue for the remainder of the primary or reversionary beneficiary's lifetime.

Table 24.1 summarises the social security assessment of the four categories of retirement income streams that apply from 1 July 2019.

Table 24.1 Social security assessment of retirement income streams

Category	Social security assessment	Product types
Lifetime income stream – purchased on or after 1 July 2019	Assessable assets[118]: • 60% of purchase price assessable until threshold day (see section 24.1), then • 30% of purchase price assessable for remainder of life Assessable income: • 60% of annual payment	• Immediate lifetime annuities • Deferred lifetime annuities • Group self annuitised products • Lifetime pensions

118 Assumes income stream complies with the capital access schedule. See 'Lifetime income streams' below for more information.

Category	Social security assessment	Product types
Asset-tested (long term)	Assessable assets: • Account based: 100% account balance • Non-account based: Purchase price - [((purchase price - residual capital value)/relevant number) × term elapsed] Assessable income: • Account based and purchased on or after 1 January 2015: deemed • Account based, purchased before 1 January 2015 and the member has not been continuously in receipt of an income support payment: deemed • Account based, purchased before 1 January 2015 and member continuously in receipt of an income support payment since 1 January 2015: Annual payment - ((purchase price - commutations - residual capital value)/relevant number) • Non-account based: Annual payment - ((purchase price - commutations - residual capital value)/relevant number)	• Account based income streams • Allocated pensions and annuities • Immediate lifetime annuities purchased before 1 July 2019 • Fixed term annuities with a term of six years or greater[119]
Asset-tested (short term)	Assessable assets: • Purchase price - [((purchase price - residual capital value)/relevant number) × term elapsed] Assessable income: Deemed	• Fixed term income streams with a term of five years or less[120]

119 Fixed term annuities with a term of less than six years qualify as asset-tested (long term) if the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy.

120 Exception is where the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy. In this case, the income stream will be assessed as asset-tested (long term).

Category	Social security assessment	Product types

Asset-test exempt	Assessable assets:
	• Purchased prior to 20 September 2004 or defined benefit income stream: 100% asset-test exempt
	• Purchased on or after 20 September 2004 and prior to 20 September 2007: 50% asset-test exempt
	  • Non-account based: 50% × (purchase price - (purchase price × (term elapsed/relevant number)))
	  • Account based: 50% × account balance
	Assessable income:
	• Annual payment - (purchase price/relevant number)
	• Defined benefit: Annual payment - deductible amount[121]
		• Complying lifetime income streams purchased before 20 September 2007
		• Complying life expectancy income streams purchased before 20 September 2007
		• Term allocated pensions purchased before 20 September 2007
		• Income streams purchased with the rollover of a pre-20 September 2007 complying income stream (must meet certain requirements)
		• Defined benefit income streams purchased at any time

24.1 Lifetime income streams

For social security means test purposes, an additional category of retirement income stream applies from 1 July 2019 – lifetime income streams.

Lifetime income streams were added to cater for a new range of 'innovative retirement income stream products' that were expected to become available due to changes in superannuation and tax laws. Innovative retirement income streams include deferred annuities and group self-annuitised products that are designed to cater for longevity risk.

Lifetime income streams also include immediate lifetime annuities.

What are lifetime income streams?

To qualify as a lifetime income stream, the income stream must be purchased on or after 1 July 2019, and once payments commence, they must continue for the remainder of the primary or reversionary beneficiary's lifetime.

Table 24.2 categorises income streams as either qualifying or not qualifying as lifetime income streams.

121 Limited to 10% of annual payment, with some exceptions (see section 24.4).

Table 24.2 Lifetime income streams

Qualify as Lifetime income streams	Do not qualify as Lifetime income streams
Immediate lifetime annuities (superannuation or non-superannuation)	Account based pensions
Deferred lifetime annuities (superannuation or non-superannuation)	Defined benefit income streams
Group self-annuitised products	Asset-test exempt income streams
Lifetime superannuation pensions	Fixed term annuities

Income and assets test assessment

All lifetime income streams purchased on or after 1 July 2019 are assessed under the lifetime income streams income and assets test rules. Grandfathering applies to lifetime income streams commenced prior to this date and they will continue to be assessed as asset-tested (long term) income streams.

Under the lifetime income streams rules, income streams that comply with a capital access schedule receive a reduced assessable value under the social security assets test. A capital access schedule limits the amount of capital that can be accessed as a voluntary commutation or death benefit. See Capital access schedule below for more information.

For lifetime income streams purchased on or after 1 July 2019 that comply with the capital access schedule, the social security assessment is:

Assessable assets:

- 60% of the purchase price[122] assessable until the individual reaches their threshold day (see below), then
- 30% of the purchase price assessable for the remainder of their life.

Assessable income:

- 60% of annual payment.

122 For deferred income streams, amounts paid to purchase the income stream are indexed to the assessment date. See 'Deferred income streams' for more information.

Threshold day

An individual's threshold day is generally the date the individual reaches a specified age. This age is based on the life expectancy of a 65 year old male at the income stream's assessment day using current life expectancy tables (rounded down to nearest whole number of years). This age applies regardless of the gender of the individual.

- For income streams with an assessment day prior to 1 January 2025, the age is 84
- For income streams with an assessment day on or after 1 January 2025, the age is 85

However, where the above age is within five years of assessment day, an individual's threshold day is instead at the end of five years.

The assessment day is generally the date of purchase; however, the rules are more complex for deferred income streams. See 'Deferred income streams' later in this section for more information.

Example: Assets test

Joan purchases a lifetime income stream at age 66 for $100,000 on 1 July 2025.

Under the assets test, 60% of the purchase price ($60,000) is assessable until age 85 (19 years), after which point 30% ($30,000) is assessable.

Example: Assets test

Bert purchases a lifetime income stream at age 83 for $100,000 on 1 July 2025.

Generally 60% of the purchase price would be assessable until age 85. However, as Bert is age 83, this would only be two years and there is a requirement that 60% is assessable for at least five years.

So in Bert's case, 60% of the purchase price ($60,000) is assessable until age 88 (five years), after which point 30% ($30,000) is assessable.

Example: Income test

Tom receives an annual payment of $10,000 from a lifetime income stream.

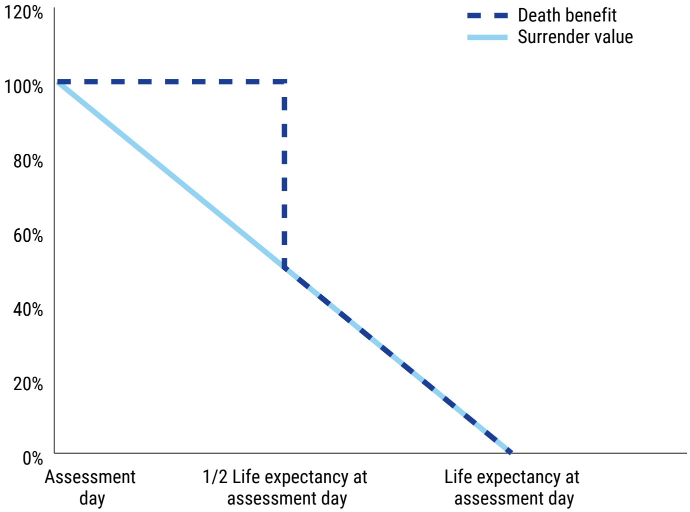
60% ($6,000) is assessed as income under the income test. As payments increase due to indexation, 60% of the indexed payments will be assessable for the duration of the lifetime income stream.

Capital access schedule

When the Government introduced innovative retirement income stream products into the superannuation and tax legislation, restrictions were placed on the amount that could be commuted from the income stream.

Chart 24.1 demonstrates the maximum amount that can be commuted either voluntarily or on death, known as the capital access schedule. In summary, the maximum amount that can be commuted as a voluntary surrender value is a declining straight line over the primary beneficiary's life expectancy (or reversionary beneficiary's life expectancy in certain circumstances). On death, the maximum amount that can be commuted is 100% of the purchase price within the first half of the primary beneficiary's life expectancy, then after this date the declining straight line value applies. No amounts can be commuted from the income stream once they reach their life expectancy.

Chart 24.1: Capital access schedule



FirstTech comment

The capital access schedule is the maximum commutation amount permitted under the legislation. However, individual products may provide a commutation amount that is significantly lower than this amount. For example, some lifetime annuities may have a nil amount that can be commuted voluntarily.

What if they do not comply with the capital access schedule?

Lifetime income streams purchased on or after 1 July 2019 that do not comply with the capital access schedule (i.e. allow a higher amount to be commuted than the schedule allows) are assessed differently under the assets test.

In this case, the assessable asset value of the lifetime income stream is the higher of:

- current or future surrender value
- current or future death benefit
- 60% of the purchase price assessable until the individual reaches their threshold day, then 30% of the purchase price assessable for the remainder of their life.

However, under the income test, they are assessed in the same way as other lifetime income streams (i.e. 60% of the annual payment is assessable).

Deferred income streams

A deferred income stream is an income stream that commences payments more than 12 months after it is acquired.[123]

For example, a member may purchase a deferred income stream at age 60 that does not commence paying an income stream until they reach age 80.

Under the deferred income stream rules, once the income stream payments commence, they must be paid at least annually for the remainder of the member's lifetime.

For social security purposes, the assessment depends on whether the deferred lifetime income stream is purchased with superannuation or non-superannuation money.

Table 24.3 summarises the income and assets test assessment. Note, this table does not cover the assessment that applies where a deferred lifetime income stream has reverted to a reversionary beneficiary.

123 This is the definition of 'deferred income stream' for superannuation purposes (SIS Regulation 1.03(1)).

Table 24.3 Means test assessment of deferred income streams

	Assets test	Income test
Superannuation	• Before assessment day: no assessable asset value • From assessment day up to and including threshold day: 60% of purchase price assessable • After threshold day: 30% of purchase price assessable	• Before payments commence: no assessable income • Once payments commence: 60% of gross payments assessable

Non-superannuation	• Before assessment day: 100% of purchase price assessable
	• From assessment day up to and including threshold day: 60% of purchase price assessable
	• After threshold day: 30% of purchase price assessable
		• Before assessment day: purchase amount is deemed
		• From assessment day:
		  • Before payments commence: no assessable income
		  • Once payments commence: 60% of gross payments assessable

Assessment day

A deferred lifetime income stream's assessment day depends on whether it is purchased with superannuation or non-superannuation money, as shown in the following table:

Superannuation	Non-superannuation
The latest of the following days: • the day the income stream recipient satisfies an eligible condition of release (retirement, death, reaching age 65, terminal medical condition, permanent incapacity) • the day the first amount was paid for the income stream • the day the income stream was acquired (if no amount is identified as having been paid for the income stream)	The income stream's commencement day where it occurs prior to Age Pension age, or Otherwise, the latest of the following days: • the day the income stream recipient reaches Age Pension age • the day the first amount was paid for the income stream • the day the income stream was acquired (if no amount is identified as having been paid for the income stream)

Note: An income stream's commencement day is generally the first day of the period to which the first payment under the income stream relates.

Threshold day

A deferred lifetime income stream's threshold day is the later of:

- the day that the income stream recipient reaches a specified age (84 for income streams with an assessment day prior to 1 January 2025 and 85 for income streams with an assessment day on or after 1 January 2025), and
- five years from the assessment day.

Indexation of purchase price

When determining the purchase price of a deferred lifetime income stream that is paid for by one or more instalments, amounts paid for the income stream are indexed when determining:

- for non-superannuation income streams – value of the financial investment assessable between the date of purchase and the assessment day
- for superannuation and non-superannuation income streams – the purchase price on the assessment day.[124]

When indexing the purchase price, amounts paid for the income stream are indexed on the 12 month anniversary of the purchase date.

The compound rate used for this calculation is the upper deeming threshold (currently 2.25% pa).

124 Where an instalment is received on or after assessment day, it adds to the purchase price but is not indexed.

Reversionary lifetime income streams

When a lifetime income stream that commences on or after 1 July 2019 reverts to a reversionary beneficiary upon the death of the original owner, the income stream is assessed as shown in Table 24.4.

Table 24.4 Means test assessment of reversionary lifetime income streams

	Assets test	Income test
Superannuation (where payments have commenced prior to reversion)	• Up to and including reversionary beneficiary's threshold day: 60% of purchase price assessable • After reversionary beneficiary's threshold day: 30% of purchase price assessable	• 60% of gross annual payments assessable
Superannuation (where payments have not commenced prior to reversion)	• Prior to reversionary beneficiary's assessment day: no assessable asset value • From reversionary beneficiary's assessment day up to and including reversionary beneficiary's threshold day: 60% of purchase price assessable • After reversionary beneficiary's threshold day: 30% of purchase price assessable	• Before payments commence: no assessable income • Once payments commence: 60% of gross payments assessable
Non-superannuation (where payments have commenced prior to reversion)	• Up to and including reversionary beneficiary's threshold day: 60% of purchase price assessable • After reversionary beneficiary's threshold day: 30% of purchase price assessable	• 60% of gross annual payments assessable

Non-superannuation (where payments have not commenced prior to reversion)	• Prior to reversionary beneficiary's assessment day: purchase amount is an assessable asset
	• From reversionary beneficiary's assessment day up to and including reversionary beneficiary's threshold day: 60% of purchase price assessable
	• After reversionary beneficiary's threshold day: 30% of purchase price assessable
		• Before reversionary beneficiary's assessment day: purchase amount is deemed
		• From reversionary beneficiary's assessment day:
		  • Before payments commence: no assessable income
		  • Once payments commence: 60% of gross payments assessable

Note: Higher asset values (than the 60%/30% of purchase price) may apply where the reversionary income stream does not comply with the capital access schedule. See earlier in this section for further information.

Note: See Indexation of purchase price above for more information on how the value of the purchase price is calculated.

Assessment day

Where a lifetime income stream reverts prior to payments commencing, the reversionary beneficiary's assessment day depends on whether it is purchased with superannuation or non-superannuation money.

Table 24.5 outlines the assessment day for superannuation and non-superannuation lifetime income streams that revert before income stream payments have commenced.

Table 24.5 Assessment day where income stream reverts before payments commence

Superannuation	Assessment day
If payments commence before the reversionary beneficiary meets an eligible condition of release	The date payments commence
If payments commence after the reversionary beneficiary meets an eligible condition of release	The later of: • Date of reversion • Date reversionary beneficiary meets an eligible condition of release

Non-superannuation	Assessment day
If payments commence before the reversionary beneficiary reaches Age Pension age	The date payments commence
If payments commence after the reversionary beneficiary reaches Age Pension age	The later of: • Date of reversion • Date reversionary beneficiary reaches Age Pension age

Note: Eligible conditions of release are retirement, reaching age 65, terminal medical condition, and permanent incapacity.

Threshold day

The threshold day is the day after which the asset value of the lifetime income stream steps down from 60% to 30% of the purchase price.

For lifetime income streams that revert on the death of the original owner, the threshold day will be:

- same as original owner, if the original owner had reached their assessment day prior to reversion
- based on the reversionary beneficiary's age, if the original owner had not reached their assessment day prior to reversion.

See the Deferred income streams section above for the definition of assessment day for superannuation and non-superannuation income streams.

Investment type life policies

As part of the changes to the assessment of lifetime income streams, changes were made to the way that lifetime income streams that contain insurance are assessed.

Prior to 1 July 2019, social security assessed a life policy with a surrender value as an assessable asset. The assessable asset value is the surrender value of the policy.

From 1 July 2019, the rules changed so that life insurance policies acquired on or after 1 July 2019 that are:

- acquired by a person on or after reaching Age Pension age, and
- the premium paid in any 12 month period exceeds 15% of the maximum death benefit payable

have an assessable asset value that is the greater of:

- the surrender value
- the sum of premiums paid less commuted amounts.

> **FirstTech comment**
>
> The change to the assessment of investment type life policies acquired on or after 1 July 2019 has important implications for products that meet the qualification criteria.
>
> In most cases, the premiums paid for the policy will exceed the surrender value, resulting in a higher assessable asset value for social security purposes than under the pre-1 July 2019 rules.

24.2 Asset-tested (long term)

An asset-tested (long term) income stream does not have the product features to qualify as a lifetime income stream, an asset-tested (short term) income stream or an asset-test exempt income stream.

The most common type of asset-tested (long term) income stream is an account based pension.

What are asset-tested (long term) income streams?

The following income streams qualify as asset-tested (long term):

- account based income streams (e.g. account based pensions, allocated pensions and equivalent annuities)
- immediate lifetime annuities purchased before 1 July 2019
- fixed term annuities with a term of six years or greater.

In addition, a fixed term annuity with a term of less than six years will qualify as asset-tested (long term) where the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy.

Example: Five-year fixed term annuity qualifying as asset-tested (long term)

Doris is 91 years old with a life expectancy of 4.69 years.

She purchased a five-year term annuity.

Ordinarily an income stream with a term of five years or less would be considered an asset-tested (short term) income stream. However as Doris has a life expectancy of less than five years and the term of the income stream is greater than her life expectancy, the income stream is asset-tested (long term).

Assets test assessment

The asset-test assessment of asset-tested (long term) income streams depends on whether they have an account balance.

Account based income streams such as account based pensions, have 100% of their account balance assessed under the assets test.

Non-account based income streams, such as annuities, are assessed using the following formula:

Purchase price - [((purchase price - RCV) ÷ relevant number) × term elapsed], where:

- **Purchase price** is the amount paid to purchase the annuity less commutations.
- **RCV** is the residual capital value.
- **Relevant number** is:
  - the term of the income stream where it is payable for a fixed number of years
  - the income support recipient's life expectancy where it is payable during their lifetime only
  - the longer of the income support recipient and the partner's life expectancies where the income stream is jointly owned and payable for life
  - the longer of the income support recipient and a reversionary beneficiary's life expectancies where the income stream is reversionary and payable for life.
- **Term elapsed** is the number of years that have elapsed since the annuity’s commencement day. The number of years is rounded down to the nearest:
  - half year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Gina purchased a 10 year annuity for $100,000. It has a residual capital value of $50,000. She receives monthly income payments from the annuity.

The assessable asset value of the annuity after 10 months from commencement is:

$100,000 - [($100,000 - $50,000) ÷ 10) × 0.5] = $97,500

Income test assessment

Prior to 1 January 2015, all asset-tested (long term) income streams were assessed by reducing the annual payment by a deductible amount. However, from 1 January 2015, new rules were introduced for account based income streams. From this date, account based pensions have been deemed under the income test unless they qualify for grandfathering (see Account based income streams below for more information).

Non-account based income streams

Asset-tested (long term) income streams that are not account based, such as immediate lifetime annuities purchased before 1 July 2019 and fixed term annuities with a term of six years or greater, are assessed by reducing the annual payment by a deductible amount.

The assessable income value is calculated by the following formula:

Annual payment - ((purchase price - RCV)/relevant number), where:

- **Annual payment** is gross amount of annuity payments paid in the year.
- **Purchase price** is the amount made to purchase the annuity less commutations.
- **RCV** is the residual capital value.
- **Relevant number** is:
    - the term of the income stream where it is payable for a fixed number of years
    - the income support recipient's life expectancy where it is payable during their lifetime only
    - the longer of the income support recipient and the partner's life expectancies where the income stream is jointly owned and payable for life
    - the longer of the income support recipient and a reversionary beneficiary's life expectancies where the income stream is reversionary and payable for life.

Example

Gina purchased a 10 year annuity for $100,000. It has a residual capital value of $50,000. The annual payment is $6,000.

Under the income test, assessable income is:

$6,000 - (($100,000 - $50,000)/10) = $1,000

Account based income streams

Account based income streams include account based pensions, allocated pensions and equivalent annuities. Term allocated pensions are not considered account based income streams for the purposes of these rules.

Deeming

Since 1 January 2015, account based income stream balances (along with a member's other financial assets) have been deemed for income test purposes. Where deeming applies to an account based income stream, actual income stream payments are ignored for income test purposes.

Grandfathering

Grandfathering applies to allow existing income support recipients to have their pre-January 2015 account based income streams continue to be assessed under the pre-January 2015 income test rules. Under the pre-January 2015 rules, assessable income is determined by:

Annual payment - ((purchase price - commutations)/relevant number), where:

- **Annual payment** is gross amount of payments paid during the financial year (excluding commutations).
- **Purchase price** is the amount made to purchase the income stream.
- **Commutations** is the total of any commutations made since commencement.
- **Relevant number** is:
  - the income support recipient's life expectancy where the income stream does not have a reversionary beneficiary
  - the longer of the income support recipient and a reversionary beneficiary's life expectancies where the income stream is reversionary.

Note

The amount by which the annual payment is reduced for income test purposes is known as the 'deductible amount'.

A member's account based income stream will qualify for grandfathering provided:

- the income stream commenced prior to 1 January 2015, and
- the member has been in receipt of an eligible income support payment[125] since immediately prior to 1 January 2015 and continuously receives an eligible income support payment from that time.

Where a member is receiving an account based income stream that has an automatically reversionary beneficiary and qualifies for grandfathering based on the above rules, its grandfathered status can continue when it reverts to the reversionary beneficiary upon the death of the member, provided the reversionary beneficiary is receiving an eligible income support payment at the time of reversion and continuously receives an eligible income support payment from that time.

What changes will cause grandfathering to cease?

Where a member has a grandfathered account based income stream, the following changes after 1 January 2015 will remove its grandfathered status:

- switching income stream providers
- aggregating multiple account based income streams
- refreshing a transition to retirement account based pension strategy
- adding or removing a reversionary beneficiary (if the provider requires a new income stream to be commenced)
- ceasing to receive an eligible income support payment (switching immediately from one eligible income support payment to another will not cause grandfathering to cease)
- where the member dies and a new pension (not reversionary pension) is paid to a beneficiary.

Once an income stream's grandfathered status is removed, it is then subject to deeming.

Grandfathered account based income streams – Centrelink reporting

For Centrelink reporting purposes, the gross annual nominated payment of a grandfathered account based income stream is equal to the sum of actual payments received plus payments to be received for the whole financial year.

Where the person nominates to increase or reduce the amount of annual payments part way through the financial year, the new annual payment amount is assessable for the remainder of the financial year.

125 Refer to the FirstTech Social Security Guide for a complete list of eligible income support payments.

Example

Bob has a grandfathered account based pension. On 1 July in a financial year, he nominates to receive payments of $1,000 per month from his account based pension.

For Centrelink purposes, the annual payment amount is:

- actual payments received: Nil
- payments to be received: 12 × $1,000 = $12,000
- total payments: $12,000.

On 1 January in that financial year, Bob decides to increase his monthly payments to $2,000. For Centrelink purposes, the annual payment amount is:

- actual payments received: 6 × $1,000 = $6,000
- payments to be received: 6 × $2,000 = $12,000
- total payments: $18,000

Centrelink will assess an annual payment of $18,000 from 1 January for the remainder of the financial year.

How do commutations affect the social security deductible amount?

For account based pensions that are grandfathered, commutations may have a significant impact on the income test assessment.

In this case, individuals will need to decide whether they wish one-off withdrawals to be treated as irregular pension income or a commutation.

- If the withdrawal is taken as a pension payment, it will be treated as income in the financial year the payment is made.
- If the withdrawal is taken as a partial commutation, it is not treated as income under the income test. However, it will permanently reduce the income stream's Centrelink deductible amount.

The deductible amount will be recalculated as:

(Original purchase price - lump sum commutations)/original relevant number

There is no fixed rule as to when a withdrawal should be treated as either a pension payment or commutation; it must be determined in light of the member's circumstances.

Example

Russell was age 65, fully retired and receiving the Age Pension.

He commenced an account based pension with a purchase price of $300,000 in November 2014. His life expectancy at commencement was 18.54.

Deductible amount: $300,000/18.54 = $16,181

Russell requires $18,000 a year to meet his retirement income needs.

On 1 July in a financial year, he nominates to receive payments of $1,500 per month from his account based pension. For Centrelink purposes, the annual payment amount is:

- actual payments received: Nil
- payments to be received: 12 × $1,500 = $18,000
- total payments: $18,000.

Centrelink will assess an annual payment of $18,000 from 1 July.

Assessable income $18,000 - $16,181 = $1,819

In addition to his annual payment of $18,000, Russell also requires $20,000 in January of that financial year to purchase a new car. He has the choice of taking the additional $20,000 as either:

- increased pension payment, or
- lump sum commutation.

Increased pension payment

On 1 January, Russell decides to increase his pension payments to receive an additional $20,000 in the month of January, in addition to his regular $1,500 per month. For Centrelink purposes, the annual payment amount is:

- actual payments received: 6 × $1,500 = $9,000
- payments to be received: 1 × $21,500 = $21,500, plus 5 × $1,500 = $7,500
- total payments: $38,000

Centrelink will assess an annual payment of $38,000 from 1 January for the remainder of the financial year.

Assessable income: $38,000 - $16,181 = $21,819

Lump sum commutation

Alternatively, Russell could choose to take the additional $20,000 as a lump sum commutation. In this case, on 1 January, Russell commutes $20,000 in addition to his regular $1,500 per month. The lump sum commutation is not assessed as income, however it does cause a recalculation of the deductible amount as follows:

(Original purchase price - lump sum commutations)/original relevant number

($300,000 - $20,000)/18.54 = $15,102

From 1 July to 31 December in the financial year:
assessable income is $18,000 - $16,181 = $1,819

From 1 January to 30 June in the financial year:
assessable income is $18,000 - $15,102 = $2,898

The reduction in the deductible amount is permanent and will result in higher assessable income for the remainder of the income stream.

Timing is important

When electing to increase the amount of annual pension payments from an account based income stream, the timing is important as the increased assessable income will apply for the remainder of the financial year.

By timing the increased pension payment towards the end of the financial year, it can minimise the impact on Centrelink entitlements.

Tip

Care should be taken as although Centrelink determines the assessable income from an account based pension on a financial year basis, it is not until August that the superannuation fund provides electronic reporting to Centrelink for the next financial year, which means that their Centrelink entitlements may be reduced until this time.

24.3 Asset-tested (short term)

Fixed term annuities with a term of five years or less are generally classified as asset-tested (short term) income streams.

The only exception is where the member has a life expectancy of five years or less at commencement of the income stream and the term is greater than or equal to their life expectancy. In this case, the income stream will be assessed as asset-tested (long term).

Assets test assessment

The asset value of an asset-tested (short term) income stream is determined using the following formula:

Purchase price - [((purchase price - RCV) ÷ relevant number) × term elapsed], where:

- **Purchase price** is the amount made to purchase the annuity less commutations.
- **RCV** is the residual capital value.
- **Relevant number** is the term of the annuity.
- **Term elapsed** is the number of years that have elapsed since the annuity's commencement day. The number of years is rounded down to the nearest:
  - half year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year when the income payments are annual.

Example

Bob purchased a five year annuity for $100,000. It has a residual capital value of $50,000. He receives monthly income payments from the annuity.

The assessable asset value of the annuity after 10 months from commencement is:

$100,000 - [(($100,000 - $50,000) ÷ 5) × 0.5] = $95,000

Income test assessment

The income value is calculated by applying deeming to the assessable asset value.

Example

In the example above, the assessable asset value is $95,000.

Under the income test, deemed income is assessable as follows for a single pensioner:

($64,200 × 0.25%) + ($30,800 × 2.25%) = $853.50

24.4 Asset-test exempt income streams

Certain categories of income streams that have restrictions on term, limited commutability and no residual capital value qualify for a social security asset-test exemption.

Table 24.6 Income streams that qualify for either a 100% or 50% asset-test exemption

100% asset-test exemption	50% asset-test exemption
Complying lifetime income streams purchased before 20 September 2004	Complying lifetime income streams purchased on or after 20 September 2004 and before 20 September 2007
Complying life expectancy income streams purchased before 20 September 2004	Complying life expectancy income streams purchased on or after 20 September 2004 and before 20 September 2007
Defined benefit income streams (purchased at any time)	Term allocated pension purchased on or after 20 September 2004 and before 20 September 2007
Income streams purchased with the rollover of a pre-20 September 2004 complying income stream (must meet certain requirements, refer to the FirstTech Social Security Guide for more information)	Income streams purchased with the rollover of a pre-20 September 2007 complying income stream (must meet certain requirements, refer to the FirstTech Social Security Guide for more information)

Currently, the only new complying income streams that can be commenced are defined benefit income streams and income streams commenced from the rollover of complying pre-20 September 2007 income streams.

Table 24.7 Lifetime, life expectancy and term allocated pensions

For lifetime, life expectancy and term allocated pensions to qualify for a social security asset-test exemption, they must meet the following criteria:

Lifetime income stream[126]	Life expectancy income stream[126]	Term allocated pension[126]
Income payments must be made at least annually over the lifetime of the beneficiary (or reversionary beneficiary)	Income payments must be made at least annually over the specified term. Term options depend on income stream commencement date[127]	Income payments must be made at least annually over the specified term. Term options depend on life expectancy of primary (or in some cases reversionary) beneficiary.[128]
Commences on the day it is purchased	Commences on the day it is purchased	Commences on the day it is purchased

126 Sections 9A (lifetime), 9B (life expectancy) and 9BA (term allocated) of the *Social Security Act 1991*.

127 See section 19 'Fixed term income streams' for more information on the terms that can be selected.

128 See section 17 'Term allocated pensions' for more information on the terms that can be selected.

Lifetime income stream[126]	Life expectancy income stream[126]	Term allocated pension[126]
Cannot be commuted except in limited circumstances. Five-year full commutation window may apply though – see section 14.2 for further information about this option.	Cannot be commuted except in limited circumstances under general rules. Five-year full commutation window may apply though - see section 14.2 for further information about this option.	Cannot be commuted except in limited circumstances under general rules. Five-year full commutation window may apply though - see section 14.2 for further information about this option.
Cannot have a residual capital value	Cannot have a residual capital value	Cannot have a residual capital value
Income payments must be fixed at start and can only increase each year by no more than the greater of 5% or CPI plus 1%	Income payments must be fixed at start and can only increase each year by no more than the greater of 5% or CPI plus 1%	Annual payment = account balance divided by payment factor. Payments can be varied plus or minus 10%
Cannot be transferred to another person except on death to a reversionary beneficiary, or in some cases to the estate	Cannot be transferred to another person except on death to a reversionary beneficiary, or in some cases to the estate	Cannot be transferred to another person except on death to a reversionary beneficiary, or in some cases to the estate
Cannot be used as security for borrowing	Cannot be used as security for borrowing	Cannot be used as security for borrowing
May have a guaranteed minimum payment term: • If purchased prior to 20 September 2004, 10 years • If purchased from 20 September 2004 to 19 September 2007, the lesser of life expectancy of beneficiary at commencement, or 20 years		

Defined benefit income streams

A defined benefit income stream is a pension paid from a public sector or corporate defined benefit superannuation fund (e.g. the Public Sector Superannuation Scheme). It does not include income streams purchased from retail providers or SMSFs or small APRA funds.

To be classified as a defined benefit income stream, it must be paid for the lifetime of the recipient and must be attributable to a defined benefit interest as defined in the SIS Regulations.

For social security purposes, defined benefit interests are not determined in relation to a specific capital amount, but relate to other factors such as:

- an individual's salary at retirement
- the number of years of service in the organisation, or
- specified factors for converting a capital sum to pension at rates that are favourable compared with those that would be available from a financial institution.

Assets test assessment

The assets test assessment of an asset-test exempt income stream depends on the type of income stream and the date of purchase:

- defined benefit income streams purchased at any time and complying lifetime and life expectancy income streams purchased prior to 20 September 2004: 100% assets test exemption
- complying lifetime, complying life expectancy and term allocated pensions purchased on or after 20 September 2004 and before 20 September 2007: 50% assets test exemption.

Lifetime and life expectancy: 50% asset-test exemption

For complying lifetime and life expectancy income streams purchased on or after 20 September 2004 and before 20 September 2007, the asset value is determined using the following formula:

50% × (purchase price - (purchase price × (term elapsed/relevant number))), where:

- **Purchase price** is the amount paid to purchase the income stream.
- **Relevant number** is:
  - the term of the income stream where it is payable for a fixed number of years
  - the income support recipient's life expectancy where it is payable during their lifetime only
  - the longer of the income support recipient and the partner's life expectancies where the income stream is jointly owned and payable for life
  - the longer of the income support recipient and a reversionary beneficiary's life expectancies where the income stream is reversionary and payable for life.
- **Term elapsed** is the number of years that have elapsed since the income stream's commencement day. The number of years is rounded down to the nearest:
  - half-year, when the income payments are more frequent than annual (e.g. fortnightly, monthly, quarterly or six monthly), or
  - whole year, when the income payments are annual.

Example: 50% asset-test exempt life expectancy annuity

Jenny purchased a 20-year, complying life expectancy income stream for $100,000. As she purchased the annuity in 2006, it qualified for a 50% asset-test exemption. She receives monthly income payments from the annuity.

The assessable asset value of the annuity after 19 years is:

50% × ($100,000 - ($100,000 × (19/20))) = $2,500

Example: 50% asset-test exempt lifetime annuity

Jill commenced a non-reversionary lifetime pension in 2007, which qualified for a 50% asset-test exemption. The purchase price was $100,000. Her life expectancy at commencement was 21.15.

She receives monthly payments from the lifetime pension.

After 18 years, the assessable asset value of the lifetime pension is:

50% × [$100,000 - ($100,000 × (18/21.15))] = $7,447

Term allocated pensions: 50% asset-test exemption

For term allocated pensions purchased on or after 20 September 2004 and before 20 September 2007, the asset value is: **50% × account balance**

Example

John commenced a term allocated pension in 2006. 50% of the account balance is an assessable asset. On 1 July in a financial year, the account balance is $200,000. The assessable asset value is 50% × $200,000 = $100,000

Income test assessment

The income value for asset-test exempt income streams including lifetime, life expectancy and term allocated pensions is calculated by the following formula:

Annual payment - (purchase price/relevant number), where:

- **Annual payment** is gross amount of income stream payments paid in the year.
- **Purchase price** is the amount paid to purchase the income stream.
- **Relevant number** is:
  - the term of the income stream where it is payable for a fixed number of years
  - the income support recipient's life expectancy where it is payable during their lifetime only
  - the longer of the income support recipient and the partner's life expectancies where the income stream is jointly owned and payable for life
  - the longer of the income support recipient and a reversionary beneficiary's life expectancies where the income stream is reversionary and payable for life.

Example: Life expectancy annuity

Jenny purchased a 20 year complying life expectancy annuity for $100,000. The annual payment is $6,000.

Under the income test, assessable income is:

$6,000 - ($100,000/20) = $1,000

Example: Lifetime pension

Joan commenced a lifetime pension in 2005 which is asset-test exempt. The purchase price at commencement was $200,000 and her life expectancy was 22 years. Joan receives an annual payment of $10,000. Assessable income is:

$10,000 - ($200,000/22) = $909

Example: Term allocated pension

John commenced a term allocated pension in 2006 for $200,000. The term selected was 20 years. John receives an annual payment of $11,000. Assessable income is:

$11,000 - ($200,000/20) = $1,000

Income assessment of defined benefit income streams

The assessable income of a defined benefit income stream is based on the annual payment and the deductible amount they receive for tax purposes.

Assessable income = annual income - deductible amount, where:

- **Annual income** means the amount payable to the person for the year from the income stream.
- **Deductible amount** (if any) is the tax free proportion, subject to a cap of 10% of the annual payment.

The 10% cap only applies to people in receipt of income support payments from Centrelink. People receiving payments from the Department of Veterans' Affairs, such as the service pension, are not impacted. In addition, defined benefit income streams paid by the following military superannuation funds are excluded from this cap:

- Defence Force Retirement & Death Benefits Scheme (DFRDB)
- Military Superannuation & Benefits Scheme (MilitarySuper), and
- Defence Force Retirement Benefits Scheme (DFRB).

Example

Bill and Norma receive a part Age Pension, and Bill receives a defined benefit income stream that is not paid from a military superannuation scheme. The defined benefit income stream has an annual payment of $50,000 and a tax free percentage of 50%.

In this case, the social security deductible amount is the lower of:

- tax free component which is 50% × $50,000 = $25,000, or
- 10% of the annual payment which is 10% × $50,000 = $5,000.

Therefore, social security assessable income will be $45,000 ($50,000 - $5,000).

FirstTech comment

From 1 July 2007, there were changes to the taxation of income streams that impacted the calculation of the tax free proportion. Defined benefit income streams acquired from 1 July 2007 have their deductible amount calculated as a proportion based on the tax free component at commencement.

For defined benefit income streams acquired before 1 July 2007, different rules applied when calculating the deductible amount until:

- the income stream is partially commuted on or after 1 July 2007 – the new deductible amount will be used irrespective of whether it is lower than the deductible amount prior to the commutation
- the primary beneficiary dies and the income stream reverts to a reversionary beneficiary on or after 1 July 2007 – the new deductible amount will be used irrespective of whether it is lower than the deductible amount prior to reversion, or
- the person is age 60 on 1 July 2007 or turns age 60 after 1 July 2007.

Refer to the FirstTech Social Security Guide for more information about the deductible amount that applied to income streams commenced prior to 1 July 2007.

Appendix 1 Glossary of terms

ADF	Approved Deposit Fund
AFCA	Australian Financial Complaints Authority
APRA	Australian Prudential Regulation Authority
ATE	Assets Test Exempt
ATO	Australian Taxation Office
AWA	Australian Workplace Agreement
AWE	Average Weekly Earnings
AWOTE	Average Weekly Ordinary Time Earnings
CGT	Capital Gains Tax
CPF	Constitutionally Protected Fund
CPI	Consumer Price Index
CSS	Commonwealth Superannuation Scheme
DASP	Departing Australia Super Payment
DFRB	Defence Force Retirement Benefits Scheme
DFRDB	Defence Force Retirement & Death Benefits Scheme
DVA	Department of Veterans' Affairs
ECC	Excess Concessional Contributions
ETP	Employment Termination Payment
FBT	Fringe Benefits Tax
FHSS	First Home Super Saver
GIC	General Interest Charge
HELP	Higher Education Loan Program
ITAA	Income Tax Assessment Act
ITAR	*Income Tax Assessment (1997 Act) Regulations 2021*
LISTO	Low Income Superannuation Tax Offset
LPR	Legal Personal Representative
LRBA	Limited Recourse Borrowing Arrangement
MAAS	Member Account Attribution Service
MATS	Member Account Transaction Service

MCS	Member Contribution Statement
MLIS	Market-linked Income Streams
MTR	Marginal Tax Rate
NANE	Non-assessable Non-exempt
NAPSA	Notional Agreement Preserving State Award
NCC	Non-concessional Contributions
NOI	Notice of Intent
OTE	Ordinary Time Earnings
PDS	Product Disclosure Statement
PF	Payment Factor
PIA	Pooled Investment Annuities
PIP	Pooled Investment Pension
PSI	Personal Services Income
PSS	Public Sector Superannuation Scheme
QROPS	Qualifying Recognised Overseas Pension Scheme
RBL	Reasonable Benefit Limit
RCV	Residual Capital Value
RESC	Reportable Employer Superannuation Contribution
RFB	Reportable Fringe Benefits
RNP	Restricted Non-preserved
RSA	Retirement Savings Account
RSE	Registrable Superannuation Entity
SAF	Small APRA Fund
SAPTO	Seniors and Pensioners Tax Offset
SCI	Salary Continuance Insurance
SG	Superannuation Guarantee
SGAA	*Superannuation Guarantee Administration Act 1992*
SGC	Superannuation Guarantee Charge
SHASA	Superannuation Holding Accounts Special Account
SIC	Shortfall Interest Charge

SPG	Superannuation Prudential Practice Guide
SIS	Superannuation Industry (Supervision) Act and/or Regulations
SMSF	Self-managed Super Fund
SSA	Salary Sacrifice Arrangement
STP	Single Touch Payroll
SVS	SMSF verification service
TAP	Term Allocated Pension
TBC	Transfer Balance Cap
TFN	Tax File Number
TPD	Total and Permanent Disability
TSB	Total Superannuation Balance
TTR	Transition to Retirement
UNP	Unrestricted Non-preserved
UPP	Undeducted Purchase Price
UUPP	Unused Undeducted Purchase Price
WT	Work Test
WTE	Work Test Exemption

Appendix 2 Concessional contributions cap checklist

1. Is member eligible to contribute to super/have contributions made on their behalf? See section 1.
2. Where personal deductible contributions will be made, does the member meet requirements to claim a tax-deduction (including work test requirements if aged 67 to 74)? See section 2.5.
3. In 2025–26, a member's concessional cap is the higher of:
   - the basic concessional cap of $30,000
   - if eligible to carry-forward unused concessional cap amounts, their concessional cap as calculated under section 2.2.

4 Determine what counts toward member's cap.

Concessional	
Employer(s)	
Mandated employer contributions (SG or super contributions imposed under award or agreement)	$
SG on potential bonus	$
Salary sacrifice and other voluntary employer contributions	$
Insurance in super paid by employer	$
Contributions from prior tax year received after 1 July (including after termination of employment)	$
Total employer	$
Personal	
Has a valid notice of intent been acknowledged by fund?	Yes/No
Total personal contributions claimed as a deduction	$
Contributions from others	
Can be from anyone (other than spouse or child contributions)	$
Allocations from fund reserves	
Assessable contributions directed to an unallocated contributions account and then allocated to a member's benefits in accordance with timeframes specified in the SIS Regulations (if not already included above). For further information, see section 7.2 of the FirstTech SMSF guide. If the allocation is net of tax, gross up by 1.176.	$
Payments from the ATO	
Where ATO contributes SHASA or SG shortfall amounts	$
Contributions relating to defined benefit interests	
Notional taxed contributions and defined benefit contributions (to the extent they exceed notional taxed contributions). Refer to section 2.7 for further information.	$
Total concessional contributions	$
Less concessional cap (from Step 3 of this checklist)	$
Excess concessional	$

Appendix 3 Non-concessional contributions cap checklist

1 Determine a member's eligibility to make non-concessional contributions and the relevant non-concessional contributions cap that applies to the member during 2025–26, using flow chart below. See section 1 of this guide for contribution eligibility rules.

Will the non-concessional contributions be made no later than 28 days after the end of the month in which the member reaches age 75?

N → Non-concessional contributions cannot be received by the fund more than 28 days after the end of the month in which the member reaches age 75.

Y ↓

Was the member's **total superannuation balance** on 30 June 2025 less than $2 million?

N → **2025–26 NCC cap is nil**
Any NCC made in 2025–26 will be excessive.

Y ↓

Is member in a previously triggered bring-forward period in 2025–26?

N → go to "Was the member age 74 or less on 1 July 2025?"

Y ↓

What year was the bring-forward rule triggered?

2023–24

Total super balance at 30 June 2023	**2023–24 NCC cap**
<$1.68m	$330,000
Less NCCs made in 2023–24	$______
Less NCCs made in 2024–25	$______
Equals 2025–26 NCC cap:	$_______*

* If negative, the 2025–26 NCC cap is nil.

Note: If the member's TSB on 30 June 2023 was ≥$1.68m, and bring-forward triggered in 2023–24, the member will no longer be in a bring-forward period in 2025–26. Go to box below.

2024–25

Total super balance at 30 June 2024	**2024–25 NCC cap**
<$1.66m	$360,000
≥$1.66m and <$1.78m	$240,000
Less NCCs made in 2024–25	$______
Equals 2025–26 NCC cap:	$_______*

* If negative, the 2025–26 NCC cap is nil.

Note: If member's TSB on 30 June 2024 was ≥$1.78m, the member could not have triggered a bring-forward period in 2024–25. Go to box below.

Was the member age 74 or less on 1 July 2025?

N → **2025–26 NCC cap is $120,000**

Y ↓

2025–26 NCC cap (including any bring-forward)

Total super balance at 30 June 2025	**2025–26 NCC cap**
<$1.76m	**$360,000**
≥$1.76m and <$1.88m	**$240,000**
≥$1.88m and <$2m	**$120,000**
≥$2m	**Nil**

Note: Non-concessional contributions can only be received by the fund where the member is under age 75 at the time of contribution (this includes the period up to 28 days after the end of the month in which the member reaches 75). However, access to the bring-forward rule in 2025–26 requires a member to be under 75 on 1 July 2025 (no 28 day period applies for this purpose).

2 Determine what counts towards member's non-concessional cap

Non-concessional	
Personal contributions Where no tax deduction is claimed (or tax deduction has been denied)	$
Excess concessional contributions Excluding grossed up amounts withdrawn by the member	$
Spouse contributions Where the member is the receiving spouse	$
Child contributions (Do not include contributions made by child's employer)	$
Foreign pension transfers (≤ 6 months) Include 100% of transfer made within six months of Australian tax residency commencing	$
Foreign pension transfers (> 6 months) Include (gross transfer amount - applicable fund earnings elected to be taxed in the fund), where the transfer is made after six months of Australian tax residency commencing	$
Proceeds from sale of small business Include if the contributions were not included in a valid CGT cap election form given to the fund at or before the time of the contribution	$
Denied personal injury payments If contributed under personal injury and conditions not met	$
Non-complying funds Contributions made after 10 May 2006 counted in the year the fund regains complying status	$
Allocations from fund reserves Non-assessable contributions directed to an unallocated contributions account and then allocated to a member's benefits in accordance with timeframes specified in the SIS Regulations (if not already included above). For further information, see section 7.2 of the FirstTech SMSF guide.	$
Amounts allocated from a fund reserve to the member's benefits, except where such an allocation is excluded from the member's non-concessional cap. For further information, see section 7.2 of the FirstTech SMSF guide.	$
Total non-concessional contributions	**$**
Non-concessional cap (worked out under Step 1 of checklist)	$
Excess non-concessional contributions[1]	**$**

1 Non-concessional contributions above the cap will not become excess non-concessional contributions where the contributions (plus 85% of an associated earnings amount) are released from super by the ATO as a default option or by the member making a valid election to the ATO, or by the ATO determining that the value of the member's remaining superannuation interests is Nil. For further information, refer to section 3.4.

Note: Downsizer contributions do not count toward the concessional or non-concessional contributions caps.

Appendix 4 Life expectancy tables

Table 1 Life expectancy table 2020–22

The 2020–22 Australian Life Tables (Table 1) apply to pensions and annuities that commence on or after 1 January 2025. Among other things, these life expectancy factors are used in the calculation of the annual non assessable amount for social security purposes (excluding non-grandfathered account based income streams which are subject to deeming) and the tax deductible amount for ordinary money annuities.

Age	Males	Females
0	81.31	85.34
1	80.59	84.59
2	79.61	83.61
3	78.62	82.62
4	77.63	81.62
5	76.64	80.63
6	75.64	79.64
7	74.65	78.64
8	73.65	77.65
9	72.66	76.65
10	71.66	75.66
11	70.67	74.66
12	69.67	73.67
13	68.68	72.67
14	67.69	71.68
15	66.70	70.68
16	65.71	69.69
17	64.74	68.71
18	63.76	67.72
19	62.80	66.74
20	61.83	65.75
21	60.86	64.77
22	59.90	63.78
23	58.93	62.80
24	57.97	61.81
25	57.01	60.83
26	56.04	59.84
27	55.08	58.86
28	54.12	57.87
29	53.16	56.89
30	52.19	55.91
31	51.23	54.92
32	50.27	53.94
33	49.31	52.96
34	48.35	51.98
35	47.40	51.00
36	46.44	50.03
37	45.49	49.05
38	44.53	48.08
39	43.58	47.11
40	42.63	46.14
41	41.68	45.17
42	40.74	44.21
43	39.80	43.24
44	38.86	42.28
45	37.92	41.33
46	36.99	40.37
47	36.07	39.42
48	35.14	38.47
49	34.22	37.53
50	33.31	36.58
51	32.40	35.64
52	31.50	34.71
53	30.60	33.78
54	29.70	32.85
55	28.82	31.92
56	27.93	31.00
57	27.06	30.08
58	26.19	29.17
59	25.32	28.26
60	24.47	27.35
61	23.62	26.45
62	22.78	25.56
63	21.94	24.67
64	21.12	23.78
65	20.30	22.90
66	19.48	22.02
67	18.68	21.15
68	17.89	20.29
69	17.10	19.43
70	16.32	18.59
71	15.56	17.75
72	14.80	16.92
73	14.06	16.10
74	13.33	15.30
75	12.62	14.50
76	11.92	13.72
77	11.24	12.96
78	10.58	12.21
79	9.94	11.48
80	9.32	10.77
81	8.72	10.08
82	8.14	9.42
83	7.59	8.78
84	7.06	8.16
85	6.55	7.57
86	6.08	7.01
87	5.63	6.48
88	5.21	5.98
89	4.83	5.51
90	4.48	5.09
91	4.16	4.69
92	3.88	4.33
93	3.62	4.00
94	3.39	3.71
95	3.18	3.44
96	2.99	3.20
97	2.81	2.99
98	2.65	2.80
99	2.50	2.63
100	2.37	2.49
101	2.25	2.36
102	2.15	2.24
103	2.06	2.14
104	1.98	2.04
105	1.90	1.96
106	1.83	1.88
107	1.77	1.81
108	1.72	1.74
109	1.67	1.68

Table 2 Life expectancy table 2015–17

The 2015–17 Australian Life Tables (Table 2) apply to pensions and annuities that commenced between 1 January 2020 and 31 December 2024. Among other things, these life expectancy factors are used in the calculation of the annual non-assessable amount for social security purposes (excluding non-grandfathered account based income streams which are subject to deeming) and the tax deductible amount for ordinary money annuities.

Age	Males	Females	Age	Males	Females	Age	Males	Females
0	80.76	84.85	37	44.95	48.58	74	12.95	14.93
1	80.05	84.11	38	44.00	47.61	75	12.25	14.15
2	79.07	83.12	39	43.05	46.64	76	11.57	13.39
3	78.08	82.14	40	42.10	45.68	77	10.90	12.64
4	77.09	81.14	41	41.16	44.71	78	10.25	11.90
5	76.10	80.15	42	40.22	43.75	79	9.63	11.18
6	75.11	79.16	43	39.29	42.79	80	9.02	10.49
7	74.11	78.16	44	38.35	41.83	81	8.44	9.81
8	73.12	77.17	45	37.43	40.88	82	7.89	9.16
9	72.12	76.17	46	36.50	39.92	83	7.36	8.54
10	71.13	75.18	47	35.58	38.97	84	6.86	7.94
11	70.14	74.18	48	34.66	38.03	85	6.39	7.37
12	69.14	73.19	49	33.75	37.08	86	5.95	6.83
13	68.15	72.19	50	32.84	36.14	87	5.54	6.32
14	67.16	71.20	51	31.93	35.21	88	5.16	5.84
15	66.17	70.21	52	31.03	34.27	89	4.81	5.40
16	65.18	69.22	53	30.13	33.34	90	4.50	4.99
17	64.20	68.23	54	29.24	32.42	91	4.22	4.61
18	63.23	67.25	55	28.35	31.49	92	3.96	4.28
19	62.26	66.26	56	27.47	30.57	93	3.72	3.97
20	61.29	65.28	57	26.60	29.66	94	3.50	3.69
21	60.32	64.29	58	25.73	28.75	95	3.29	3.43
22	59.36	63.30	59	24.87	27.84	96	3.11	3.18
23	58.39	62.32	60	24.02	26.93	97	2.93	2.94
24	57.43	61.33	61	23.17	26.03	98	2.77	2.73
25	56.46	60.35	62	22.33	25.14	99	2.62	2.53
26	55.50	59.36	63	21.50	24.24	100	2.49	2.36
27	54.53	58.37	64	20.67	23.36	101	2.36	2.19
28	53.57	57.39	65	19.86	22.47	102	2.24	2.05
29	52.61	56.41	66	19.04	21.60	103	2.14	1.91
30	51.65	55.42	67	18.24	20.73	104	2.04	1.80
31	50.68	54.44	68	17.45	19.87	105	1.94	1.69
32	49.72	53.46	69	16.67	19.02	106	1.86	1.59
33	48.77	52.48	70	15.90	18.18	107	1.78	1.51
34	47.81	51.51	71	15.14	17.35	108	1.71	1.43
35	46.85	50.53	72	14.39	16.53	109	1.64	1.37
36	45.90	49.56	73	13.66	15.73			

Table 3 Life expectancy table 2010–12

The 2010–12 Australian Life Tables (Table 3) apply to pensions and annuities that commenced between 1 January 2015 and 31 December 2019. Among other things, these life expectancy factors are used in the calculation of the annual non-assessable amount for social security purposes (excluding non-grandfathered account based income streams which are subject to deeming) and the tax deductible amount for ordinary money annuities.

Age	Males	Females
0	80.06	84.31
1	79.39	83.60
2	78.42	82.62
3	77.44	81.63
4	76.45	80.64
5	75.46	79.65
6	74.46	78.66
7	73.47	77.66
8	72.48	76.67
9	71.49	75.68
10	70.49	74.68
11	69.50	73.69
12	68.51	72.69
13	67.51	71.70
14	66.52	70.70
15	65.53	69.71
16	64.55	68.72
17	63.56	67.74
18	62.59	66.76
19	61.63	65.77
20	60.67	64.79
21	59.70	63.81
22	58.74	62.82
23	57.78	61.84
24	56.81	60.86
25	55.85	59.87
26	54.89	58.89
27	53.92	57.90
28	52.96	56.92
29	52.00	55.94
30	51.04	54.96
31	50.08	53.98
32	49.13	53.00
33	48.17	52.02
34	47.22	51.04
35	46.26	50.06
36	45.31	49.09

Age	Males	Females
37	44.36	48.12
38	43.41	47.14
39	42.46	46.18
40	41.51	45.21
41	40.57	44.24
42	39.62	43.28
43	38.68	42.32
44	37.75	41.36
45	36.81	40.41
46	35.88	39.45
47	34.95	38.50
48	34.03	37.56
49	33.11	36.61
50	32.20	35.67
51	31.29	34.74
52	30.38	33.80
53	29.49	32.87
54	28.59	31.95
55	27.71	31.02
56	26.83	30.10
57	25.95	29.19
58	25.09	28.28
59	24.22	27.37
60	23.37	26.47
61	22.52	25.57
62	21.68	24.68
63	20.85	23.80
64	20.03	22.92
65	19.22	22.05
66	18.41	21.18
67	17.62	20.33
68	16.84	19.48
69	16.07	18.64
70	15.31	17.80
71	14.56	16.98
72	13.83	16.18
73	13.11	15.38

Age	Males	Females
74	12.40	14.60
75	11.72	13.83
76	11.05	13.08
77	10.41	12.33
78	9.78	11.61
79	9.18	10.90
80	8.60	10.21
81	8.04	9.55
82	7.51	8.90
83	7.00	8.29
84	6.52	7.70
85	6.06	7.14
86	5.64	6.61
87	5.24	6.11
88	4.87	5.65
89	4.52	5.22
90	4.21	4.82
91	3.92	4.45
92	3.66	4.12
93	3.44	3.82
94	3.24	3.55
95	3.06	3.32
96	2.91	3.11
97	2.78	2.93
98	2.67	2.77
99	2.57	2.62
100	2.46	2.50
101	2.36	2.38
102	2.27	2.27
103	2.19	2.17
104	2.11	2.08
105	2.03	2.00
106	1.96	1.92
107	1.90	1.85
108	1.84	1.79
109	1.79	1.73

Table 4 Life expectancy table 2005–07

The 2005–07 Australian Life Tables (Table 4) apply to pensions and annuities that commenced between 1 January 2010 and 31 December 2014. Among other things, these life expectancy factors are used in the calculation of the annual non-assessable amount for social security purposes and the tax deductible amount for ordinary money annuities.

Age	Males	Females	Age	Males	Females	Age	Males	Females
0	79.02	83.67	38	42.60	46.63	76	10.68	12.78
1	78.44	83.04	39	41.66	45.66	77	10.07	12.05
2	77.47	82.07	40	40.71	44.70	78	9.48	11.35
3	76.49	81.08	41	39.77	43.73	79	8.92	10.67
4	75.50	80.10	42	38.83	42.77	80	8.38	10.01
5	74.51	79.11	43	37.89	41.81	81	7.86	9.37
6	73.52	78.11	44	36.96	40.85	82	7.36	8.75
7	72.53	77.12	45	36.03	39.90	83	6.89	8.17
8	71.54	76.13	46	35.10	38.95	84	6.45	7.61
9	70.55	75.14	47	34.18	38.00	85	6.03	7.08
10	69.55	74.14	48	33.26	37.05	86	5.64	6.58
11	68.56	73.15	49	32.34	36.11	87	5.27	6.11
12	67.57	72.15	50	31.43	35.17	88	4.94	5.68
13	66.58	71.16	51	30.53	34.24	89	4.63	5.28
14	65.58	70.16	52	29.63	33.31	90	4.36	4.91
15	64.59	69.17	53	28.73	32.38	91	4.11	4.57
16	63.61	68.19	54	27.84	31.45	92	3.89	4.27
17	62.63	67.20	55	26.95	30.53	93	3.69	3.99
18	61.66	66.22	56	26.08	29.61	94	3.51	3.75
19	60.71	65.24	57	25.20	28.70	95	3.36	3.53
20	59.75	64.25	58	24.34	27.79	96	3.22	3.33
21	58.80	63.27	59	23.48	26.89	97	3.10	3.16
22	57.84	62.29	60	22.63	26.00	98	2.99	3.00
23	56.88	61.31	61	21.79	25.11	99	2.90	2.86
24	55.93	60.32	62	20.96	24.23	100	2.81	2.74
25	54.97	59.34	63	20.14	23.35	101	2.73	2.63
26	54.02	58.36	64	19.34	22.48	102	2.66	2.54
27	53.06	57.38	65	18.54	21.62	103	2.60	2.46
28	52.11	56.40	66	17.76	20.76	104	2.54	2.38
29	51.16	55.42	67	16.99	19.92	105	2.49	2.32
30	50.20	54.44	68	16.24	19.08	106	2.44	2.26
31	49.25	53.46	69	15.49	18.24	107	2.40	2.20
32	48.30	52.48	70	14.76	17.42	108	2.35	2.15
33	47.35	51.50	71	14.04	16.61	109	2.30	2.09
34	46.40	50.52	72	13.33	15.82			
35	45.45	49.55	73	12.64	15.03			
36	44.50	48.58	74	11.96	14.27			
37	43.55	47.60	75	11.31	13.51			

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