MGR ADVISORY GROUP
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360 PRIVATE WEALTH

Self Managed Super

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Labor's proposed super policies

We have seen significant changes made to super over the past few years, with the new 'transfer balance cap' and numerous changes to the contribution rules. With a federal election to happen by 18 May 2019, we outline the super proposals Labor is taking to the election.

COMMENT–A source of frustration for our clients is the continual super changes made by both parties. In particular, the changes make it difficult to plan for retirement.

Labor Party super policies announced to date

The Labor Party proposes to make a raft of super changes if elected to government in the upcoming federal election. The super policy changes proposed by Labor include:

Labor Policy	Description of policy
Super Guarantee rate to increase	When prudent, increasing the Super Guarantee rate from 9.5% to 12%.
Removal of $450 monthly SG threshold	Most workers do not receive Super Guarantee support if they earn less than $450 in any month. Labor plans to phase-out this minimum monthly threshold.
Non-concessional contributions cap to be reduced	Labor will reduce the non-concessional (i.e., after-tax) contributions cap from $100,000 to $75,000. Note that indexation currently applies to the cap – we assume that Labor will allow indexation to continue.
Tax deductibility of personal super contributions to be reformed	All individuals can generally claim a deduction for personal super contributions from 1 July 2017. Before then, personal super claims were subject to the individual meeting the '10% rule'. Labor will reinstate the 10% rule, if elected.
Catch-up concessional contributions to be removed	From 1 July 2019, eligible individuals with super balances below $500,000 can access unused concessional cap space for up to five years. If elected, Labor will remove this new super concession.
High income super contribution threshold	Individuals with income and concessional super contributions over $250,000 incur an additional 15% tax on concessional contributions over this cap. Labor will reduce this threshold to $200,000.
Low income super tax concession	Eligible members with an adjusted taxable income of up to $37,000 receive a super contribution equal to 15% of their concessional contributions, capped to $500. Labor will retain this policy.
Parental Leave and Partner Pay	Recipients of Commonwealth Paid Parental Leave and Dad and Partner Pay payments will be entitled to super contributions.
Removal of franking credit refunds	Individuals and super funds currently receive refunds of excess franking credits. Labor will remove this entitlement, except for those SMSFs with at least one individual receiving an Australian Government pension or allowance before 28 March 2018.
Banning the ability of SMSFs to borrow	Under the current rules, SMSFs can borrow to buy assets such as property on a limited recourse basis. Labor will prospectively prohibit SMSFs from entering these arrangements for housing investments.
Capital gains tax discount to remain unchanged for super funds	The 'CGT discount' generally applies to taxable capital gains on assets owned > 12 months. Labor will cut the discount for non-small business assets from 50% to 25%. However, the CGT discount of 33.33% will remain for super funds.
Unpaid super entitlements	Unpaid super guarantee entitlements are a debt owed to the ATO, not the worker. Labor will change the Fair Work Act to allow employees to recoup unpaid super themselves.

HIGHLIGHTS

LABOR'S PROPOSED SUPER POLICIES

Labor has announced a raft of super policies before the upcoming federal election

HOW MUCH SUPER IS ENOUGH?

We review the latest figures about how much super that retirees need for a comfortable retirement

TRUSTEE Q & A

Can my SMSF buy shares in my employer?

"Contributing members could review their contribution levels..."

Labor's proposed super policies – cont'd

What are the implications of Labor's policies for SMSFs?

Labor's proposed removal of franking credit refunds concerns many SMSF members. We echo the sentiments of other commentators that this proposal is retrospective and unfairly targets SMSFs.

Referring to Labor's policy to ban SMSFs from entering limited recourse borrowing arrangements, SMSFs may only have a short window to establish new arrangements.

Contributing members can expect Labor's proposals to further limit contributions by:

- Reinstating the limitation that individuals cannot deduct their personal super contributions if 10% or more of their income is from salary and wages;
- Lowering the non-concessional contributions cap; and
- Removing the new catch-up concessional contributions measure.

Contributing members could review their contribution levels in anticipation of Labor's proposed tightening of the contribution rules.

Liberal National Party policies

Right now, the Liberal National Party (LNP) have no new super policies for the next federal election. However, the LNP have made significant changes to super during its tenure–including the transfer balance cap and the limiting of super concessions for individuals with super balances of at least $1.6 million.

How much super is enough?

Statistics reveal that we are living to an average age of 86 (male) and 89 (female). Predictions are for the average age to rise to 91 for men and 93 for women by 2050.

In its latest Retirement Standard, the Association of Superannuation Funds of Australia reports that a single retiree needs $43,200 per year to live comfortably, while a couple needs $60,843. This level of income allows retirees to afford:

- Top-level private health cover and the ability to take part in a range of regular leisure activities;
- New clothes and a reasonable car;
- Domestic and occasional overseas holidays, restaurant dining and a variety of good quality food;
- Air conditioning, a faster internet connection with a big data allowance; and
- Better quality household items and the ability to replace the kitchen and the bathroom over 20 years.

In contrast, someone on the Age pension would only receive roughly half of the amount a retiree needs to be comfortable ($21,222 for a single person and $31,995 for a couple).

Hence, Age pension recipients need to cut costs such as clothing, utility bills and internet expenses. Further, their budget would not allow costs like private health insurance, holidays and larger repair items–such as fixing a leaky roof.

ATO UPDATE

The ATO reports that another 44,000 taxpayers are liable for Division 293 tax following a cut in the income threshold from $300,000 to $250,000. Division 293 tax is an extra 15% tax on concessional (e.g., employer) contributions over the threshold. Google 'QC 57790' to read more.

The ATO reminds SMSF trustees that an SMSF cannot lodge a tax return before the audit is complete. The ATO considers that trustees who do so make a 'false or misleading statement', which exposes them to penalties and sanctions. Google 'QC 57227' to learn more.

Draft guidance published by the ATO explains how it expects the amendments to 'non-arm's length income' to work. 'Non-arm's length income' is super fund income above a true market rate and is subject to tax at 45%. Proposed amendments ensure that this tax rate also applies where a fund incurs non-arm's length expenses in earning its income. Google 'LCR 2018/D10' to read this guidance.

Further guidance and practical examples on the new 'downsizer' super measures are now available on the ATO's website. The guidance deals with various practical issues, including examples of how the 10-year ownership requirement works, and calculating how much super the downsizer may contribute. Google 'GN 2018/2' to read the guidance.

SMSF trustee Q & A

Question

I am an employee, and I've received an offer to buy shares in my employer at a discount. Can I buy the shares in my SMSF?

Answer

Potentially yes, but you need to review the various tax and super issues.

The offer seems to be an 'employee share scheme' because the nature of the offer is that employees can buy employer shares at a discounted price.

Taxwise, the employee share scheme rules generally treat the discount as ordinary income in your hands. That is, the discount is essentially taxed to you as a form of remuneration.

It sounds like the scheme allows you to nominate an associate (such as your SMSF) to buy the shares. The tax law, however, still includes the discount in your income irrespective of whom you nominate to buy the shares.

Turning to the super issues, buying the shares in your fund may cause a super contribution to arise. This is because the ATO considers the fund members to be receiving a benefit from buying the shares at a discounted rate.

Note, the rules treat the contribution as your 'personal contribution' rather than an 'employer contribution'.

Finally, if you buy the shares in your name, but look to contribute them to your super fund later, know that your SMSF generally cannot acquire unlisted shares from you (i.e., because of the restrictions against buying shares from a related party).

INFO–Check on the tax and super consequences before buying the shares in your SMSF because the rules of employee share plans vary from plan to plan.

Question

How long do I have to provide requested documents to my SMSF auditor?

Answer

You must provide the documents to your SMSF auditor within 14 days of the request being made.

This means you will breach the super rules if the documents are not provided to the auditor within this time frame.

Further, the auditor must report the contravention to the ATO–including situations where you provide the documents to the auditor, but later than the 14-day time frame.

INFO–The ATO relies on SMSF auditors to protect the integrity of the super system, hence the significant powers given to them.

Key dates and reminders

28 April 2019

Quarterly TBAR due for affected SMSFs with a reportable event occurring during the quarter ended 31 March 2019.

15 May 2019

Due date for SMSFs where a tax return is not required at an earlier date and the SMSF is not eligible for the 5 June concessional lodgement date.

5 June 2019

This is generally the due date for SMSFs that were non-taxable or refundable for both the 2017 and 2018 income years.

'Work test' requirement eased from 1 July

Starting from 1 July 2019, individuals aged 65 to 74 with super balances below $300,000 are exempt from the 'work test' for an additional year after they finish working.

Currently, individuals aged 65 to 74 must work at least 40 hours in any 30-day period to meet the 'work test' for an income year to keep making voluntary contributions (e.g., non-concessional contributions).

The new 'work test' exemption provides a one-off opportunity for individuals with low super balances to contribute super for an extra income year–provided they met the 'work test' in the prior income year.

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