Self Managed Super

Summer Edition Newsletter 2017

Planning for the super changes

The superannuation changes are now law, with most amendments commencing from 1 July 2017. In this article, we provide some points to consider in the lead-up to 30 June 2017.

Non-concessional contributions

To ensure that superannuation is used for retirement purposes, rather than estate planning or tax minimisation, new restrictions will apply to non-concessional contributions from 1 July 2017.

Firstly, the Government has reduced the non-concessional (i.e., after-tax) contributions cap from $180,000 to $100,000 (indexed) with effect from 1 July 2017 (transitional arrangements apply).

Secondly, from 1 July 2017, individuals with total superannuation balances of $1.6 million+ (indexed) at the end of the previous income year will no longer be permitted to make non-concessional contributions during the income year. From this date, limitations will also apply to the bring forward rule for individuals with total superannuation balances over $1.4 million but less than $1.6 million (2018 income year).

Planning point

The good news is that the existing non-concessional rules **continue to apply** until 30 June 2017. This means that all individuals (irrespective of whether their superannuation balance is $1.6 million+) are eligible to:

- make non-concessional contributions **before** 1 July 2017 using the higher $180,000 cap; and
- maximise non-concessional contributions under the existing three-year bring forward rule **before** 1 July 2017. This rule allows individuals under 65 to access a non-concessional contributions cap of $540,000, being three times the non-concessional contributions cap of $180,000).

TIP–The new law prevents payment of the Government co-contribution from the 2018 income year for individuals who are ineligible to make non-concessional contributions. This includes individuals who maximise their non-concessional contributions or those with total superannuation balances of $1.6 million+ (indexed) at the end of the prior income year.

Concessional contributions

The concessional contributions limit will be cut to $25,000 for all individuals from 1 July 2017. This means that:

- individuals aged 49+ at 30 June 2016 have an opportunity to contribute up to $35,000 before 1 July 2017 – $10,000 more than the cap of $25,000 applying from this time.
- individuals under age 49 on 30 June 2016 are entitled to contribute up to $30,000 before 1 July 2017 – $5,000 more than the reduced cap that applies from 1 July 2017.

Planning point

The higher concessional contributions caps applying until 30 June 2017 create a planning opportunity for individuals to boost their concessional contributions in the current income year, where they have the capacity to do so. Higher contributions may also benefit some high income earners, due to the income threshold for the additional tax on concessional contributions being lowered from $300,000 to $250,000 from 1 July 2017.

TIP–Any salary sacrifice arrangements will need to be reviewed to ensure they are in accordance with the reduced cap from 1 July 2017.

HIGHLIGHTS

PLANNING FOR THE SUPER CHANGES

An overview of some planning issues around the new superannuation rules

'ELDER ABUSE' INQUIRY

An inquiry into the levels of 'elder abuse' is now underway, with a discussion paper recently published

TRUSTEE Q & A

Transactions to artificially obtain CGT relief on restructuring pensions may be scrutinised by the ATO

"SMSF trustees should consider whether or not they are eligible for CGT relief;"

Planning for the new super changes cont'd

Transition to retirement pensions

The tax exemption on fund earnings from assets supporting a transition to retirement income stream (TRIS) will be removed from 1 July 2017.

However, individuals who wish to draw down a TRIS for the purposes of supplementing their income as they phase into retirement can still do so.

Planning points

- With the pension exemption abolished, review whether the TRIS will remain appropriate from 1 July 2017.
- SMSF trustees eligible for the CGT relief on existing pension assets should consider whether the relief is appropriate.

Account-based pensions

Individuals with pension balances over $1.6 million will need to remove pension capital to comply with the new rules.

Planning points

- SMSF trustees should consider whether or not they are eligible for CGT relief.
- They should ensure that minimum pension payments for the 2018 income year are determined on the basis of pension balances at 1 July 2017 (not 30 June 2017).
- Individuals with multiple pensions will need to determine which pensions should be returned to accumulation phase before 1 July 2017.

Government 'elder abuse' inquiry

The Government recently called for an inquiry into what it calls 'elder abuse'. The inquiry aims to review whether current laws protect older persons from misuse or abuse by formal and informal carers, representatives and others.

'Elder abuse' broadly refers to harming an older person, and usually refers to abuse by a trusted person (e.g., family or friends). Psychological/emotional abuse and financial abuse are the most common types of elder abuse.

The World Health Organisation (WHO) estimated that the rate of elder abuse in high or middle income counties is 2% to 14%. This rate could increase with Australia's ageing population.

A discussion paper calling for comments and submissions has now been released. Questions raised for discussion from a superannuation perspective include:

- should all SMSFs have a corporate trustee?
- should the superannuation laws prescribe arrangements for an SMSF if the trustee loses capacity?
- should additional obligations be imposed on trustees and directors when they are not fund members?
- should the Superannuation Complaints Tribunal be able to resolve SMSF disputes?

The final report will be submitted to Government in May 2017.

ATO UPDATE

The ATO has released a number of draft guidelines on how it will interpret the **superannuation reforms**. These guidelines cover topics including: how the CGT relief works for existing pensions, the $1.6 million transfer balance cap and defined benefit pensions.

The ATO is also considering further guidance on the **superannuation reforms** in other areas such as: how fund assets should be valued, transition to retirement income streams and the reporting obligations of superannuation funds.

The ATO has also released a fact sheet detailing how it expects the **reforms** will impact on SMSFs.

In relation to **SuperStream,** the ATO has provided an email template for SMSFs who need to provide SuperStream details to their employer. Note that SMSFs are now generally subject to the SuperStream rules unless the fund **only** receives employer contributions from a related-party employer.

Finally, the ATO has been in contact with SMSF trustees with **borrowing arrangements** afoot. The ATO wants to learn more about the use of these arrangements by SMSFs. Participation is voluntary and trustee responses will be kept anonymous.

SMSF trustee Q & A

Question

"My entire super savings are in an account-based pension of $500,000. Can my fund sell a pension asset now and purchase it back to get a higher cost base?"

Answer

No, the ATO considers that this type of transaction will generally be construed as tax avoidance. The new reforms only allow CGT relief for funds that need to take action to comply with the new rules.

SMSF trustees in pension phase who do not qualify for the relief (e.g., members with account-based pensions below $1.6 million) cannot artificially obtain the relief via a 'wash sale'. This transaction involves the fund selling an asset that has risen in value and repurchasing it immediately (e.g., a listed share).

This adjusts the asset's cost base to a higher value whilst the SMSF pays little or no tax on the capital gain because the asset supported a pension. The ATO considers this transaction as tax avoidance because there is no other purpose behind selling and buying back the share aside from tax.

A 'wash sale' can be contrasted to a situation in which a fund genuinely sells an asset to rebalance its portfolio in line with a properly considered investment strategy. As part of this rebalancing, the fund may purchase a completely different asset in a different industry.

However, if the transaction is a wash sale disguised as rebalancing the portfolio, the ATO may still seek to tax the capital gain.

Question

"I am 62 years of age and receive a transition to retirement income stream. Will my TRIS income payments still be tax free after 30 June 2017?

Answer

Yes, your TRIS income will continue to be tax free in your hands from 1 July 2017 – that is, the tax treatment of the pension payments for you personally has not been altered with the new superannuation reforms.

TRIS income payments are tax free for individuals aged 60+ (exceptions apply), with this treatment continuing under the new rules from 1 July 2017. Hence, the law change only removes the tax exemption on earnings from assets supporting a TRIS at a fund level – not the tax treatment of TRIS pension payments to you.

Key dates and reminders

1 January 2017

Changes to the pension assets test apply from this time, which may affect the Age Pension received.

28 February 2017

Due date for tax agent clients to lodge the tax return for a newly registered SMSF (whether taxable or not). Payment (if required) is also due at this time.

30 April 2017

Due date for SMSF trustees to contact the ATO if they have diverted personal services income to an SMSF to avoid income tax obligations.

15 May 2017

General due date for SMSF tax returns not due at an earlier time. Payment (if required) is also due at this time.

5 June 2017

Due date for eligible non-taxable SMSFs.

Auditing SMSFs

It is compulsory for all SMSFs to have their financial accounts and statements audited each year. The audit report needs to be completed before the SMSFs tax return can be lodged – trustees need to allow sufficient time for this to occur.

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