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Super transfer balance cap: reporting events

Now that the transfer balance cap of $1.6 million has been introduced to limit the amount of capital that can be transferred into the tax-exempt retirement phase, the ATO requires certain events that track the movement of capital to be reported in a timely manner, depending on your super balance, to ensure the correct amount is in super fund members' transfer balance accounts. Common events that need to be reported to the ATO include the start of new pensions, commutations, limited recourse borrowing arrangements (LRBAs) and structured settlement contributions.

Pre-existing pensions that members were receiving before 1 July 2017 and have continued to receive in retirement phase after 1 July 2017 should have already been reported to the ATO. In addition, the following common events must now also be reported:

- the start of new pensions that began to be in retirement phase on or after 1 July 2017;
- full and partial commutation of a pension on or after 1 July 2017, regardless of whether the commutation was paid out as a lump sum, retained in accumulation phase or rolled over to another super fund;
- certain LRBA payments that result in an increase in value of the interest that supports a member's pension (where the LRBA was entered into on or after 1 July 2017);
- commutations in compliance with a commutation authority issued by the ATO; and
- structured settlement contributions.

For people who are beneficiaries of capped defined-benefit income streams, there is a different approach for reporting commutations and new pensions. For example, if you had a capped defined-benefit income stream before 1 July 2017, commuted it in full and started a new market-linked pension, you may have exceeded the $1.6 million transfer balance cap unintentionally. The ATO will not be taking any compliance action if your fund doesn't report the commutation of the original pension or the start of a new market-linked pension for a limited time. However, the fund is still required to report the pre-existing capped defined-benefit income stream.

So, now that you know what needs to be reported, the next question is when or how often you need to report these events to the ATO. This depends on whether your self managed super fund (SMSF) is on an annual or quarterly cycle, which is determined by when the SMSF first starts to have a pension in the retirement phase.

Where each member's total super balance is under $1 million, the SMSF must report transfer balance events annually, usually at the same time as the SMSF annual return is due.

If any member has a total super balance of $1 million or more, the SMSF must report transfer balance events 28 days after the end of the quarter in which the event occurs, by lodging a transfer balance account report (TBAR). It's important to note that the report only needs to be lodged if there has been a reportable event – if there hasn't event, the SMSF isn't required to lodge a TBAR.

However, if a fund member has exceeded their transfer balance cap, the trustee must report any commutations earlier (either within 10 business days after the end of the month, or by a specific date denoted on the commutation authority). In addition, if you're rolling your pension from an SMSF to a fund regulated by the Australian Prudential Regulation Authority (an APRA fund), the commutation should be

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reported as soon as possible to prevent duplication (which is a risk because APRA funds and SMSFs can have different reporting times).

Do you need a hand?

Running your own SMSF can be a tricky exercise, particularly with the new reporting rules. If you are confused or you need someone to help you look over your fund and make sure everything is above board, contact us today.

Borrowing money in a self managed super fund

Do you have a self managed superannuation fund (an SMSF) and want to grow the assets with borrowings to fund your retirement? An SMSF, or, more specifically, the trustees of an SMSF, can borrow money to do this, but only in very limited circumstances. These include short-term borrowings of seven or 90 days to cover certain events and, more interestingly, longer-term borrowings using limited recourse borrowing arrangements (LRBAs).

LRBAs allow SMSFs trustees to borrow money to purchase an asset (or a collection of identical assets that have the same market value) that will be held in a separate trust. Investment returns from the asset go to the SMSF, and if the loan defaults, the lender’s rights are limited to the assets held in the separate trust, meaning that the main fund is protected. While LRBAs could potentially be an attractive avenue for achieving your retirement goals, the complexity and risks involved mean that forward-planning is essential to get the best outcome.

Using LRBAs as part of an investment strategy to purchase a growth asset may be a particularly desirable strategy for members of SMSFs with more modest assets looking to gain access to high-value growth assets, or looking to increase the fund’s asset base exposure by borrowing.

As with any investments, there are risks involved that you need to consider, including long-term geared exposure to whatever market you have invested in (eg the property market), interest rate risk, potential lack of diversification, liquidity and cash flow.

Data from the ATO shows that real estate is the most common asset purchased by SMSFs using LRBAs.

A single-title block of land acquired under a contract of purchase, with an initial deposit and the balance payable on settlement, can be funded under a single LRBA. This is also the case for the deposit and balance payable at settlement under contract for an off-the-plan purchase of a strata-titled unit. However, an “option” to acquire an off-the-plan purchase of a house or unit must be funded under an LRBA separate to any subsequent acquisition of the house or unit, because the option is a separate asset.

Notwithstanding the complexity and risks involved in establishing an LRBA, there may also be restrictions on the loan and lender to consider. For example, SMSF trustee or investment manager cannot allow a related-party lender to charge the fund more than the arm’s-length rate of interest under an arrangement. They must also be able to demonstrate that the SMSF is not paying in excess of an arm’s-length rate of interest to a related party, based on reasonably objective and supportable data.

Want to find out more?

Before establishing a LRBA, it is vital to plan ahead to avoid any adverse tax or potential stamp duty consequences down the track. Given the complexity involved, detailed advice should be obtained in relation to the borrowing agreement and the establishment of a holding trust. We can help to ensure that the documentation put in place now will elicit favourable tax treatment and prudential compliance in the years ahead.

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