TAX TALKS

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20 | TRIS to an ABP

How do we convert a TRIS to an ABP after 1 July 2017? The industry had a clear idea how this should work. A TRIS converts to an ABP when meeting a condition of release – no need to stop the TRIS and start an ABP. But then the ATO declared that a TRIS can't do that. A TRIS does not automatically convert to an account-based pension. A TRIS can only ever be a TRIS. This is bad news.

TRIS to an ABP

How do we covert a TRIS to an ABP? Before 1 July 2017, this wasn't a big issue. When a TRIS no longer had the cashing and commutation restrictions attached, it became an account-based pension per reg 1.06(9A) SISR, or stayed a TRIS. Either way it was tax exempt.

But then the super reforms removed the tax exempt status of TRIS. And amended s 307-80. So now the question is whether a TRIS can directly convert into an ABP? Or needs to stop and then start as an ABP?

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ATO View

The ATO view is that a TRIS doesn't enter the retirement phase even when a member meets a condition of release. Be it that the member notifies the trustee of that fact or turns 65.

The argument is that a pension commenced as a TRIS always remains a TRIS. Even after the recipient satisfies a condition of release with a nil cashing restriction.

The explanatory memorandum to the Bill in paragraph 1.131 was the first to take this position:

> " As a superannuation income stream that is established as a TRIS will always retain its character as a TRIS, the restriction introduced as a part of the Amending Act would always prevent TRISs from being in the retirement phase even after the holder later satisfies a condition of release with a nil cashing restriction"

The ATO confirmed this position and stated on its website,

> "Our view is that the current law does not facilitate an "auto conversion" of TRIS to a different or new pension or income stream. The same TRIS continues on and remains a TRIS until such time as it ceases. The law provides that once a nil cashing restriction condition of release is met, the limitations of a 10% annual maximum payment and commutation restrictions are no longer applied."

Industry view

The widespread industry view takes the opposite stance.

The industry argues that a TRIS stops being a TRIS and reverts to an account-based pension on the member satisfying a condition of release.

A TRIS is a pension that meets the standards of an account-based pension as prescribed by reg 1.06 (9A)(a), but just got a couple of restrictions that an ABP doesn't have.

When a member satisfies a condition of release with a nil cashing restriction, these restrictions fall away. So now the TRIS is essentially an account-based pension. It doesn't make sense to argue that TRIS restrictions can fall away so that the pension is identical to an account-based pension, but that the pension is still a TRIS anyway, just as a matter of law.

Issue

Why all this arguing? What is the issue?

There are other issues, but the one big issue is the dilution of tax-free components.

If a TRIS can't directly convert to an account-based pension but has to stop and then start as an ABP, it will lose the crystallisation of the tax-free/taxable components. Everything goes back into the big accumulation "bucket". And chances are that the accumulation bucket is not 100% tax-free, but the TRIS might be just that.

Final Call

So until the ATO makes the final call on this, hopefully after consulting the industry, TRISs are like a landmine. You don't know whether they will go off or not when a member meets a condition of release. Let's just hope that this gets sorted soon.

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