# Self Managed Super

Winter Edition Newsletter 2019

## New contribution rules

The 2020 income year is now well underway. The good news is that two positive changes to the contributions rules effectively commence this year:

- Catch-up concessional contributions; and
- The work test exemption for recent retirees.

In this newsletter, we review the critical aspects of these two changes.

### Catch-up concessional contributions

Concessional contributions for an individual generally include employer contributions (e.g., super guarantee or salary sacrificed amounts) and any deductible contributions made personally.

All individuals have a concessional contributions cap of $25,000 for the 2020 income year. The cap is a 'global' cap, meaning that all concessional contributions for an individual (including those made to different super funds) count against their cap.

Traditionally, the concessional cap has operated on a 'use it or lose it' basis, meaning that individuals were unable to carry forward any unused cap amount to future income years. The fixed nature of the cap has limited the ability of individuals with broken work patterns (such as mothers or carers) to build their retirement savings.

However, from the 2019 income year, eligible individuals can carry forward any unused amount of their concessional cap for up to five years. The first year that eligible individuals can benefit from an increased concessional contributions cap is the 2020 income year.

**COMMENT**–Individuals aged 65 to 74 will generally need to meet the work test in respect of any voluntary concessional contributions made.

### Increasing the concessional contributions cap

An individual is eligible for an increased concessional contributions cap in the 2020 income year if the following requirements are met:

| Item | Description |
|---|---|
| **Unused cap amount from 2019 income year** | The individual did not fully utilise their cap of $25,000 in the 2019 income year. |
| **Total super balance < $500,000** | The individual's total superannuation balance as at 30 June 2019 is less than $500,000. |
| **2020 income year contributions exceed $25,000** | The individual's concessional contributions would otherwise exceed their cap of $25,000 (2020 income year). |

## HIGHLIGHTS

### NEW CONTRIBUTION RULES

The catch-up contributions rules and new work test exemption now apply

### ATO UPDATE

New ATO guidance for reversionary pension recipients

### TRUSTEE Q & A

I am 62 and currently employed part-time. If I resign from my part-time job, can I start an account-based pension?

Individuals who meet these conditions can access a higher concessional contributions cap. Hence, for the 2020 income year, an eligible individual's concessional contributions cap of $25,000 is increased by the amount of unused concessional contributions from the 2019 income year. Any unused amounts can be carried forward for up to five years.

**EXAMPLE**–Layla's employer made super guarantee contributions for her of $10,000 during the 2019 income year. No other concessional contributions were made by or for her. This means that Layla can 'carry forward' unused concessional contributions of $15,000 to the 2020 income year (i.e., $25,000 – $10,000).

**What can Layla's concessional contribution cap increase to for the 2020 income year?**

Assuming Layla's 'total superannuation balance' as at 30 June 2019 is below $500,000, Layla can increase her concessional contributions cap to $40,000 (i.e., being her concessional contributions cap of $25,000 for the 2020 income year plus unused concessional contributions from the 2019 income year of $15,000).


*"...Amendments to the law provide a one-year exemption from the work test for retirees between 65 and 74 with low super balances..."*

## ATO UPDATE

The ATO has updated its information on transfer balance cap reporting for superannuation funds– Google 'QC 59749' to learn more about this change.

SMSF members using ATO online via myGov can now access more information about their superannuation contributions made – Google 'QC 59413'.

ATO statistics show that the super gap between men and women is reducing over time, but still high. At 30 June 2017, male SMSF members held 58% of total assets, whilst females held 42% – Google 'QC 59656'.

Reversionary pension recipients who fail to make their minimum pension payment requirement now have guidance from the ATO on what action they need to take to fix the breach – Google '59673'.

# New contribution rules – continued

Other relevant issues to consider regarding the catch-up concessional contributions measure are:

- Any unused concessional contributions cap amount can be carried forward for up to five years before the unused amount expires;
- A 'catch-up' concessional contribution can either be made by an employer or an individual;
- Individuals making personal 'catch-up' concessional contributions must ensure that the usual eligibility criteria for claiming a deduction are met (e.g., providing the required notice to the fund which then acknowledges the notice); and
- It is acceptable for catch-up contributions to cause an individual to exceed their $500,000 total superannuation balance. The critical test is whether the individual's total superannuation balance is below $500,000 at the end of the income year prior to the one in which the contributions are made.

**WARNING**–Any additional tax issues should also be considered. For example, individuals with 'income' and concessional contributions over $250,000 may incur an extra 15% tax on the concessional contributions over the $250,000 threshold (Division 293 tax).

### Work test exemption for retirees

Individuals aged 65 to 74 can generally only make voluntary contributions if they meet the 'work test'. The 'work test' requires an individual to work at least 40 hours in 30 consecutive days in the year of making the contribution.

Amendments to the law (effective from 1 July 2019) provide a one-year exemption from the 'work test' for retirees between 65 and 74 with low super balances who meet the following criteria:

| Condition | Description |
|---|---|
| **No gainful employment** | The individual was not gainfully employed during the year in which the contributions are made. |
| **Gainful employment in the preceding year** | The individual was gainfully employed at least part-time in the income year prior to the contribution year. |
| **Total super balance < $300,000** | The individual's total super balance was below $300,000 on 30 June of the income year prior to the contribution year. |
| **Exemption not yet used** | The member has not relied on the work test exemption in a prior income year. |

Hence, a fund can accept contributions in the 2020 income year for eligible individuals who meet the work test in the 2019 income year.

**EXAMPLE**–Harry, aged 67, retired from full-time employment in the 2019 income year. His total super balance at 30 June 2019 was $280,000. Harry makes a non-concessional contribution of $100,000 in the 2020 income year, which his fund can accept because:

- He is not gainfully employed during the 2020 income year;
- He was gainfully employed during the 2019 income year;
- His total superannuation balance was under $300,000 as at 30 June 2019; and
- He has not previously utilised the work test exemption.

### 2019-20 Federal Budget changes

The Government also announced in the 2019-20 Federal Budget that it will:

- Allow a fund to accept voluntary contributions for individuals aged 65 and 66 without them having to meet the work test. These people will also be able to make three years of non-concessional contributions under the bring-forward rule; and
- Increase the age limit for spouse contributions from 69 to 74.

**COMMENT**–The above changes are expected to apply from 1 July 2020, but are not yet law.

## SMSF trustee Q & A

### Question

**I am 62 and currently employed full-time, but I also have other part-time employment. If I resign from my part-time job, can I start an account-based pension?**

### Answer

**Yes, you can commence an account-based pension, provided that the fund's governing rules allow it. This is because you have 'retired'.**

By way of background, the super law states that you cannot access your super until a condition of release is met – such as 'retirement'.

As you are at least 60 years old, the 'retirement' condition of release simply requires you to leave a position of 'gainful employment' (i.e., a job). In your case, you satisfied the 'retirement' condition of release when you resigned from your part-time employment.

Note that the 'retirement' condition of release does not impose any restrictions on the form in which the benefits must be taken – you are free to take your accumulated super as an account-based pension and/or a lump sum.

A word of warning – you can only access super that accumulated up until the point that you retired. Generally, you cannot access any super accrued after retirement until you meet a new condition of release – such as leaving another job or reaching age 65.

In your case, this means that super contributions (including super guarantee contributions) made by your employer will be preserved until another condition of release is met.

**TIP**–Super payments from an account-based pension received by individuals aged 60+ will generally be tax-free.

### Question

**I was recently made bankrupt – can I remain a member of my SMSF?**

### Answer

**No, you cannot remain a member of an SMSF if you are an undischarged bankrupt, for the reasons outlined below.**

The super law requires SMSF members to be a trustee or director of the corporate trustee. However, bankrupts are specifically prevented from acting as trustee (or director of the corporate trustee). Further, the rules specifically prohibit the appointment of your trustee in bankruptcy to act as trustee of an SMSF in your place.

Hence, as you cannot be a trustee of an SMSF whilst you are an undischarged bankrupt, you cannot remain a member of your fund.

## Key dates and reminders

### 28 Oct 2019

Quarterly TBAR due for SMSFs with a member over the $1m threshold with a reportable event.

### 31 Oct 2019

- Due date for SMSF annual returns where the return for the prior year was not lodged on time.
- Due date for new SMSFs that are subject to review by the ATO at the time they are initially registered.

### 28 Feb 2020

Due date for new SMSFs, unless the ATO advises the fund of a 31 October 2019 due date upon initial registration.

### Coalition wins election – back to business

The Government has reintroduced various superannuation-related measures into Parliament (they are not yet law), which include:

- The proposal to apply a 45% tax rate to income from arrangements involving SMSFs that incur expenses at non-commercial prices.
- Amendments that permit high-income earners with multiple employers to opt-out of the super guarantee regime to avoid breaching their $25,000 concessional contributions cap.

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