THE FOLLOWING INFORMATION HAS BEEN PROVIDED BY THE ATO

ATO update on Transition to Retirement Income Streams, Total Balance Caps and Limited Recourse Borrowings Arrangements.

To support an effective implementation of the Government's superannuation tax reform package the ATO has been advised of the Government's intention to make a number of minor and technical amendments to the legislation to ensure that the legislation operates as was intended.

The ATO understands that the Government intends to legislate these changes to ensure they are enacted by 1 July 2017.

The ATO has also been advised that the Government has decided not to progress two of the regulations that were released for public consultation in December 2016.

- First, the regulation that proposed that funds with an account based pension (or similar straight forward pension) no longer be required to obtain an actuarial certificate each year stating the proportion of their income that was tax exempt will not be progressed.

- Second, the proposal to remove the prohibition on commutation of defined benefit products will not be progressed.

The ATO will continue to work across the industry and profession to support an effective implementation of the superannuation tax reform package.

Measure affected		Clarification sought	Proposed response
Minor and technical amendments			
1	Transition to retirement Income Streams (TRIS)/Transfer Balance Cap (TBC)	There is concern that life insurance companies do not benefit from the CGT relief provisions in the tax reform package. Currently, they are required to pay CGT if they transfer an asset from retirement phase to accumulation phase. The reform package introduced a provision that enables the transfer to occur without paying CGT, but this doesn't start until 1 July 2017. This means that life insurers that seek to rebalance their assets prior to 1 July 2017 will face a tax burden that other superannuation providers don't have.	The application date of the new direct transfer provision for life insurance companies will be changed. It will now have application from the introduction of the amending Bill.
2	TRIS/TBC	Some funds offering TRIS products may not be able to access the CGT relief because of the definition of 'pre-commencement' period. CGT relief applies to assets held during the 'pre-commencement' period/ which is the period from the date of the introduction into Parliament until just before 1 July 2017. TRIS changes come into effect on 1 July 2017, which is after the pre-commencement period.	Amend the CGT relief rules so that they apply appropriately to assets that support TRISs
3	TRIS	There is a concern that TRIS holders that satisfy a nil condition of release will be subject to taxation after 1 July 2017 unless they commute their income streams and recommence an account based	Amend the legislation to provide that TRIS holders that have satisfied a nil condition

		pension. This is a significant compliance burden on both individuals and providers.	of release receive an earnings tax exemption.
4	TBC	There are concerns about the impact of the death benefit changes on non-retirement age spouses. Currently, a non-retirements age spouse seeking to comply with the TBC prior to 1 July 2017 can either: - cash out the excess which will be taxed at marginal rates; or - roll the excess into an accumulation account where it will not be able to be accessed until the non-retirement age spouse reaches retirement age. Alternatively, the individual can remain in breach of the TBC until shortly after 1 July 2017. Because of the changes to the death benefit provisions (the 'six month rule') which come into effect 1 July 2017, any excess taken as a lump sum would no longer be subject to marginal tax rates.	Amend the changes to the six month rule to apply from a date of introduction of the amending Bill rather that 1 July 2017. This will mean that spouses who commute death benefits to comply with the TBC prior to 1 July 2017 will not face adverse tax/preservation consequences.
5	TBC	Some concerns have been raised that the drafting of the debit provisions may not, technically, give rise to a debit where an income stream is deemed to be non-compliant.	Amend the debit provisions of the legislation to ensure that the debit arises before the income stream is deemed non-compliant.

Measure affected		Clarification	Response
LRBA related amendments			
6	TBC, concessional and non-concessional contribution caps	SMSF trustees may pay retirement phase liabilities from accumulation phase income through the use of a LRBA. This means there is an effective transfer of the accumulation growth to retirement phase, which would not be captured by the transfer balance cap.	Amend the credit provision to ensure the amount of the repayment of the principle and interest of the LRBA is a transfer balance credit in a members account.
7	Concessional and non-concessional contribution caps	SMSF trustee are making payment of lump sums to members who then lend back the money to the SMSF to purchase an asset through a LRBA. This strategy allows members to continue making contributions by keeping their net balance below the total superannuation balance threshold.	Amend the total superannuation balance provisions to count the outstanding balance of the LRBA each year towards

			the member’s annual total super balance.