MLC TechConnect

Guide to the transfer balance cap

Contents

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Guide to the transfer balance cap

29 January 2025

This guide outlines the rules, advice tips and opportunities when considering a client's transfer balance cap.

Important update

The general TBC is set to increase from $1.9m to $2m on 1 July 2025, following the release of the December 2024 quarter Consumer Price Index. The ATO is expected to confirm the increase in March. For more information, refer to our article '**What will a $2m TBC mean for super pension clients?**'

Background

The general transfer balance cap (TBC) limits the amount of super money that can be transferred into retirement phase income streams for individuals. The TBC system commenced on 1 July 2017 with a general TBC of $1.6m. The general TBC is indexed periodically in $100,000 increments, in line with changes in the consumer price index (CPI). The general TBC first indexed (to $1.7m) on 1 July 2021 and was indexed again, to $1.9m, from 1 July 2023. The cap remains at $1.9m for 2024/25.

Each client in retirement phase has a personal TBC, which may be equal to or less than the general TBC. For 2024/25, personal TBCs are between $1.6m and $1.9m depending on when the client first commenced a retirement phase income stream and how much cap space they used prior to indexation.

The ATO records an individual's transfer balance account (TBA), which tracks key events against their personal TBC by applying credits (for the commencement of a retirement phase income stream) and debits (for commutations or withdrawals).

Penalties apply where an individual's TBA exceeds their personal TBC. The client will receive an excess determination from the ATO requiring the excess plus an assumed earnings amount (known as notional earnings) to be removed from retirement phase. Tax (either 15% or 30%) is payable on the notional earnings from an excess transfer balance.

Broadly, excess amounts must be commuted from retirement phase either by cashing out or rolling the amount back to accumulation phase.[1] It is possible to hold an unlimited amount in accumulation phase.

The TBC is a complex area of advice because:

- credits and debits for different types of incomes streams are calculated using different methods
- the timing and credit value of reversionary and non-reversionary death benefit pensions vary
- each client may have a different cap, and
- transition to retirement (TTR) pensions only count towards the TBC once a specified condition of release with a nil cashing restriction has been met.

Advice opportunities

Advice opportunities include:

- helping clients identify how much they can transfer to retirement phase to use their available TBC space and to avoid an excess transfer balance
- providing guidance on alternative investments where the TBC is exhausted (hold excess benefit in super accumulation vs personally owned investments)
- discussing with clients the various outcomes relating to reversionary and non-reversionary death benefit nominations
- providing guidance to a beneficiary following death, and
- helping clients to rectify excess TBC amounts.

All references in this guide are to the Income Tax Assessment Act 1997 unless otherwise specified.

1 Modified rules apply to certain 'capped defined benefit income streams' which are accepted as being non-commutable.

Transfer balance fundamentals

Who do the TBC rules apply to?

The TBC applies to retirement phase recipients[2]. This is a person who has commenced a retirement phase superannuation income stream.

A client is a retirement phase recipient if either:

- a retirement phase income stream is payable to them, or
- a deferred income stream is payable to them after a determined time and they have met the retirement, terminal medical condition, permanent incapacity or attaining age 65 condition of release[3].

What is a retirement phase income stream?

Broadly, a superannuation income stream is in retirement phase[4] if a full condition of release has been met and all funds in the income stream are unrestricted non-preserved. This includes retirement, permanent incapacity and terminal medical condition. It also includes death benefit pensions paid to an eligible beneficiary. Earnings from retirement phase income streams are tax exempt. Retirement phase income streams (including death benefit pensions) include:

- account based pensions (ABP) and annuities
- market-linked pensions and annuities, and
- lifetime pensions provided by defined benefit or constitutionally protected funds.

TTR pensions

A TTR pension is excluded[5] from the retirement phase. This means that a person may commence a TTR regardless of the amount used as it is not assessed against the TBC. A TTR pension enters retirement phase automatically when the person reaches age 65, or at the time the trustee is notified that the member meets one of the following conditions of release:

- retirement
- permanent capacity, or
- terminal medical condition.

Retirement for this purpose occurs where the member permanently retires after reaching their preservation age or ceases an employment arrangement after turning age 60. See our **Guide to accessing super** for more information about these conditions of release.

There is no need to stop and restart a TTR to enable the income stream to enter retirement phase, as this happens automatically upon reaching age 65 or notifying the trustee about the relevant condition of release.

☑ Advice tip

You should consider potential TBC issues, such as a possible transfer balance excess, when one of the above conditions of release is met for clients with a TTR pension. The TTR pension enters retirement phase automatically once the client reaches 65, so there is no opportunity to delay notifying the trustee to reduce the pension balance before the super fund reports the value to the ATO.

Where the original TTR pension member dies with a valid reversionary nomination in place, the pension enters retirement phase and a credit is applied to the reversionary's TBC 12 months after date of death (see page 6 for information on the timing of credits).

2 S294-20
3 S307-80
4 S307-75
5 S307-80(3)

Transfer balance cap

When providing advice to clients, consider the *general* TBC and the client's *personal* TBC. The *general* TBC in 2024/25 is $1.9 million. This cap may be indexed in future years in line with CPI in $100,000 increments[6] (rounded down). A client's *personal* TBC is calculated with reference to:

- the general TBC at the time the individual first commenced to have a TBA, plus
- any entitlement to proportional indexation.

The general TBC was indexed from $1.6m to $1.7m on 1 July 2021 and to $1.9m on 1 July 2023. This means clients may have a personal TBC between $1.6m and $1.9m (The calculation of indexation is on page 8-9).

Transfer balance account

Commencing a TBA

An individual's TBA exists at the time they first commence a retirement phase income stream.[7] For individuals who had a retirement phase income stream on 1 July 2017, their TBA commenced on this date.

For individuals who first commence a retirement phase income stream after 1 July 2017, the start date of the TBA depends on the type of benefit:

- accumulated balance used to start pension – TBA starts on the day of pension commencement
- non-reversionary death benefit income stream – TBA starts on the day of pension commencement
- a reversionary death benefit income stream – TBA will start 12 months after the date of death of the original income stream recipient, or
- a TTR pension – TBA will start on the day their TTR enters retirement phase.

When does a TBA cease?

An individual's TBA ends when the person dies. A TBA does not cease when a retirement phase income stream no longer exists (for example, because it is fully exhausted, or they roll their funds back to accumulation).

Credits and debits

An individual's TBA is determined by a series of credits and debits, which are tracked by the ATO based on super fund reporting. There may also be circumstances that require the individual to report certain events directly to the ATO, such as a family law split, certain bankruptcy or fraud events, and pre-1 July 2007 structured settlements.

The TBA is a *notional* account balance, which is calculated by applying credits and debits upon certain events. Not all transactions or changes to an actual account balance are recognised as a credit or debit. This means a TBA and *actual* account balance are unlikely to ever be the same after commencement.

TBC and different types of income streams

Credits and debits are calculated and applied differently for account based income and capped defined benefit income streams. Capped defined-benefit income streams include defined benefit pensions, certain market-linked pensions and lifetime income streams. Information on defined benefit income streams is located in our technical article **Legacy pensions and the transfer balance cap**.

Credits and debits – account based pensions

Credits

Broadly, a credit[8] is created in an individual's TBA when an amount is transferred into a retirement phase income stream (or 12 months after death for a reversionary pension).

The credit is equal to the value of the income stream at the commencement of the retirement phase income stream. The value of account based pension on 30 June 2017 created a credit on 1 July 2017. Investment earnings do not result in a credit.

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6 S960-285
7 S294-15(2)
8 S294-25

Key credit events and the value and timing of credits are summarised in the table below.

Key credit events

Event	Credit value	Credit timing
Individual commences a retirement phase income stream (from 1 July 2017)	Commencement value of retirement phase interest	Date of commencement of account
TTR enters retirement phase	Pension account value on date credit is applied	Date the TTR enters retirement phase (date the person turns 65, or date trustee is notified that the person has met a prescribed full condition of release)
Notional earnings accrue on an excess transfer balance amount	Value of daily notional earnings that have accrued (see page 13)	Credited daily at the start of the following day from the first day in excess, until the excess is removed, or the ATO issues a determination.
LRBA repayment made from an accumulation interest, where asset in question supports a retirement phase interest[9]	The increase in value of retirement phase interest as a result of repayment	Date of repayment

Debits

Certain events create a debit which reduces an individual's TBA[10]. Negative earnings and pension payments do not result in debits. Key debit events and the value and timing of debits are summarised in the table below. Further information and examples are provided in the appendix for specific debit events.

Key debit events

Event	Debit value	Debit timing
Commutation made back to super accumulation or lump sum super benefit received	Value of the amount commuted	Date commutation is actioned (not date of request)[11]
Structured settlement contribution made to super	Value of the contribution	Later of the time the contribution is made and date the person commences to have a TBA
Fraud or dishonesty event[12]	Reduction in value of super interest	Time of the loss
Bankruptcy	Amount paid to trustee in bankruptcy	Time of the payment
Family law split	Varies depending on arrangements (see page 16)	Varies – see page 16
Trustee fails to commute an excess transfer balance within required timeframe after receiving a commutation authority from ATO	Value of the amount stated in the commutation authority was complied with[13]	The value on the final day for payment
Retirement income stream fails to meet the pension or annuity standards	Value of the interest at the end of the year in which standards were not met.	The end of the financial year in which the standard was not met.

9 S294-55
10 S294-80
11 S294-80(1)
12 S294-85
13 If there are insufficient funds in the particular income stream, the trustee must commute the maximum amount and notify the ATO of the amount that could be commuted. This may result in the client continuing to be in excess and a commutation from another income stream may be required.

Example 1: Credits and debits applied

Jackie commenced a retirement phase income stream on 1 July 2024 valued at $1,700,000. On 10 October 2024, she commutes $150,000 to purchase a caravan and vehicle. On 3 January 2025, Jackie commences a second retirement phase income stream valued at $350,000.

Date	Personal transfer balance cap	Credit	Debit	Transfer balance account
1/07/2024	$1.9m	$1.7m		$1.7m
10/10/2024	$1.9m		$150,000	$1.55m
3/01/2025	$1.9m	$350,000		$1.9m

Jackie has used up her available space in her personal TBC of $1.9m.

Tracking the TBA and TBC

TBA information is available on an individual's myGov account. This includes:

- TBA credits for amounts already transferred into retirement phase
- TBA debits for any lump sum commutations withdrawn from retirement phase
- highest ever TBA and personal TBC at date of highest ever TBA
- current personal TBC (including proportional indexation applied) and available cap space, and
- any excess transfer balance amount.

Our client-friendly **How to monitor the transfer balance account** provides screenshots and detailed instructions on how to access this information.

Death benefit pensions and the TBA

Death benefit pensions are assessable under the TBC rules. Consequently, the amount of a death benefit that can be taken as a death benefit pension may be limited by:

- the amount of the death benefit itself (which will include any life insurance proceeds payable), and
- the beneficiary's TBA balance.

The value and timing of the credit in respect of a death benefit income stream varies based on the type of nomination.

Credit value and timing of death benefit pensions

Nomination type	Credit value	Credit timing
Automatic reversionary nomination	Balance at date of member's death	12 months from date of member's death
Non-binding, binding, or no nomination	Account value at date income stream becomes payable to beneficiary	Account value at date income stream becomes payable to beneficiary.

The 12 month delay in the credit event applying for a reversionary nomination affords the beneficiary (ordinarily the surviving spouse) additional time to seek advice to ensure that an excess transfer balance amount does not occur.

The ability of a child to receive a death benefit pension may be limited further by the operation of the modified TBC rules that apply to child beneficiaries. For more discussion on the timing of credits related to the payment of death benefits, beneficiary nominations and the modified rules that relate to child pensions and capped defined benefit income streams, see our **Guide to Death Benefits**.

TBA implications of a pension refresh

The application of debits and credits allows a client to change income stream providers and retain the same capital in retirement phase. This approach ensures amounts are not double counted.

A client may also wish to consolidate member pensions, or if their TBC has not be fully utilised, consolidate income stream balances with accumulation amounts.

A debit for the value of the commutation back to accumulation applies on the date the commutation is completed. When a new retirement phase income stream is commenced (either in the same super fund or another), the new commencement value provides a credit to their TBA.

TBAs can be negative

It is possible for a TBA to be negative. This occurs where a commutation is made (debit) that exceeds the total of all credits to a person's TBA. This could arise where the actual account balance at the time of commutation (which determines the debit value) is more than the value at commencement (the credit) as explained in Example 2.

Example 2: Pension refresh and negative TBA

Nicki commences an ABP on 11 September 2024 with $1.9 million. This is equal to the general TBC for the 2024/25 financial year. On this day, she has a TBA and the credit to her account is $1.9 million. In April 2025, she is no longer happy with her current income stream provider and wants to rollover to another fund. She fully commutes her pension back on 12 April 2025. The full balance is rolled over to a new fund on 14 April 2025, where a new income stream is commenced.

The actual income stream balance on the date of commutation is $2 million. The debit applied when a commutation is made always reflects the amount being commuted on the date it is actioned. Therefore, because the full amount is being commuted, a debit of $2 million applies, resulting in a TBA of negative $100,000.

Upon commencing the new income stream, a credit of $2 million applies in her TBA, reflecting the commencement value of the new income stream. This does not trigger an excess transfer balance amount, even though her cap is only $1.9 million. This is because the commutation results in a negative TBA. She is not penalising her for the growth that has occurred within her income stream after commencement.

Date	Personal transfer balance cap	Credit	Debit	Transfer balance account
11/9/2024	$1.9m	$1.9m	N/A	$1.9m
12/4/2025	$1.9m	N/A	$2m	($100,000)
14/4/2025	$1.9m	$2m	N/A	$1.9m

For more information including worked examples, see our article **Pension refreshes and the TBC.**

Indexation of the TBC

The general TBC is indexed in $100,000 increments based on increases in CPI. The general TBC is $1.9m for 2024/25.

Determining a client's personal TBC

A client's personal TBC is equal to the general TBC in the first financial year that they commence a retirement phase income stream. After this point, if the client has never used their TBC in full, they receive proportional indexation of any TBC increase. The table below outlines when clients are eligible for full indexation, proportional indexation or no indexation.

Eligible for proportional indexation

Client	Indexation
Has never had TBA (never commenced a retirement phase pension) before 1 July 2024	Full indexation - $1.9m for 2024/25
Has TBA and highest ever balance < personal TBC	Proportionate indexation
Has TBA and highest ever balance ≥ personal TBC	No indexation

Calculating proportionate indexation

An individual receives a percentage of the general TBC increase based on their unused proportion of their own TBC. The unused proportion of an individual's TBC is determined by identifying the client's highest ever balance in their TBA and the client's personal TBC on that day. The highest ever balance in their TBA at the time of indexation is used in the calculation.

A client's TBC increase is calculated as follows:

Unused cap % x indexation increase

The "Unused cap" is calculated as follows:

= (1 – (Highest ever TBA/personal TBC*)) x100

Where:

- *Highest ever TBA* – is the highest ever value in the TBA
- *Personal TBC* – is the personal TBC at time the client first had their highest ever TBA

* This percentage is rounded down to the nearest whole number[14].

The "indexation increase" for 2023/24 was $200,000. There is no 'indexation increase' for 2024/25.

Example 3: Indexation and pension refresh

Ronnie commenced an account based pension with $1m on 1 July 2021, when the general TBC was $1.7m. Since Ronnie commenced his pension, the only transfer balance event that has occurred is a lump sum commutation in August 2022, which resulted in a debit of $50,000 to his TBA. The current pension account balance is $890,000.

His TBA is as follows:

Date	Personal transfer balance cap	Credit	Debit	Transfer balance account
1/7/2021	$1.7m	$1m	N/A	$1m
8/8/2022	$1.7m	-	$50,000	$950,000

From 1 July 2023, the general TBC indexed by $200,000 to $1.9 million.

In August 2024, he wishes to complete a pension refresh by commuting his existing pension back to accumulation phase, consolidating this amount with other accumulated benefits and commencing a new income stream up to his personal TBC.

Ronnie has not fully utilised his TBC and was eligible for proportional indexation on 1 July 2023. To calculate the maximum amount he can use to commence a new account based pension, we first need to calculate his personal TBC. This is based on his unused cap percentage, which is calculated with reference to his *highest ever* TBA value (ie $1m) and not his current TBA balance or the value of his account based pension.

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14 S294-40(2)(c)

The unused portion is calculated as:

= (1 – (Highest ever TBA/personal TBC at time for first having highest balance)) x100

= (1 – ($1m/$1.7m) x 100

= (1 – 0.588) x 100

= (1 – 58%) x 100 (Note: rounding down to nearest whole number)

= 42%

This means that Ronnie has an unused cap percentage of 42% and was eligible to receive 42% of the indexed amount (ie $200,000 x 42% = $84,000) on 1 July 2023.

Ronnie's personal TBC is therefore increased by $84,000 to $1.784 million. The TBA below identifies that, based on an actual pension account balance of $890,000 on 11 August 2024 that he commutes back to accumulation, the maximum amount he could use to start a new pension without exceeding his TBC is $1.724 million.

Date	Personal transfer balance cap	Credit	Debit	Transfer balance account
1/7/2021	$1.7m	$1m	N/A	$1m
8/8/2022	$1.7m		$50,000	$950,000
1/7/2023	$1.7m plus $84,000 indexation =**$1.784m**	-	-	-
11/8/2024	$1.784m		$890,000	$60,000
12/8/2024	$1.784m	$1.724m		$1.784m

This means that in addition to the existing pension value of $890,000, he could transfer up to $834,000 from accumulation into a new pension within his personal TBC.

Excess transfer balance cap

A client has an excess transfer balance (ETB) if their TBA exceeds their personal TBC at the end of a day. The excess balance is equal to:

- the amount in the TBA that exceeds the individual's TBC, and
- the associated earnings on the excess amount

In the case of an excess, a client needs to:

- reduce the amount held in pension phase (eg via a partial commutation either to receive in cash or rollover back to accumulation phase) by an amount equal to the excess transferred, plus 'associated earnings' on the excess amount, and
- pay ETB tax.

The ETB tax regime removes any benefit derived by having an excess amount in an income stream with earnings taxed at 0%. Associated earnings do not reflect actual fund earnings, rather a set rate of return.

Steps to managing an ETB

Unlike an excess contribution, for which the individual needs to wait for instruction from the ATO before taking the required steps, when an individual becomes aware that they have an ETB amount, they can immediately take steps to rectify the excess. This can reduce the overall financial penalty (charge) resulting from the excess. Broadly, the options and associated steps required are:

1) voluntarily commute the excess and the associated earnings (skip to step 4), or
2) receive ETB determination (where voluntary commutation is not completed)
3) commute the amount required, and
4) receive ETB tax assessment and pay ETB tax.

1) Voluntarily commute excess and associated earnings

As soon as a person becomes aware they have an excess TBA, a voluntary commutation can be made to rectify the issue. Only commutations back to accumulation or amounts cashed out of the income stream as a super lump sum create a debit in the TBA. Income payments received since the excess occurred may have reduced the *actual* account balance to below the person's TBC, however, as income payments do not create a debit, this will not reduce the excess that has accrued.

Where a voluntary commutation is made, the person needs to calculate the total amount to be removed from retirement phase. This includes not only the amount transferred in excess of the person's TBC, but also any associated earnings deemed to have accrued on the excess. See below for steps to calculate notional earnings.

2) Excess balance determination where voluntary commutation not complete

The ATO may issue an ETB determination if the person has not already acted and removed their ETB and notional earnings. An ETB tax assessment is sent separately.

Amount to be commuted

If a determination is issued, it states the 'crystallised reduction amount' and date when action needs to be taken. This is the amount that must be removed from the income stream and includes:

- the amount that was transferred in excess of the TBA, and
- the amount of notional earnings which have accrued up to that point.

If a client has more than one income stream, the determination includes the ability for a client to elect which income stream they would like the crystallised reduction amount to be removed from.

☑ **Advice tip**

Clients should know the date by which a commutation must take place. You should consider how long it takes a superannuation provider to action a commutation request. It is the date the commutation is processed (not the date it was requested) that is the debit for the client's TBA.

If no nomination is made and the excess amount is not voluntarily removed, the ATO issues a compulsory commutation authority to the client's superannuation income stream provider noted on the excess determination to commute the excess amount.

The provider has 60 business days to commute the amount specified in the authority. If a trustee fails to comply with the commutation authority, the income stream is not considered to have been in retirement phase for that financial year. As a result, earnings for the financial year are taxed at 15%[15].

What to do if you think a determination is incorrect

The ATO has no discretion to amend TBA details, or to disregard any excess amount in any circumstances. This is unlike excess contribution rules, where an individual can put forward their circumstances to the ATO to ask for discretion or the reallocation of an excess contribution to another financial year. If the information on an ETB determination does not look correct, the individual has 60 days to **lodge an objection**.

Before lodging an objection, if information needs to be clarified, the person may wish to log on to their myGov account to find details about their retirement phase accounts sent to the ATO. If a transaction does not look correct (eg an income stream has been reported twice) or records look incomplete, contact the individual super fund(s) to determine whether information reported to the ATO is correct. Where a fund has made an error in reporting, the trustee needs to re-report to the ATO.

It is possible to apply to the ATO for an extension of time to respond to the ETB determination, provided a commutation authority has not been sent to the super fund. However, as ETB earnings accrue continuously until the excess is removed, this increases the amount that needs to be commuted from retirement phase, as well as the ETB tax payable.

Circumstances where amount to be commuted exceeds commutable retirement phase interests

A scenario can also arise where the commutable amount on the ETB determination exceeds the remaining balance in a commutable income stream. It is possible for this scenario to arise where clients hold a combination of defined benefit and ABPs. If the amount required to be commuted exceeds the balance in commutable retirement phase income streams, an ETB will remain even after the ABP is fully commuted.

15 S307-80(4)

If a client finds themselves in this situation, they should also notify the ATO through **ato.gov.au** The client should do this as early as possible after receiving the notice. The ATO, once satisfied, then debits the client's TBA for the remaining excess balance identified in the notice[16]. In this scenario, the client must still pay ETB tax on total ETB earnings.

3) Commute amount required

Once the ATO has issued an ETB determination, the person can either:

- contact their retirement income stream provider and request a commutation of the required amount
- respond to the ATO with a commutation authority, nominating the retirement phase income stream they would like the required amount commuted from, or
- do nothing, in which case the ATO will send a commutation authority to the super fund nominated as the default fund (this information is provided with the ETB determination).

Notional earnings do not continue to be credited to the person's TBA from the date of the determination.[17] If the commutation request is made directly from the individual to the super fund, the trustee of the super fund would generally report this debit event to the ATO.

Where a commutation authority is provided by the individual to the ATO, the commutation authority is not sent to the fund until the due date noted on the ETB determination. As ETB tax continues to accrue for each day an account is in excess, this option leads to a higher ETB tax assessment.

Where a person fails to request a commutation from their fund or does not return a commutation authority to the ATO within the required timeframe, the ATO issues a commutation authority directly to the default income stream provider noted on the ETB determination. Once received, the fund must comply with the commutation authority within 60 days (in most cases, subject to limited exceptions)[18].

<u>Tax components</u>

The tax components on the amount released under the commutation authority are in the same proportions as held in the income stream. This also applies to commutations from retirement phase voluntarily elected by the member. This contrasts with release authorities relating to excess contributions, where amounts are released from the taxable component of the interest only.

<u>How does the fund process the request?</u>

Where a super fund receives a commutation authority, reasonable attempts should be made by the fund to get in touch with the member to discuss the various options available to commute the amount required. For example, this could include providing a member with the option to commute the excess amount back to an accumulation account, or to receive the commutation as a lump sum member benefit.

Individual funds should have a process to deal with circumstances where they cannot contact a member (for example, the default for a fund might be to open a new accumulation account for the member where the member does not have an accumulation account, so that the commutation does not leave the super environment).

4) Receive excess transfer balance tax assessment and pay ETB tax

An ETB tax assessment is sent separately to the excess determination. The ATO sends this once the amount stated in the ETB determination has been removed from retirement phase. Even where a person has voluntarily commuted their pension to reduce their retirement phase interests by the amount of the excess (and earnings) and therefore does not receive an excess determination, they still receive an ETB tax assessment.

The ETB tax is levied on the earnings that are deemed to have accrued on the excess amount transferred (not the excess itself). The intention of ETB tax is to ensure earnings (albeit notional) that have accrued in tax free retirement phase are ultimately taxed. The tax is calculated based on notional earnings compounded daily, rather than actual earning accrued.

ETB tax starts to accrue from the first day the excess amount is in retirement phase, until the day the required amount is fully commuted. Notional earnings are taxed at[19]:

- 15% for any breach that occurred in 2017/18
- 15% for the first breach that occurs from 1 July 2018 and 30% for the second and subsequent breaches.

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16 S294-80 (1)
17 Unless an additional credit arises in the person's TBA which the person is still in excess.
18 Where the member is deceased at the time the commutation authority is received by the fund, the fund does not need to complete the request, even if a death benefit has not yet been paid.
19 Superannuation (Excess Transfer Balance Tax) Imposition Act 2016 s5

When is the ETB tax payable and how is it paid?

From the time the excess tax assessment is issued, the ETB tax is due to be paid by the client within 21 days. While this amount is unpaid, it attracts the General Interest Charge (GIC). ETB tax is payable for all days where at the end of that day, an amount is held in retirement phase in excess of the person's TBC. This is why the ETB tax assessment is sent after the required commutation has been made. ETB tax is a tax levied on the individual. This means that the tax needs to be paid personally. Unlike excess contribution tax, a Release Authority cannot be sent to the fund to release the excess tax payable.[20]

Calculating notional earnings and ETB tax

ETB tax is calculated based on notional earnings. *Notional earnings* are calculated based on the *notional earnings rate*:

Notional earnings = Excess transfer balance x daily notional earnings rate

The notional earnings rate is based on the **GIC**, which is the 90 day Bank Accepted Bill rate + 7%. It is then compounded daily, as a person is liable for ETB for each day they have an ETB amount.

The daily notional earnings rate is determined as follows:

$$\frac{\textbf{90 day Bank Accepted Bill yield + 7\%}}{\textbf{Number of days in the year}}$$

Notional earnings accrue from the day a client's TBA is first in excess until the day the commutation occurs in full.

Example 4: Excess transfer balance and notional earnings commutation

Leslie commenced an ABP with $2 million on 13 October 2023. This exceeded her personal TBC of $1.7 million[21]. The excess amount was $300,000. After 25 days, she realised her mistake and made a partial commutation.

After discussing with her income stream provider the length of time to process the request, the commutation took effect after 30 days. Leslie needed to commute:

- the excess amount of $300,000, and
- notional earnings that had accrued on the excess.

The notional earnings were calculated based on the GIC for that quarter. This rate was 11.15% for the October - December 2023 quarter. The daily rate was 0.03054794%.

The notional earnings on the $300,000 excess is calculated as follows:

$300,000 x 30 days x 0.03054794% = $2,794.31

Leslie therefore needed to commute a total of $302,794.31 from retirement phase. When this occurred, a debit of $302,794.31 was applied to her TBA. As Leslie had taken voluntary action and removed the ETB amount plus earnings from retirement phase, she did not receive an excess determination from the ATO. However, she did receive an ETB tax determination.

Her ETB tax payable was $419.15 (15% tax x $2,794.31 notional earnings). She had 21 days to pay the amount. If she did not make the payment in time, the GIC would continue to accrue on the amount unpaid until she made the payment.

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20 As a person with a retirement phase income stream has met a full condition of release. This means they have access to their super savings should they need access to funds to pay the ETB tax (ie take an additional pension payment or commutation).

21 This income stream was commenced in 2023/24 financial year in which the general TBC was $1.7 million.

Appendix

TBA events reported to the ATO

Super trustees report TBA events to the ATO to enable an individual's TBA to be maintained and updated on myGov. The table below summarises the key events that super trustees must report to the ATO.

Table: Key events reported to the ATO

Retirement phase income stream commences	Death benefit income stream commences	Voluntary commutation
Income stream stops being in retirement phase due to failure to meet the pension standards	An amount is commuted as per a commutation authority	Structured settlement contribution is received
Repayment of LRBA supporting a retirement phase asset from an accumulation interest		

Some events are not reported by the super fund. This includes:

- income stream payments
- investment earnings and losses
- death of a member (this is instead reported as a credit to the beneficiary's TBA if a death benefit pension is paid), and
- where the balance of a retirement phase income stream is exhausted.

Other events are reported via a **Transfer Balance Event Notification form** directly to the ATO by the member These events include:

- family law splits where the member's interest is not split, but income stream payments are split to the non-member spouse
- fraud, dishonesty and bankruptcy related events, and
- structured settlements that were made to super before 1 July 2007.

TBA reporting frequency

The reporting frequency required for TBA events varies for APRA regulated funds and SMSFs.

APRA regulated funds

TBA events must be reported in real-time via Member Account Transaction Service (MATS). Events should be reported to the ATO within 10 days after the event occurs. The fund must report to the ATO the:

- event type
- value, and
- effective date.

SMSFs

SMSF trustees must report TBA events to the ATO via Transfer Balance Account Reporting (TBAR). Since 1 July 2023, all SMSFs must report transfer balance events within 28 days after the end of the quarter that an event occurs. SMSFs can elect to report TBA events earlier rather than waiting for the due date.

SMSFs must report sooner for:

- voluntary member commutation of an income steam in response to an ETB determination within 10 business days after the end of the month in which the commutation occurs, and
- commutation authorities within 60 days of the date the commutation authority was issued.

Practical considerations – timing of reporting by SMSF trustees

As reporting requirements, including timing, vary between APRA funds and SMSFs, the ATO's records for an individual's TBA may not match reportable events in sequence. In these scenarios, clients may receive an ETB determination. This might happen, for example, where the person rolls over an amount from an SMSF income stream to a retail fund and commences a retirement phase income stream. In this case, the ATO is notified and a credit applies to the individual's TBA in respect of the new income stream likely before a debit is reported by the SMSF. Affected clients should notify the ATO **(ato.gov.au/object)** as early as possible after receiving a notice. Alternatively, SMSF trustees might consider reporting these events earlier than required to avoid adverse outcomes for members.

Assessment of certain key events

Structured settlements

A debit applies in the TBA equal to the amount of a contribution made under a structured settlement (also known as **personal injury contributions**). This allows the full amount of that contribution to be transferred to retirement phase without impacting the available TBC of the person. The debit is applied at the later of:

- the time the contribution is made, or
- when the person first has a TBA (ie when an income stream is first commenced).

This means that if a structured settlement contribution is made and the person has not yet commenced a retirement phase income stream (and therefore does not have a TBA, a debit in respect of the structured settlement contribution is applied in the future when they commence a retirement phase income stream. The value of the debit equals the value of the structured settlement contribution.[22]

Reporting requirements

Structured settlements made after 1 July 2007 are reported to the ATO by the income stream provider. However, an individual must report a structured settlement contribution before 1 July 2007 to the ATO.

Example 6: Structured settlement contribution

Michael (45) made a structured settlement contribution of $2.6m on 30 July 2024. At that time, all of Michael's super was in accumulation. The trustee of the fund is satisfied Michael has met the permanent incapacity condition of release to allow the interest to be unrestricted non-preserved.

Michael's superannuation consisted of the $2.6m recently contributed, and an existing member balance of $120,000.

On 5 August 2024, Michael commenced a retirement phase income stream with the entire $2.72m from his accumulation account. Michael was entitled to a debit in his TBA for an amount equal to the structured settlement contribution.

In Michael's case, the debit applied on the day he commenced to have a TBA (ie 5 August 2024).

Date	Personal transfer balance cap	Credit	Debit	Transfer balance account
5/8/2024	$1.9m	$2.72m	N/A	$2.72m
5/8/2024	$1.9m	N/A	$2.6m	$120,000

As TBAs are reconciled to determine an excess at the end of each day, Michael's TBA is not in excess. Even though his actual income stream balance is $2.72m, his TBA is only $120,000. This means that Michael could transfer additional amounts to retirement phase in the future within his personal TBC.

22 For a structured settlement contribution made prior to 1 July 2017, where a retirement phase pension was also in existence on 30 June 2017, the amount of the debit applied equalled the entire amount in retirement phase at 30 June 2017.

Family law split

Upon relationship breakdown, superannuation may be split as part of a property settlement. Sometimes, an amount might be split from one person's super accumulation account (the member spouse) to the other (non-member spouse). In other cases, the non-member spouse receives either a lump sum amount or a percentage of income stream payments.

Where a commutation is made from the member spouse to provide a settlement to the non-member spouse, the member spouse receives a debit to their TBA equal to the value of the commutation. Where on the other hand, the settlement provides for the non-member spouse to receive a percentage of the member spouse's future income stream benefits:

- the non-member spouse receives a credit to their TBA equal to the total value of the member spouse's pension balance at the same date, and
- each spouse receives a simultaneous debit to their TBA, equal to the proportional entitlement of future income stream payments of the other person. This is calculated based on the account balance at the date the split is effective (as per the court order).

Example 7: Effect of a family law split on the TBA

Justin has a retirement phase income stream from which he receives $4,000 per month. He commenced the income stream on 1 December 2021 with $1.7 million and has a credit in his TBA equal to this amount. He and his wife Lizzy divorce.

A court orders that 60% of future income stream benefits payable to Justin goes to Lizzy.[23] The court order specifies that the effective date is 1 August 2024. Currently Lizzy does not have a TBA but commenced to have one on this date. On this date, the actual account balance of Justin's retirement phase pension was $1.71 million, due to market movement.

Their individual TBAs have transactions as follows:

- a debit to Justin's TBA of 60% of the 1 August 2024 balance ($1,026,000) representing that Lizzy will receive 60% of all future income payments, and
- a credit to Lizzy's TBA of $1.71 million, and
- a simultaneous debit to Lizzy's TBA of 40% of the 1 August 2024 balance ($684,000) which ensures her TBA only reflects the 60% of future income payments she is eligible to receive.

Fraud and dishonesty

A debit can arise due to a loss suffered within a super income stream where the loss is attributable to fraud or dishonesty[24]. The debit is equal to the loss that arises. However, it only applies if an individual is convicted of an offense for the fraud or dishonesty. Where such an event has occurred, the individual needs to report this to the ATO on a **Transfer Balance Event notification form.**

Limited recourse borrowing arrangements in an SMSF

A credit applies to a client's TBA if a repayment in respect of a limited recourse borrowing arrangement (LRBA) entered into on or after 1 July 2017[25], is funded fully or partially with assets supporting accumulation interests in an SMSF[26]. A credit[27] arises in an individual's TBA where:

- the individual has an interest in an SMSF
- an LRBA exists within the fund
- the asset against which the LRBA is secured supports, at least in part, a retirement phase income stream interest of a member, and
- repayments of the LRBA are made using assets sourced from the accumulation interests.

This credit aims to capture the increase to the value of a retirement phase income stream occurring when accumulation interests are used to repay an LRBA. Such an event increases the net value of an income stream interest. This means the credit equals the increase in the value.

A detailed explanation of repayment rules can be found in our adviser article, **Guide to LRBAs.**

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23 Payment splits are most common where the interest is non-commutable.
24 S294-85
25 Income Tax (Transitional Provisions) Act 1997 s294-55. Existing LRBAs or refinancing of LRBAs entered into before this date are grandfathered.
26 S294-25(1)
27 S294-55

Failure to meet pension standards

Where an income stream fails to meet the payment standards, for example it did not pay the required minimum pension payment, the income stream is deemed not have been in retirement phase for the entire financial year. This also has implications from a tax perspective, including:

- the amount being treated as having been in accumulation for the financial year, meaning the exemption on pension earnings is not applied, and
- amounts received are treated for tax purposes as super lump sums.

From a TBC perspective, a debit applies based on the value of that interest at the end of the financial year in which the pension standards were not met. The value of the debit equals the value of the interest at that point in time. However, the value of the original credit applied in respect of the commencement of that income stream remains in the TBA, with any future income stream commenced from the interest again creating a credit in the TBA.[28]

28 LCR 2016/9, paragraphs 52-55K