



# SUPERANNUATION BUDGET CHANGES BECOME LAW

## DECEMBER 2016

## \$1.6m Pension Cap

### (Transfer Balance Cap)

There will be a \$1.6m cap (the transfer balance cap) on the amount of capital that can be transferred into retirement products such as superannuation pensions and annuities. The transfer balance cap applies from 1 July 2017.

The effect of the cap is to limit the tax exempt investment earnings that can be derived through superannuation, i.e. earnings on up to \$1.6m per person can qualify for the 0% tax rate, but earnings on balances above \$1.6m will be taxed at the standard fund tax rate of up to 15%.

The following will be counted against your transfer balance cap:

- The value of superannuation income streams on 30 June 2017;
- The value of superannuation income streams commenced on or after 1 July 2017;
- The value of reversionary and death benefit income streams at the time the beneficiary becomes entitled (although

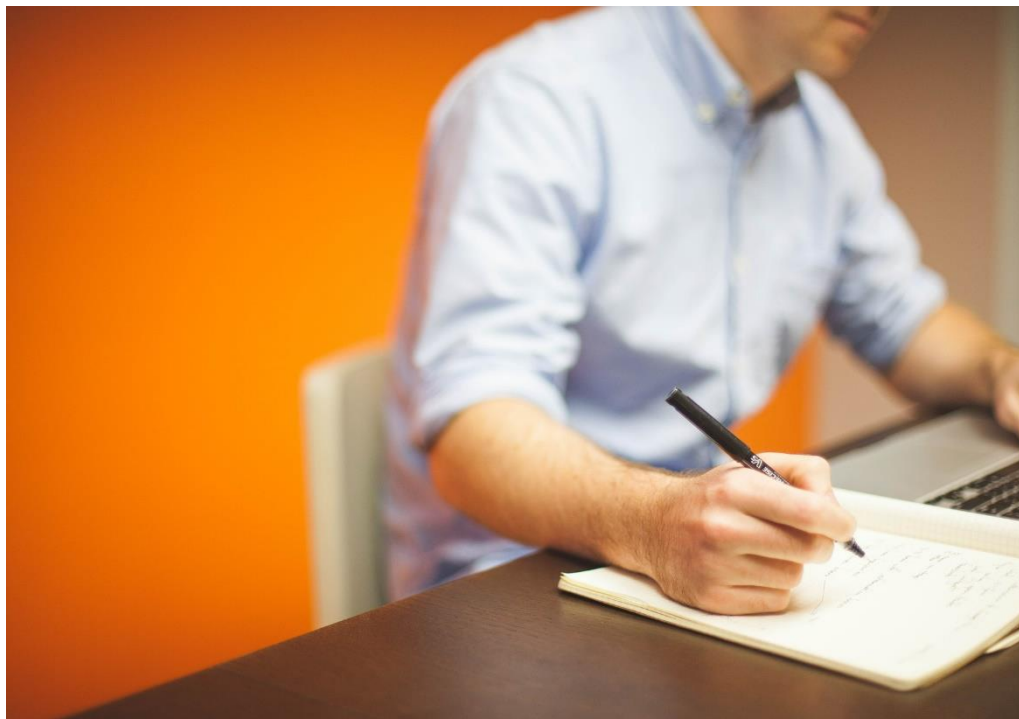
reversionary pensions are not counted for up to 12 months to allow restructuring); and

- Excess transfer balance earnings.
- Certain events will result in a reduction of what has been counted against your transfer balance cap, such as stopping some or all of a pension.

Investments gains/losses and annual pension drawings are not counted and therefore have no impact on the amount of transfer balance cap you have used.

If you use more than your transfer balance cap, an excess position eventuates. When an excess position eventuates, you will be required to unwind the excess position and notional earnings (at the go bank bill rate plus 7% - currently 8.76% p.a.) will be deemed to have accrued over the period the excess position existed.

Those notional earnings will be taxable personally at 15% for a first time cap breach and then at 30% for subsequent breaches.



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## CGT Relief

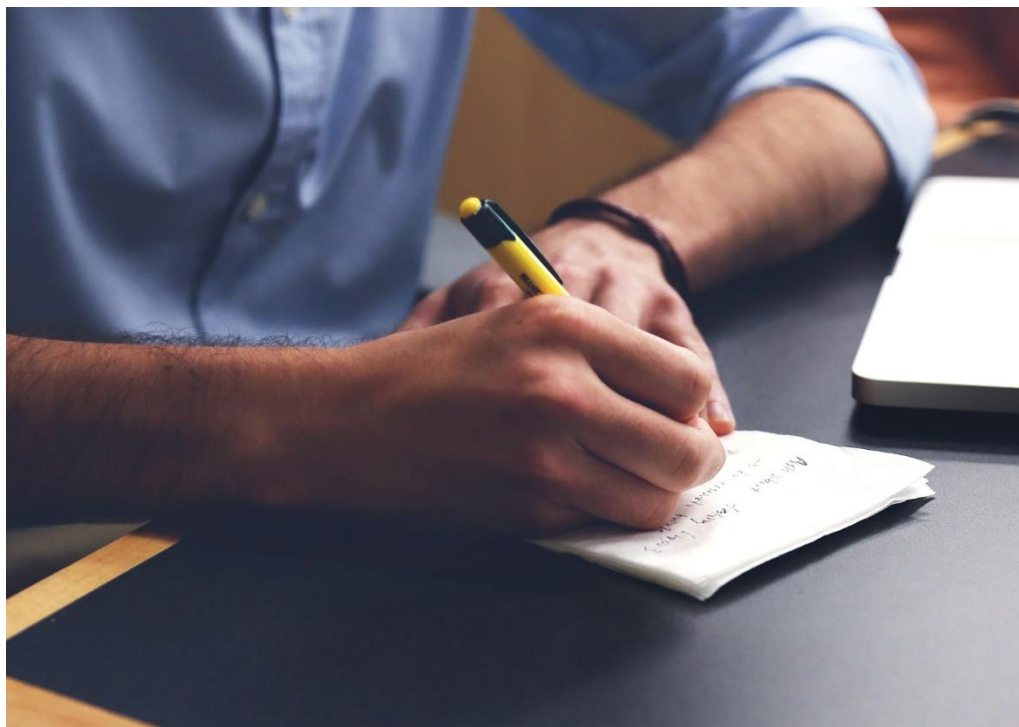
The rules include CGT relief for those who will be required to unwind existing pension arrangements. The CGT provisions effectively deem a disposal and reacquisition at 30 June 2017, meaning unrealised gains on existing pension assets will not generally be taxed on disposal following commencement of the new rules.

We expect trustees will generally elect to apply the CGT relief where available, although there are limited circumstances where you might choose not to apply relief.

Being in a position to determine asset values at 30 June 2017 will be necessary. For unlisted investments, a reasonable valuation at 30 June 2017 should be obtained.

The CGT relief provisions are particularly complex, requiring consideration on an asset by asset basis and written elections within prescribed time limits. A discussion with us will probably be necessary to determine the best approach in your circumstances.





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# Transition to Retirement Pensions

Transition to retirement pensions will not qualify for any earnings tax exemption from 1 July 2017, i.e. all earnings/profits on transition to retirement pension assets will be taxed at the standard fund tax rate of up to 15%.

A transition to retirement pension is generally a pension received by someone under age 65 who has not satisfied the 'retirement' condition of release at some point after attaining age 55. For a pension recipient it is not always clear if a pension is a transition to retirement pension. If you are unsure, you should discuss your circumstances with us.

On a practical level if your pension is a transition to retirement pension you will probably be best to stop the pension by 30 June 2017, unless you rely on the capital drawdowns to meet expenses.







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## Defined Benefit Pensions

For the purposes of the \$1.6m pension cap (transfer balance cap), defined benefit pensions (e.g. lifetime pensions historically received in the public sector and some private sector legacy pensions, such as market linked pensions) will be subject to special valuation rules (as these pensions do not generally have an underlying capital balance).

Defined benefit pensions will be valued by multiplying the annual pension entitlement by 16. In other words, a lifetime pension of \$100,000 per annum will use

100% of the \$1.6m pension cap, which would appear to be a reasonably generous outcome compared to the outcome for private sector pensions.

Market linked pensions will be valued by multiplying the annual pension entitlement by the remaining term of years.

Excess defined benefit pensions will not result in a breach of a person's transfer balance cap, rather the recipient will pay some top up tax personally on the pension income.





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## Impact on Pension Changes

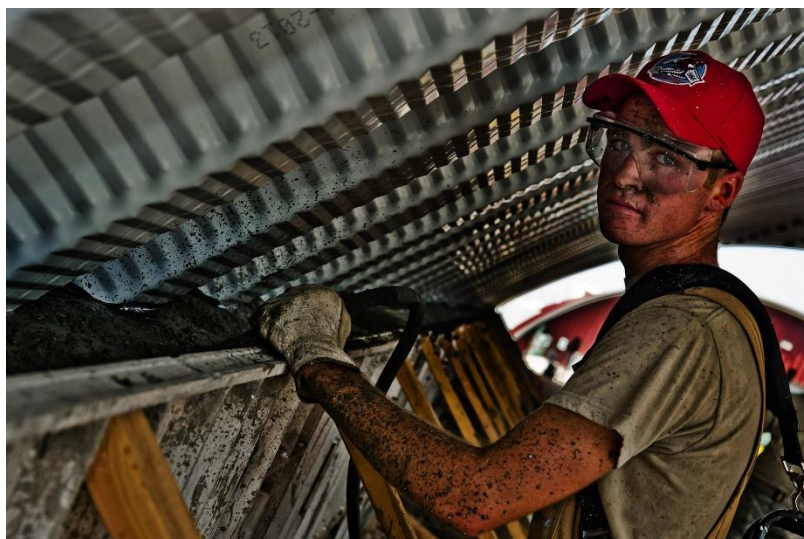
The main impact will be on individuals with existing pension balances in excess of \$1.6m, and on recipients of transition to retirement pensions, who will pay more tax on investment profits/earnings in the fund going forward. However, other aspects will broadly remain the same.

If you are likely to be impacted you should commence reviewing your circumstances to determine what needs to occur before 30 June 2017. For most we believe the required actions will be reasonably modest,

such as stopping enough pension to fit within the \$1.6m cap and considering the CGT relief provisions.

Commencing new pensions into the future will be a more complex exercise as you will need to consider where you sit against the pension cap before taking any action.

Also there are likely to be impacts in the future on the death of spouse where combined balances exceed the \$1.6m pension cap.







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### Common Questions

There is currently a lot of discussion on the best approach in response to the upcoming tax increases. We outline our thoughts on some common questions for your reference below. Please note these comments are not intended to be advice and they will not have application in all circumstances. It is critical that you seek specific advice before finalising any actions in response to the new rules.

#### Should I sell my assets before 30 June 2017 while the tax rate is still 0%?

Probably not the best approach in most circumstances as the CGT relief provisions may achieve the same outcome without incurring transaction costs.

There is complexity in the CGT relief provisions that may mean people nevertheless choose to sell assets as an easier approach. However, you would need to ensure tax avoidance rules would not apply if you did prefer selling.

#### Should I take my money out of super?

Again, probably not the best approach in most circumstances. While the rule changes are complex and increase the tax take out of super, a superannuation fund is still a tax effective investment structure. Profits/earnings in super are generally taxed at a maximum of 15%, compared to an average rate of say 30% and above where investments are held outside super.

#### Should I open a second SMSF and separate my pension/non pension balances?

Possibly. There may be an opportunity to maximise access to the 0% tax rate on profits/earnings by having your higher achieving investments in a special purpose pension fund. Also we expect some people may just prefer to separate pension money from non-pension money. Operating a second fund will result in setup costs and ongoing running costs however which need to be considered.

#### I have transition to retirement pension, what should I do?

As a general rule, there will be little incentive to continue running transition to retirement pensions. Unless you need the capital to meet expenses, we believe most people will probably be better off stopping a transition to retirement pension.

It is likely many people will not know if their pension is a transition to retirement pension. If this is the case, you should discuss your circumstances with us.

#### What is required for the CGT relief rules to apply?

The CGT relief rules are very complex. Key issues will be ensuring you can value current pension assets at 30 June 2017 and making sure you make the necessary elections for the CGT relief to apply before your super fund's 2017 income tax return is due.



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# Non-Concessional Contributions

## (After Tax Contributions)

The new rules will broadly see the current system of non-concessional contributions continuing, but with lower annual caps and exclusion if you have a super balance above the pension transfer balance cap amount (being \$1.6m at 30 June 2017), as follows:

- the standard annual non-concessional contributions cap will be reduced to \$100,000 from \$180,000 from 1 July 2017;
- if your total super balance is above the pension cap at 30 June in a year, you will not be eligible to make non-concessional contributions in the following year;
- the three year bring forward rule can still be applied to enable after tax contributions up to three times the standard annual non-concessional cap, that is contributions of up to \$300,000 will

be permitted at any time if under age 65, down from the current \$540,000 limit;

- if your super balance is close to the pension transfer balance cap amount at 30 June (being \$1.6m at 30 June 2017), you will only be able to bring forward the \$100,000 annual cap for the number of years that would take your balance to the pension transfer balance cap amount. For example, if your balance is \$1.45m at 30 June 2017, you would be able to contribute up to \$200,000 under the bring forward rule from 1 July 2017, assuming under age 65;
- the \$100,000 annual cap will be maintained at 4 times the annual concessional contributions cap of \$25,000. The concessional contributions cap will be indexed to wages growth in \$2,500 increments;

- the eligibility threshold, i.e. the pension transfer balance cap, is also indexed but to CPI.

Going forward, individuals with super balances at or above the applicable pension transfer balance cap will only be able to increase their overall super balance via concessional contributions and investment growth.

As the new rules come into effect on 1 July 2017, the current non-concessional contributions cap of \$180,000, and the three-year bring forward cap of \$540,000, continue to apply for the 2016/17 financial year.

There may therefore be an opportunity to make larger contributions of up to \$540,000 this financial year before the lower limits commence.



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# Concessional Contributions

The concessional contributions cap will be reduced to \$25,000 from 1 July 2017, down from the \$30,000/\$35,000 cap that currently applies.

You should consider your existing concessional contribution arrangements and be prepared to adjust from 1 July 2017 to comply with the lower cap applying from that time.

The rule changes also broaden the application of the 30% tax rate on concessional contributions to incomes of \$250,000 and above from 1 July 2017, from incomes of \$300,000 and above that currently applies.





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## Next Steps

The new rules constitute a significant change in the superannuation landscape and we will be making contact with clients affected as well as conducting information sessions in the near future.

For more information on the issues raised in this Bulletin, please discuss with your regular Collins & Co contact.

