



PENSIONS: THE PAST, THE PRESENT AND THE FUTURE

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With over 20 years experience in the superannuation industry, focusing primarily on SMSFs, Mary has an in-depth, expert knowledge of the industry. With diverse roles spreading across large accounting firms, large and boutique financial service providers as well as Government, Mary offers an all-round understanding of the SMSF industry. Mary has a multifaceted perspective of the SMSF industry, including that of government, a professional advisor and trustee/member.




Pensions: The Past, the Present & the Future




Pre-Retirement Pensions



Retirement Pensions



Death Benefit Pensions



Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS) – The Past



Features	Pre 1 July 2017 TRIS
Eligible to claim ECPI	Yes
Min. pension payment required	Yes
10% maximum pension	Yes
Commutation restrictions	Yes
Lump sum payments/in-specie payments	Yes
Proportioning rules apply @ start	Yes
TBC implications	No
Pension concessionally taxed	Yes

Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS) – The Present



GN 2019/1 – Non Retirement Phase TRIS

- ECPI lost from 1 July 2017
- TBC implications
- Still an income stream
 - Minimum & maximum pension requirements apply
 - Pension payments 'cash' only (no in-specie payments)
 - Commutation restrictions
 - Proportioning rules apply (separate superannuation interest)
 - Taxation of pension payments unchanged
 - Reversionary pensions

Non Retirement Phase TRIS
v
Retirement Phase TRIS

Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS) – The Past & Present



Features	Pre 1 July 2017 TRIS	Non Retirement Phase TRIS	Retirement Phase TRIS
Eligible to claim ECPI	Yes	No	Yes
Minimum pension payment required	Yes	Yes	Yes
10% maximum pension	Yes	Yes	No
Commutation restrictions	Yes	Yes	No
In-specie payments	Yes	No	Yes
Proportioning rules apply @ start	Yes	Yes	Yes
TBC implications	No	No	Yes
Pension concessionally taxed	Yes	Yes	Yes

Pre-Retirement Pensions
 Transition to Retirement Pensions (TRIS) – The Present

RETIREMENT

Under 60

Must be of preservation age

Gainful employment arrangement ends

Member is 60 on or before their employment ends

No intention to be gainfully employed, at least, on a part time basis

Pre-Retirement Pensions
 Transition to Retirement Pensions (TRIS) – The Present

RETIREMENT - 3 essential elements:

- **Must** be employed or self-employed
 - 'Gainfully employed' SIS Reg 1.03
 - TR 2010/1
- Must be employed **for** 'gain or reward'
 - Not limited to monetary remuneration
 - No need to quantify gain/reward
- That arrangement **must** end
 - Resignation, retrenchment, dismissal

Not mutually exclusive

Poll Question

Can a person retire from their directorship role in their personal company and satisfy 'retirement'?

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Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS) – The Future



Is a TRIS worth the bother??

- Not limited by \$1.6m TBC
 - Maximise income withdrawals
 - Improve tax-free pension component
- Fund NCCs: improve tax-free components
- Fund CCs: utilise carry forward CC cap & access deduction
- Opportunity to equalise spouse balances

Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS): Case Study



- Assume Camilla turned ~~57~~⁵⁸ on 1 July 2019 and wanted to start a TRIS.
- Runs own business. Has a buyer in 3 yrs for \$500K – will fund SB CGT NCC.

	@ 30 June 2019
Member balance	\$1.38m
Tax-free component	40%
Taxable component	60%

- Option 1** Retain accumulation
- Option 2** Trigger TRIS & re-contribute

Pre-Retirement Pensions

Transition to Retirement Pensions (TRIS): Case Study



Camilla dies
(7 years later)

7 years later	Option 1	Option 2	
	Accum.	TRIS	Accum
Tax-free component	21%	40%	89%
Taxable component	79%	60%	11%
Balance	\$2.645m	\$1.257m	\$1.13m

- BDBN nett \$1m L/S death benefit to Laura (independent adult child)

- Option 1 - Accum** Gross L/S DB = \$1.135m. Tax = \$135K.
- Option 2 - Accum** Gross L/S DB = \$1.018m Tax = \$18K.

Retirement Pensions

ECPI: The Past, The Present, The Future



Segregation **NOT** available

- Disregarded Small Fund Assets (DSFAs) (s295-387 ITAA97)
 - Annual test @ previous 30 June
 - Any member has TSB > \$1.6m AND
 - That member is receiving a RPIS (any fund)

Segregation **DEEMED**

- 100% RPISs
- ATO View = Distinct periods

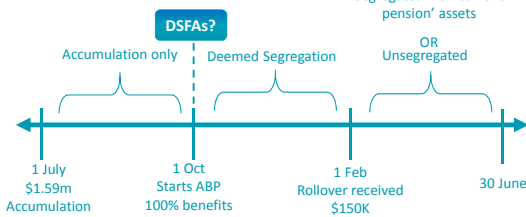
Proposed Gov changes

Retirement Pensions

ECPI: Case Study



Camilla is the sole member of her SMSF.



Retirement Pensions

ECPI: Failing to pay the minimum pension



SIS Reg 1.06(9A) minimum pensions

TR 2013/5: Pension ceases from start of year

TBC: 'Dr' arises at year end for failing standards

ATO's GPA can apply (subject to conditions)

Consequences:

- ECPI: Nil in year of underpayment
- Tax components: reset at start of new death pension
- TBC: report 'Cr' for new pension (neutral)



Commutation considerations

Retirement Pensions

ECPI: Commutations



Partial & Full commutations

- TR 2013/5 (paras 23 – 26):
 - the commutation(s) occurs first, and
 - a full commutation stops the pension,
 - assets are no longer segregated pension assets
 - lump sum payment is made or rolled over.
- In-specie transfers & CGT
- Min. pension requirements
- Timing

Equally applies to death benefit pensions & SMSF wind-ups

Retirement Pensions

Market Linked Pensions – The Past, The Present



The Past

- Pre Sept'07 SMSFs permitted
- Pension concessionally taxed

The Present (new or re-structured MLPs)

	Pre 1 July 2017	Post 1 July 2017
TBC	'Cr' = special value @ 1 July 2017 (CDBIS)	'Cr' = market value @ start date
Pension income	Defined benefit income cap 50% of Y > \$100K @ MTR	Tax free > 60s
Excess TBC	Nil	Perpetual

Retirement Pensions

Market Linked Pensions – The Future



TLAB (No. 3) 2019

- 'Dr' value fix (Discrepancy remains where 'Cr' > 'Dr')
- Retrospective 1 July 2017



To re-structure or not ??

Retain MLP	Re-structure MLP
Optimise ECPI where assets > \$1.6m	Optimise TBC where assets < \$1.6m
CDBIS status retained on reversion	MLP tax free > 60s
ATE status retained	

Retirement Pensions



MLPs: Case Study

As at 30 June 2017	Philip (90)	Elizabeth (88)
Asset balance	\$2.5m	\$1.5m
Reversionary	Yes	Yes
Term	Liz's life expectancy	Liz's life expectancy

- Phil: Retain. Optimise ECPI for life Liz's lifetime.
- Liz: Restructure?? Create TBC space. Tax free pension.
- Phil dies. Reverts to Liz. Liz in perpetual excess.
- Liz dies. Reverts to Phil. Phil in excess. Must commute Liz's MLP (capped value)

Assume Liz restructures - What if either spouse dies?

Retirement Pensions



Legacy Pensions – The past, The Present, The Future

The Past	The Present	The Future
Pre Dec 2005 • Complying lifetime pensions (CLPs) • Complying life expectancy pensions (CLEPs) • Flexi pensions • ATE status	• Small population • TBC, special value @ 1 July 2017 (CDBIS) • Defined benefit income cap applies • PAYG obligations – Includes Nil • Reserves	• Re-structure to a MLP – Nil 'Dr' issue CLEPs – No ATO compliance approach for CLPs • Allocation of reserves (SMSFRB 2018/1)



SMSFA's Budget submission – Amnesty

Death Pensions



Cashing Rules – Past & Present

Compulsory cashing requirements

- Ongoing death benefit (LCR 2017/3)
- "As soon as practicable" SIS Reg v IT Regs

Cashing form for each beneficiary:


- Up to 2 lump sums OR
- A retirement phase income stream (RPIS) OR
- A combination

Separate super interest

Rollovers




Death benefit commutations?

Death Pensions 



Cashing Rules – Death Benefit Pension

Minimum pension payments (reversionary v non-reversionary)

Breach minimum pension standards 

- Pension stops (TR 2013/5)
- Compulsory cashing rules SIS Reg 6.21 – Breached

Breach resolution?

- ATO view “As soon as practicable” 
- Lump Sum 
- New death benefit pension
- Rollover

Death Pensions 


The Future - Life Interest Pensions

Technical issues

- Compliance with SIS Reg 6.22
 - Who's benefit is it? 
- Compliance with SIS Reg 6.21
 - “as soon as practicable” 

Practical considerations

Death Pensions 

Insurance – The Past

Insurance proceeds

- Not assessable income & excluded from CGT
- Not a contribution (TR 2010/1 para 138)
 - Treat as income, profit or gain

Allocation of insurance proceeds

- ‘Fair & reasonable’ SIS Reg 5.03
- ‘Insured benefit’ SIS Reg 4.07C and 4.07D
- SMSFRB 2018/1: The use of reserves
- Allocate to pension despite SIS Reg 1.06(1)(a)
- Allocate to accum 100% taxable comp (s307-125 ITAA97)

Death Pensions

Insurance Proceeds – The Present



Reversionary ABPs

- Proportioning rules of original pension apply
- TBC 'Cr' valued at date of death.
 - Proceeds not received yet, so excluded from 'Cr'.
- ECPI continues (incl. earnings on insurance proceeds)

Non Reversionary ABPs

- Modified tax-free proportioning rules apply
 - Include in 'taxable component' (IT Reg 307-125.02)
- TBC 'Cr' valued at pension start date so **may** include proceeds
- ECPI continues (excl. insurance proceeds & attributable earnings)

Death Pensions

Insurance Proceeds – The Future



Rollovers: Untaxed element

- Created only where member dies before reaching 65
- TLAB (No.3) 2019 - exclude from receiving fund's assessable income
- Draft law still creates 'untaxed' element
 - Administrative burden
 - Member's **Different outcome**

Disclaimer



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