

Challenger Tech

For adviser use only.

September 2020

Does your client meet the retirement definition?

By Rahul Singh, Technical Services Manager

Accumulated through compulsory and voluntary contributions as well as earnings, super is a significant source of retirement savings. As clients approach retirement, their minds often turn from accumulating to accessing their super, be it through either an income stream, lump sum or a combination.

To access super, clients need to meet a condition of release. Upon meeting a condition of release, super can be classified as unrestricted non-preserved, enabling further financial planning strategies related to accessing super.

Retirement is widely understood to be an event which enables access to super, however, there are some legislative nuances when it comes to the specific definition of retirement. In this article, we focus on retirement related condition of release and address some frequently asked questions.

There are other related issues when it comes to accessing super. It is outside the scope of this article to discuss any tax related issues which may go hand in hand when accessing super. For example, Transfer Balance Cap implications upon commencing income streams and tax issues relating to accessing super for those under 60 are some common tax issues to consider, which are not discussed in this article.

Definition of retirement in superannuation law

Until a client reaches age 65, there are two definitions of retirement depending on whether the client is under or over age 60.

Client has reached their preservation age and is less than 60

Preservation age is the earliest time at which super can be accessed under the retirement definition and will gradually increase to age 60 for those born on or after 1 July 1964. For those born between 1 July 1962 and 30 June 1964 (inclusive), clients have a different preservation age depending on their date of birth, which is outlined on the following page.

Retirement is widely understood to be an event which enables access to super, however, there are some legislative nuances when it comes to the specific definition of retirement.

Table 1: Preservation age based on date of birth

Date of birth	Preservation age
Before 1 July 1962	Already attained
1 July 1962 to 30 June 1963	58
1 July 1963 to 30 June 1964	59
From 1 July 1964	60

Retirement occurs when an arrangement under which the client was gainfully employed¹ has come to an end and the super trustee is reasonably satisfied that the member intends never to be gainfully employed for ten hours or more per week in the future.

Advisers often ask whether retail super funds require any proof around termination of employment and clients' intention to no longer be gainfully employed. Unique rules aside, most super funds simply require a member to make a declaration, often by indicating through the withdrawal form that they are retired.

Client has reached the age of 60

If the client is age 60 or over, retirement definition is easier to meet. The client is no longer required to make a declaration that they don't intend to be gainfully employed in the future. Instead, retirement definition is simply met upon termination of a gainful employment arrangement. It is of no consequence that the client may still intend to be gainfully employed in the future or indeed where the client had multiple employment arrangements, continues to work.

Importantly, in this circumstance, the amount of funds which can be accessed are the accrued entitlements on the day of termination of gainful employment. Any further contributions after the termination of gainful employment are required to be preserved and a subsequent condition of release is required for access to those funds.

From a practical perspective, some retail super funds may not enquire about the termination date. Where no termination date is required by the super fund for their withdrawal process, practically, the super fund may unrestrict the entire balance at the time the withdrawal form is completed.

Where super funds do require a termination date, they may use that date to allow access to the funds under the retirement definition, with any new contributions and earnings after that date being still preserved until any future condition of release is met.

Even if the client is over the age of 60, they can still use the retirement definition relating to ceasing a gainful employment arrangement and not intending to be gainfully employed for ten hours or more per week.

Age 65

Having to contend with the retirement definition for those who have reached their preservation age and continue to work is made much simpler upon reaching age 65.

Reaching age 65 is a defined condition of release. It does not matter if the client continues to work more than ten hours a week. Upon reaching age 65, clients can access their super which can open up many opportunities for the usual financial planning strategies.

If the client is age 60 or over, retirement definition is met upon termination of a gainful employment arrangement. It does not matter if the client still intends to be gainfully employed in the future.

¹ Defined as employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

Access to Transition to Retirement Income Streams

Once a client has reached their preservation age outlined in Table 1, they could access their super in the form of a non-commutable income stream with a pension payment limit of 10% of the account balance each financial year, if any of their funds are preserved without having to meet any other condition of release.

Upon reaching age 65 or meeting the retirement definition prior to turning 65, the 10% payment limit is removed, and one could access their entire balance.

Retirement definition relevance to Challenger products

Challenger has a range of fixed term and lifetime annuities which can be commenced inside or outside super. Where the annuity is commenced through super monies, usually, the client must have reached age 60 and have unrestricted access to their super.

Challenger has a range of fixed term and lifetime annuities which can be commenced inside or outside super.

ATO's scrutiny on declaration of retirement

Since 1 July 2017, with Transition to Retirement Income Streams (TRIS) not in retirement phase subject to up to 15% tax on their earnings, the Australian Taxation Office (ATO) has repeated their intent to scrutinise declarations of retirement to commence retirement phase income streams where the earnings are tax-free.

Of particular interest to those who are gainfully employed through a related trust or company, the [ATO has stated](#) that even if an individual ceases to be gainfully employed through a controlled trust or company but continues to perform substantive duties and is remunerated through passive mechanisms such as distributions or dividends, it may put into question whether a person has met the retirement definition.

Common questions/issues

My client, at the age of 59, retired with no intention to work in the future. As time transpired, their intentions changed after a year of retirement. Are there any concerns around their previous declaration and is there any change to the unrestricted non-preserved status of their super?

As imaginable, with passing of time, for some clients, their intentions can change. Maybe they tried retirement and they truly did drive their significant other half crazy, or maybe they established that weren't fully ready for retirement.

It is permissible to have a change of intention, as long as the original declaration of retirement was genuine and the intention to retire was not contrived to access super, including commencing retirement phase income streams.

Upon recommencing any future employment, funds in accumulation phase previously characterised as unrestricted non-preserved remain as such. Any previously commenced retirement phase income streams also remain as such. Future contributions and earnings in accumulation phase from the subsequent employment and any voluntary contributions remain preserved until a further condition of release is met.

Upon recommencing any future employment, funds in accumulation phase previously characterised as unrestricted non-preserved remain as such. Any previously commenced retirement phase income streams also remain as such.

My client read somewhere that upon reaching age 60, they can access their super. That's not true is it?

Since 1 July 2007, the headline message that super is tax-free for people over 60, has sometimes given rise to a misconception that super is also automatically accessible at age 60 without meeting the retirement condition of release. With the exception of accessing super through a TRIS, turning age 60 does not automatically constitute retirement.

My client is a casual worker and takes whatever shifts they are given. Some weeks, they work five hours and some weeks they work 20 hours per week. On average throughout the year, they work less than ten hours per week. Can they declare retirement?

In this case, the crux of the issue is likely to be the client's intention to work ten hours or more per week. One cannot make an assessment from the pattern and averaging of employment in the past but rather look ahead to future intentions to work ten hours or more per week.

As the client is willing and intending to work when it is available, ten hours or more per week, they are unlikely to be able to meet the retirement definition.

I read some technical literature that indicated there may be issues on declaring retirement whilst at the same time, accessing JobSeeker Payment.

There is a question mark on whether a client can receive JobSeeker Payment (JSP) and declare retirement for the purposes of accessing super or commencing an unrestricted income stream. To receive JSP, generally a person agrees with Centrelink to reconnect with the workforce, including accepting suitable offers of employment.

To declare retirement for super purposes, a person over their preservation age, is informing the super fund that they don't intend to work ten hours or more per week. The two declarations seem contradictory. There is a technical view that the superannuation retirement definition can't be satisfied if one has an intention to receive (or is already receiving) JSP.

The contradictory declaration issue does not eventuate for those who terminate employment on or after turning 60. As discussed earlier, in these situations, retirement definition is met upon termination of a gainful employment arrangement with no declaration required about a person's future intention to never be gainfully employed.

Gradually easing to full retirement, my client has changed from full-time employment to part-time employment after turning 60. Has the retirement definition been met?

For those relying on the retirement definition that they have terminated a gainful employment arrangement on or after turning 60, the crux of the matter is whether employment has ended.

Where a person is varying their hours, retirement definition is likely not met as there is a variation to the employment arrangement rather than the required termination. In assessing whether there has been a variation rather than a termination, factors such as whether accrued leave entitlements have been paid out or the person's service period with the employer has been restarted, may be determinative.

My client, over preservation age and under age 60, retired a year ago but didn't inform their super fund that they had retired. They went back to the workforce recently, engaged for more than ten hours per week. Can they meet the retirement definition?

In this situation, as they are under 60, they would be relying on the retirement definition on the basis that they don't intend to be gainfully employed for ten hours or more per week. As the person is currently working more than ten hours per week, they cannot access their super presently on the basis that they met the retirement definition in the past.

There is a technical view that the superannuation retirement definition can't be satisfied if one has an intention to receive (or is already receiving) JSP.

The issue this question highlights is that when clients terminate employment after reaching their preservation age, they need to turn their mind to their future intention to work and its impact on the retirement definition. If their intention is to not be gainfully employed in the future or to work less than ten hours per week, then they meet the retirement definition.

Contrast the previous question to a situation where the client is currently 62. They terminated an employment arrangement a year ago (that is, after turning 60) and went back to the workforce, working more than ten hours per week. They hadn't informed their super fund of their termination after turning 60. Can they meet the retirement definition?

In this situation, the retirement definition can play out differently. As the client was over the age of 60 at the point of terminating their previous employment, that fact does not change even if they start a new employment arrangement. Therefore, they have met the retirement definition but only on the amount of funds which were accrued at the date of termination from the previous employer.

Any contributions from the new employer are required to be preserved until a further condition of release is met.

Acknowledging that it is rare, but I have a client who has never worked in their life. What does this mean for them being able to declare retirement?

To be retired, one has to have ceased a gainful employment arrangement at some point in their life, even if it happened prior to the person reaching their preservation age. If a person has never worked, they are incapable of declaring retirement. This means that unless any other condition of release applies, this client can only access their super at age 65.

Contact details

By phone

Challenger Tech team
1800 176 486
(during Sydney business hours)

By email

challengertech@challenger.com.au

Website

challenger.com.au

By mail

Challenger Life Company Limited
Reply Paid 3698
Sydney NSW 2001

The information contained in this update is current as at 24 September 2020 unless otherwise specified and is provided by Challenger Life Company Limited ABN 44 072 486 938, AFSL 234670 (Challenger), the issuer of Challenger annuities (Annuity(ies)). It is intended solely for licensed financial advisers and this update must not be passed on to retail clients. The examples shown are for illustrative purposes only and are not a prediction or guarantee of any particular outcome. This information is not intended to be financial product advice and has been prepared without taking into account any person's objectives, financial situation or needs. Each person should, therefore, consider its appropriateness having regard to these matters and the information in the product disclosure statement (PDS) for the applicable Annuity before deciding whether to acquire or continue to hold an Annuity. A copy of the PDS is available at challenger.com.au or by contacting our Adviser Services Team on 1800 621 009. This document may include statements of opinion, forward looking statements, forecasts or predictions based on current expectations about future events and results. Actual results may be materially different from those shown. This is because outcomes reflect the assumptions made and may be affected by known or unknown risks and uncertainties that are not able to be presently identified. Neither Challenger nor its related bodies corporate nor any of their employees receive any specific remuneration for any advice provided in respect of the Annuity. Some or all of Challenger group companies and their directors may benefit from fees and other benefits received by another group company. Any taxation, Centrelink and/or Department of Veterans' Affairs illustrations are based on current law at the time of writing which may change at a future date. Neither Challenger, nor any of its officers or employees, is a registered tax (financial) adviser under the Tax Agent Service Act and it is not licensed or authorised to provide tax or social security advice. Before acting, we strongly recommend that prospective investors obtain financial product advice, as well as taxation and applicable social security advice from a professional and registered tax agent who can take into account the investor's individual circumstances.