Lifting the lid off a TRIS
When a condition of release is met, does a TRIS automatically convert to an Account Based Pension?

When a Transition to Retirement Income Stream (TRIS) can be commenced is well known by advisers, what appears to be unclear to some is the process to lift the 'lid' on the restrictions applicable to a TRIS.

What is a Transition to Retirement Income Stream?

A TRIS, as it is commonly referred to, is a superannuation income stream that is able to be commenced once a member reaches their preservation age, currently 55 years of age.

A TRIS is basically an Account Based Pension with 3 major restrictions:

- the annual payments cannot be greater than 10% of the assets supporting the TRIS;
- payment of a lump sum is not permitted from preserved funds; and
- an order of cashing of benefits applies, with unrestricted non-preserved benefits drawn first[1], with preserved benefits paid last.

Account Based Pension

Account based pensions may only be commenced with the unrestricted non-preserved portion of a member's balance in a fund.

Once a member has met one of the conditions of release which have a 'nil' cashing restriction, their benefits in superannuation become unrestricted non-preserved.

The most common of those conditions of release, in the context of converting from a TRIS to an account based pension, is the **retirement** condition of release.

Upon notification by a member to their fund that they have met a condition of release, the fund should record the benefits as unrestricted non-preserved, paving the way for the member to commence an account based pension when they decide to do so.

Lifting the lid off a TRIS

What happens then, when:

- a TRIS was commenced after a person reached their preservation age; and
- they have now met a condition of release?

Advisers have differing opinions as to what action needs to be taken at that point and, in particular whether:

- the 3 major restrictions are automatically removed following notification to the super fund trustee by the member; or
- the TRIS needs to be stopped and a new account based pension commenced.

Whilst a TRIS could always be stopped and an account based pension commenced (reset), is it necessary and will it raise any potential ramifications?

For example, the resetting of a TRIS may result in the mixing of tax free and taxable components if the member holds an accumulation balance at the time, potentially impacting the estate planning intentions of the member.

> *"Account Based Pensions may only be commenced with the unrestricted non-preserved portion of a member's balance in a fund."*

Reset or Automatically revert?

So what is the answer?

It's not surprising there is some difference of opinions on the topic – even the ATO on their website – ([Super withdrawal options](#)) appears to suggest there exists the need to reset a TRIS to convert to an account

Current as at 28 October 2014.
Please note this article is for information purposes only and does not constitute legal or financial advice.

Lifting the lid off a TRIS
When a condition of release is met, does a TRIS automatically convert to an Account Based Pension?

based pension when it states: "*Once you retire or turn 65 years old you can stop the transition to retirement income stream and access your super through a different income stream or a lump sum.*"

Our view however is that the resetting of the TRIS **is not necessary** to *take the lid off the TRIS*, as long as the trust deed for the fund and the initial pension agreement specifically provide that upon a condition of release being met, the rules of the pension convert to those governing an account based pension.

Should these provisions be present, the TRIS will simply be automatically converted by way of a trustee resolution, noting the member has satisfied a condition of release and that the income stream will now continue as an account based pension.

When making this resolution, the trustee should:

- consider any proof confirming the member's retirement;
- if satisfied, resolve to record the member's balance as unrestricted non-preserved; and
- resolve to treat the income stream going forward as an account based pension.

One consideration to be made when converting the TRIS to an account based pension is the potential ramifications of the member's entitlement to Centrelink benefits - will the conversion adversely impact their entitlements particularly given the grandfathering provisions to apply from 1 January 2015?

Our Reasoning

It is understandable that there have been some differing opinions – especially given the ATO's publication on the issue.

However, that statement was included in a general information (rather than technical) document, so it could be expected it would take a rather simplistic approach.

Specifically, our reasoning has a legislative basis, derived from the SIS Regulations. The definition of a *transition to retirement income stream* at SIS Reg. 6.01:

- refers to subreg. 1.06(9A) and paragraph 1.06(9A)(a) [that the income stream must be an account based pension and the minimum payment rules apply]; and
- restricts payments to no more than 10% of the pension account balance - <u>unless the recipient has satisfied a condition of release with a 'nil' cashing restriction.</u>

ATO ruling TR 2011/D3 further supports the automatic conversion to an account based pension. In this ruling the ATO specifies that the terms of the pension must be agreed upon by the trustee and the member, subject to the requirements set out in the SIS Regulations.

If the agreement between the member and the trustee specifies the TRIS will convert to an account based pension upon a condition of release being met, then this provision can therefore be deemed as being a rule of the pension.

Conclusion

Once a member has met the requirements for a 'nil' cashing restriction condition of release, such as the **retirement** condition of release, the 10% TRIS restriction is effectively lifted, as long as the trust deed and the agreement supporting the pension provide for this.

As the basis for a TRIS is an account based pension, once the TRIS 'lid' has been lifted (following acceptance by the trustee that the condition of release has been met), the account based pension, with unrestricted non-preserved funds, is what remains, and the member will have full access to their pension benefits.

> "*Once a member has met the … Condition of Release, … the 10% TRIS restriction is effectively lifted.*"

Topdocs Pension Documentation

The Topdocs transition to retirement income stream package specifically provides for the automatic conversion to an account based pension upon a nil cashing

Current as at 28 October 2014.
Please note this article is for information purposes only and does not constitute legal or financial advice.

restriction condition of release being satisfied by the member.

More Information

Should you have any questions or require more information, please contact the team at Topdocs on 1300 659 242.

Notes:

[1] To overcome the order of cashing of benefits requirement, many advisers commence separate account based pensions from unrestricted non-preserved benefits.
Reasons why it is advisable to commence a separate income stream with unrestricted non-preserved funds are set out in the Topdocs technical article titled SMSF Income Streams - Priority of cashing of benefits & other options

Current as at 28 October 2014.
Please note this article is for information purposes only and does not constitute legal or financial advice.