Issue
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Tax Smart Australia

Tax Essentials
Superannuation
(Wealth Accumulation Tips)

DECEMBER	2020

THE NEWSLETTER
Tax Planning Opportunities for Everyday Business

MICHAEL'S CORNER
How to Do Performance Reviews — Remotely for The Long-Term
Article No.008

SPECIAL BONUS ISSUE
2020 Superannuation - (Wealth Accumulation Tips)

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BUDGET CHECKLIST

The 2020-21 Federal Budget was handed down on 6.10.2020 and our detailed analysis was uploaded on our website the following day.

How Are You Able to Benefit from The Changes?

1. The amended income tax rates and changes to tax offsets are included in this edition. Depending on your earnings, you could have an additional $50-$60 a week in your pocket. Subject to the $25k contribution limit, if you salary sacrifice this amount into superannuation you will benefit in retirement.
2. There is temporary full expensing for the purchase of capital assets between 6.10.2020 and 30.6.2022. If your business has a genuine need for new equipment, you could directly benefit from this. Business with aggregated annual turnover below the relevant threshold will be able to deduct the full cost eligible capital asset acquired from 7:30pm AEDT on 6.10.2020 and first used or installed by 30.6.2022.
   - Full expensing in the year of first use will apply to new depreciable assets and the cost of improvements to existing eligible assets for businesses with aggregated annual turnover of less than $5 billion.
   - Full expensing also applies to second-hand assets for small and medium-sized businesses with aggregated annual turnover of less than $50 million.

Full expensing does not apply to second-hand assets for businesses with aggregated annual turnover of $50 million or more.

3. If your company incurred losses in the year ended 30.6.2020, you may be delaying seeing your accountant. In the event your company had a tax liability for the FY 2019, it may be worth seeing your accountant sooner than later. This is because of the temporary loss carry-back effective 1.7.2019. This could result in a “clawback” of the company tax paid for FY 2019.

   Under the existing rules, companies were required to carry losses forward to offset profits in future years.

   The Government has announced that it will allow companies with aggregated annual turnover of less than $5 billion to carry back tax losses from 2019-20, 2020-21 or 2021-22 income years to offset previously taxed profits in the 2018-19 or later income years.

   Eligible corporate tax entities can elect to apply tax losses against taxed profit in a previous year, generating a refundable tax offset in the year in which the loss is made. The tax refund is limited by requiring that the amount carried back is not more than the earlier taxed profit and cannot result in a franking account deficit.

   The tax refund will be available on election by eligible companies when they lodge their 2020-21 and 2021-22 tax returns.

   Companies that do not elect to carry back losses under this measure can still carry losses forward as normal.
4. Consider taking advantage of the Jobmaker hiring credit. From 7.10.2020, the Government will pay a hiring credit for up to 12 months for each new job. This is available from 7 October to employers who hire eligible employees age 16 to 35.

   The credit will be paid quarterly in arrears at the rate of $200 per week for those age 16 to 29, and $100 per week for those age 30 to 35. Eligible employees are required to work a minimum of 20 hours per week and receive the JobSeeker Payment, Youth Allowance or Parenting Payment for at least one month out of three months prior to when they are hired.

   To be eligible, employers will need to demonstrate an increase in overall employee headcount and payroll for each additional new position created.
5. If applicable consider taking advantage of the apprenticeship’s wages subsidy. From 5.10.2020 to 30.9.2021, employers will be able to claim a new Boosting Apprentices Wage Subsidy for new apprentices of trainees who commence during this period.

   Eligible businesses will be reimbursed up to 50% of an apprentice or trainee’s wages worth up to $7,000 per quarter, capped at 100,000 places.
6. Make family members aware of the first home loan deposit scheme. As part of the Government’s economic recovery plan, an additional 10,000 first home buyers will be able to purchase a new home

sooner under the First Home Loan Deposit Scheme.

The First Home Loan Deposit Scheme has already helped almost 20,000 first home buyers purchase a home this year with a deposit as low as 5 per cent.

An additional 10,000 places will be provided from 6 October 2020 to support the purchase of a new home or a newly built home.

The Government recognises that saving a deposit has become a more significant barrier to entering the housing market than the ability to service a home loan.

Under the existing First Home Loan Deposit Scheme, eligible first home buyers can purchase a modest home with a deposit of as little as 5 per cent.

Building on the success of the existing scheme, an additional 10,000 first home buyers will be able to obtain a loan to build a new home or purchase a newly built home with a deposit of as little as 5 per cent.

The additional guarantees will be available until 30 June 2021 and will drive more construction and support jobs as part of the Economic Recovery Plan.

Eligible first home buyers will also be able to take advantage of the Government's First Home Super Saver Scheme and HomeBuilder, and first home buyers may also be eligible for state and territory grants and concessions.

Combined, the First Home Loan Deposit Scheme, Homebuilder and First Home Super Saver Scheme represent an unprecedented level of Government support for home buyers and the construction industry alike.

7. Give your staff retraining without having to pay fringe benefits tax (FBT). The Government will provide an exemption from Fringe Benefits Tax (FBT) for employer-provided retraining and reskilling, for employees who are redeployed to a different role in the business. The exemption will apply from 2.10.2020.

   Removing costly barriers to training as the economy rebuilds is essential to ensure Australian employees have the opportunity to reskill or retrain for the jobs that will come back as the economy reopens.

   Currently, FBT is payable if an employer provides training to its employees that is not sufficiently connected to their current employment. For example, a business that retrains their sales assistant in web design to redeploy them to an online marketing role in the business can get hit with FBT. By removing FBT, employers will be encouraged to help workers transition to new employment opportunities within or outside their business.

   The exemption will not extend to retraining acquired by way of a salary packaging arrangement or training provided through Commonwealth supported places at universities, which already receive a benefit.

   In addition, the Government will consult on potential changes to the current arrangements for workers that undertake training at their own expense. The current rules, which limit deductions to training related to current employment, may act as a disincentive for Australians to retrain and reskill to support their future employment needs.

   These changes will provide further support for training, building on the $1 billion JobTrainer program which will provide up to an additional 340,700 training places across the country for school leavers as well as provide opportunities for job seekers to upskill and reskill and get back to work as quickly as possible.

8. If you genuinely engage in research and development (R+D), take advantage of the enhanced R+D tax offset.

   The Government announced further enhancements to the Research and Development Tax Incentive. The changes will apply for income years starting on or after 1.7.2021:

   - for companies with an aggregated turnover below $20 million, the refundable R&D tax offset rate will be increased to a 18.5% premium to the company's corporate tax rate. Note the previously proposed cap on $4 million annual cash refunds will not proceed
   - for companies with aggregated turnover of $20 million or more, the number of R&D intensity tiers (which measures the company's R&D expenditure as a proportion of total expenses for the year) will be reduced from three to two, and the non-refundable R&D tax offset will be increased as follows:

R&D intensity	Non-refundable R&D tax offset
0-2%	Corporate tax rate + 8.5%
>2%	Corporate tax rate + 16.5%

   Reforms from the 2019-20 MYEFO announcement will be retained, including the proposal to increase the limit for R&D expenditure which is eligible for the R&D tax incentive from $100 million to $150 million per annum.

9. Consolidate your superannuation into one account safe in the knowledge you will never have the hassle of dealing with multiple accounts.

This is because commencing 1.7.2021, the Your Future, Your Super package will improve the superannuation system by:

Having your superannuation follow you: preventing the creation of unintended multiple superannuation accounts when employees change jobs.

Making it easier to choose a better fund: members will have access to a new interactive online YourSuper comparison tool which will encourage funds to compete harder for members' savings.

Holding funds to account for underperformance: to protect members from poor outcomes and encourage funds to lower costs. The Government will require superannuation products to meet an annual objective performance test. Those that fail will be required to inform members. Persistently underperforming products will be prevented from taking on new members.

Increasing transparency and accountability: The Government will increase trustee accountability by strengthening their obligations to ensure trustees only act in the best financial interests of members. The Government will also require superannuation funds to provide better information regarding how they manage and spend members' money in advance of Annual Members' Meetings

10. If you are a medium sized business with a turnover of between $10 million and $50 million, for the first time you will have access to up to ten small business tax concessions. The changes are estimated to support an additional 20,000 businesses and their employees.

The expanded concessions, as part of the 2020-21 Budget will apply in three phases:

From 1 July 2020, eligible businesses will be able to immediately deduct certain start-up expenses and certain prepaid expenditure.

From 1 April 2021, eligible businesses will be exempt from the 47 per cent fringe benefits tax on car parking and multiple work-related portable electronic devices, such as phones or laptops, provided to employees.

From 1 July 2021, eligible businesses will be able to access the simplified trading stock rules, remit pay as you go (PAYG) instalments based on GDP adjusted notional tax, and settle excise duty and excise-equivalent customs duty monthly on eligible goods. Eligible businesses will also have a two-year amendment period apply to income tax assessments for income years starting from 1 July 2021.

In addition, from 1 July 2021, the Commissioner of Taxation's power to create a simplified accounting method determination for GST purposes will be expanded to apply to businesses below the $50 million aggregated annual turnover threshold.

JOBMAKER PLAN – BRINGING FORWARD THE PERSONAL INCOME TAX PLAN

While the tax scales contained in our annual publication were correct at the date of publication, COVID-19 resulted in the Federal Government delaying its 2020-21 Federal Budget until 6.10.2020. Here are the changes.

The Government has announced that stage 2 of its Personal Income Tax Plan will be brought forward and apply for the 2020–21 income year. The low- and middle-income tax offset will continue to be available for the 2020–21 income year but will not apply for the 2021–22 income year and later years.

Threshold changes

If enacted the measure will:

- increase the low-income tax offset (LITO) from $445 to $700 and adjust the phase out rules
- increase the top threshold of the 19% personal income tax bracket from $37,000 to $45,000, and
- increase the top threshold of the 32.5% personal income tax bracket from $90,000 to $120,000.

These changes will result in the following tax rates for the 2020–21 income year for individuals who are Australian residents.

Resident tax rates for 2020–21	
Taxable income	**Tax on this income**
0 to $18,200	Nil
$18,201 to $45,000	19cents for each $1 over $18,200
$45,001 to $120,000	$5,092 plus 32.5cents for each $1 over $45,000
$120,001 to $180,000	$29,467 plus 37cents for each $1 over $120,000
$180,001 and over	$51,667 plus 45cents for each $1 over $180,000

Note: Changes are also proposed for the thresholds of foreign resident individual taxpayers and working holiday makers. If enacted the new tax rates will be as shown in the table following.

Foreign resident tax rates for 2020–21	
Taxable income	**Tax on this income**
$0 – $120,000	32.5cents for each $1
$120,001 – $180,000	$39,000 plus 37cents for each $1 over $120,000
$180,001 and over	$61,200 plus 45cents for each $1 over $180,000
Working holiday maker tax rates 2020–21	
Taxable income	**Tax on this income**
0 to $45,000	15%
$45,001 to $120,000	$6,750 plus 32.5cents for each $1 over $45,000
$120,001 to $180,000	$31,125 plus 37cents for each $1 over $120,000
$180,001 and over	$53,325 plus 45cents for each $1 over $180,000

Low income tax offset

The proposal would also increase the low-income tax offset (LITO) from a maximum amount of $455 to $700 per annum for the 2020–21 income year and future years.

As a non-refundable offset, any unused low-income tax offset cannot be refunded. The low-income tax offset will directly reduce the amount of tax payable but does not reduce the Medicare levy. If not all the offset is used to reduce the tax payable, there is no refund of any unused portion.

*There are also changes proposed to the phase out rules.

Proposed phase out rules	
Taxable income	**Tax on this income**
$37,500 or less	$700
Between $37,501 and $45,000	$700 minus 5cents for every dollar above $37,500
Between $45,001 and $66,667	$325 minus 1.5cents for every dollar above $45,000

Low- and middle-income tax offset

Under the previous legislation, the low- and middle-income tax offset (LMITO) was to be repealed when the relevant threshold changes came into effect and the LITO was increased. Under the Government's announcement, LMITO will continue to be available for the 2020–21 income year then removed for the 2021–22 income year and later years.

There are no changes to the amount of LMITO or the eligibility thresholds and as such LMITO is applied as outlined in the following table:

Low and middle tax offset	
Taxable income	**Offset**
$37,000 or less	$255
Between $37,001 and $48,000	$255 plus 7.5cents for every dollar above $37,000, up to a maximum of $1,080
Between $48,001 and $90,000	$1,080
Between $90,001 and $126,000	$1,080 minus 3cents for every dollar of the amount above $90,000

As a non-refundable offset, any unused low- and middle-income tax offset cannot be refunded. The low- and middle-income tax offset will directly reduce the amount of tax payable but does not reduce the Medicare levy. If all of the offset is not used to reduce the tax payable, there is no refund of any unused portion.

2020–21 administrative treatment

PAYG Withholding

The ATO has published updated tax withholding schedules as the amendments have passed Parliament.

This will allow the tax cuts to be reflected in people's take-home pay.

The ATO will publish updated tax withholding schedules at ato.gov.au/taxtables as soon as possible.

The ATO will work closely with providers of payroll software and employers to ensure that the reduced withholding associated with the threshold changes and the increase of LITO is reflected in software as soon as practicable.

PAYG instalments

The proposed changes to thresholds have not been included when calculating PAYG Instalment shown on the September quarter Activity Statements. The changes will be reflected in the December Activity statements if the legislation is enacted or if there is clear bipartisan support for the measure. In most cases this will result in a wash-up of any over payments that occurred for earlier periods.

Vary your PAYG instalments

In line with their current position, if you chose to vary your PAYG instalments for the 2020–21 income year to reflect the proposed tax cuts the ATO will not apply penalties or charge interest for excessive variations if you have made your best attempt to estimate your end of year tax liability. General interest charges may apply to outstanding PAYG instalment balances.

You should review your tax position regularly throughout the year and vary your PAYG instalments as your situation changes.

SIMPLIFYING ACCESS TO CREDIT FOR CONSUMERS AND SMALL BUSINESSES

As part of their economic recovery plan the Federal Government is reducing the cost and time it takes consumers and businesses to access credit.

Credit is the lifeblood of the Australian economy, with billions of dollars in new credit extended to households and businesses in Australia each month.

- The Government considers: it is critical that unnecessary barriers to accessing credit are removed so that consumers can continue to spend, and businesses can invest and create jobs.
- Consumer credit has now evolved into a regime that is overly prescriptive, complex, and unnecessarily onerous on consumers.
- The system will be simplified by moving away from a "one-size-fits-all" approach while at the same time strengthening consumer protections for those that need it.

Key elements of the reforms include:

- Removing responsible lending obligations from the National Consumer Credit Protection Act 2009, with the exception of small amount credit contracts (SACCs) and consumer leases where heightened obligations will be introduced.
- Ensuring that authorised deposit-taking institutions (ADIs) will continue to comply with APRA's lending standards requiring sound credit assessment and approval criteria.
- Adopting key elements of APRA's ADI lending standards and applying them to non-ADIs.
- Protecting consumers from the predatory practices of debt management firms by requiring them to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial institutions.
- Allowing lenders to rely on the information provided by borrowers, replacing the current practice of 'lender beware' with a 'borrower responsibility' principle.
- Removing the ambiguity regarding the application of consumer lending laws to small business lending.

These changes will make it easier for the majority of Australians and small businesses to access credit, reduce red tape, improve competition, and ensure that the strongest consumer protections are targeted at the most vulnerable Australians.

The Government will consult publicly with stakeholders before finalising any legislation required to implement the reforms.

COVID-19 AND FURTHER PAYROLL TAX SUPPORT

Further COVID-19 support has been provided by State Government to assist some employers in relation to their applicable State payroll taxes:

- The NSW Government will grant further deferrals of payment of payroll tax for all employers for the outstanding liability for the 2019-20 financial year and the payments for July, August, and September until October 2020. There is an option of paying the outstanding liability in full or entering into an instalment plan after October 2020.
- The Victorian Government will defer payroll tax for businesses with payrolls up to AUD10 million (based on their 2019-20 financial year annual reconciliation returns) for the full 2020-21 financial year until the 2021-22 financial year.
- The Western Australian Government confirms that payments made to employees under the JobKeeper scheme will continue to be exempt from payroll tax until 28 March 2021.
- The Queensland Government has announced the following:
  - a two-month payroll tax waiver for July and August 2020 for businesses with annual Australian taxable wages up to AUD6.5m, and
  - allowing businesses to pay off existing payroll tax deferred liabilities over the course of 2021.

APRA CLARIFIES 'WORK TEST' FOR SUPERANNUATION CONTRIBUTIONS

In October, the Australian Prudential Regulation Authority (APRA) confirmed individuals whose incomes are subsidised by the JobKeeper scheme will be considered by registrable superannuation entities (RSE) to be 'gainfully employed' for the purpose of the 'work test', and can therefore make personal superannuation contributions.

This was contained within an updated set of frequently asked questions for superannuation on their response to COVID-19.

According to APRA, RSE licensees need not distinguish between individual members who are working reduced hours or those who have been stood down, and can assume that all members whose incomes are subsided by the JobKeeper scheme satisfy the 'work test' for the purpose of voluntary superannuation contributions.

ATO UPDATE: JOBKEEPER 80-HOUR THRESHOLD FOR EMPLOYEES

The ATO recently updated guidance on the 80-hour test for higher rate of JobKeeper payment.

This provides more information on the treatment of leave.

An employee will satisfy the 80-hour threshold, if in their 28-day reference period, the total of the following is 80 hours or more:

- actual hours they worked
- hours they were on paid leave
- hours they were paid for absence on a public holiday

According to the ATO, if an eligible employee satisfies the 80-hour threshold, the employer can claim the tier 1 (higher) payment rate for them.

If they do not meet the 80-hour threshold, the employer can only claim the tier 2 (lower) payment rate for them.

SHARES AND UNIT RECORDS DATA

If you are looking for information concerning purchases and sales of shares, the data may already be with your tax agent.

The ATO is now sharing over 20 million shares transactions for 800,000 taxpayers. Share purchase and sale information from 1 July 2017 is available on Online services for agents to help them prepare clients' income tax returns.

It is important you verify this information separately as not all transactions may be recorded if:

- an organisation has not supplied data yet
- ATO processing has not yet been completed
- the ATO has received data that could not be matched to your clients with high confidence
- the data did not pass all validation processing checks.

It is still vital that you retain records for shares, units, and stapled security transactions.

DUAL RESIDENT OF AUSTRALIA

Commissioner of Taxation v Pike [2020] FCAFC 158

This Full Federal Court case has upheld the decision of the Primary Judge which considered the tax residency of an individual. The Court agreed with the primary judge's finding that the taxpayer was a "resident" of Australia for the income years ended 30.6.2009 to 30.6.2016 within ordinary concepts. The Court also agreed with the primary judge's consideration of the tie-breaker rule in the double tax agreement (DTA) between Thailand and Australia from 2009 to 2014.

EICHMANN: FULL COURT HOLDS THAT LAND IS A SMALL BUSINESS ACTIVE ASSET

As a preface, this case is important because for an entity to access the valuable capital gains tax (CGT) small business concession, the item being disposed of must be an "active asset" being used by a small business.

This Full Federal Court decision follows on 23.9.2020 Administrative Appeals Tribunal (AAT) and Federal Court decisions in Eichmann v FCT [2019] AATA 162 and The Full Federal Court in Eichmann v FCT [2020] FCAFC 155 allowed the taxpayer's appeal of the Federal Court decision.

<u>The Federal Court decision</u>

The Federal Court, allowed the ATO appeal against the AAT's decision, holding that land used for storage was not an active asset for the purposes of the small business capital gains tax (CGT) concessions in Division 152 of the Income Tax Assessment Act 1997 (ITAA 1997). Derrington J held the use of the land by the taxpayer to store work-related materials for later use in business activities was "in relation to" the carrying on of the business not "in the course" of that business therefore the statutory test in section 152-40 of the ITAA 1997 was not satisfied and the land was not an active asset. The taxpayer appealed.

The Full Court decision

The Full Court of McKerracher, Steward, and Stewart JJ allowed the taxpayer's appeal.

On the question of construction of the statutory test in section 152-40, the Full Court accepted the taxpayer's contention that small business relief in Division 152 should be construed beneficially and not restrictively in order to promote the purpose of the concessions in the Division.

Carefully reviewing the language in section 152-40, the Full Court said it is necessary to:

- determine the use of the particular asset
- determine the course of the carrying on of a business; and
- see whether the asset was used in the course of the carrying on of that business.

In applying section 152-40 Full Court said:

> *"These inquiries involve issues of fact and degree. But because s. 152-40 should be construed beneficially, no narrow approach to the consideration of these issues should be applied. We also observe that, for these purposes, the legislature has not used language which might confine these inquiries. It has not, although it could have, referred to the "ordinary" course of a business or to the "day to day" course of a business; it has not used the words "direct" or "integral" to qualify the word "in". It is sufficient if the asset is used at some point in the course of the carrying on of an identified business."*

Unlike the view of the Federal Court and submissions of the ATO the Full Court held:

1. it is incorrect to read into section 152-40 an inference requiring there to be a very close, direct, or integral connection between the use of the asset and the carrying on of a business
2. section 152-40 does not require the use of the relevant asset to take place within the day to day or normal course of the carrying on of a business. Narrowing the qualification in this way was not supported by the language of the provision and was inconsistent with the need to construe its language beneficially.

It was suggested that even if the Full Court's construction of section 152-40 was not correct and the Federal Court's construction was allowed, the Full Court would still "characterise the use of the appellant's property as bearing a 'direct functional relevance to the carrying on of the normal day to day activities' of the business here". The taxpayer's property served the function of being a necessary place for storage of plant and equipment of the business and this function bore a direct relationship to the activities of that business.

UK CITIZEN ON WORKING HOLIDAY VISA WAS AUSTRALIAN RESIDENT

Gurney v Full Commissioner of Taxation AATA 3813 30.9.2020

This Administrative Appeals Tribunal case shows how important demonstrated intention can be in determining residency status. In this case it was found that a UK citizen on a working holiday visa was a resident of Australia while here... saying that having a temporary intention to live in Australia was sufficient for him to be a resident in Australia.

The taxpayer was a British passport holder who came to Australia on 18.12.2015 on holiday, remaining here until 2.1.2016.

Prior to arriving in Australia he had applied for a long-term skilled entrant visa that could have allowed him live and work in Australia for an extended period but that application was withdrawn after he realised that its processing time normally exceeded four months.

Instead on 29.2.2016, he obtained a working holiday visa allowing him to remain in Australia until 28.2.2017. He came back to Melbourne, Australia on 28.2.2016 with the intention of staying and working in Australia long term.

This was demonstrated by him securing longer term accommodation and making it his home. Prior to leaving the UK, he had disposed of all his assets except some books stored at his parents. His sole bank account there only held a nominal balance.

The taxpayer applied for several jobs in Melbourne as a civil engineer with the job application stating his visa status and that he was looking for entry level employment. The job applications also indicated he would seek sponsorship to continue when his visa expired. After some temp positions, he secured longer term employment at the Bayside City Council. In order to change his visa status, in August 2016, the taxpayer unsuccessfully sought sponsorship from the Council.

The taxpayer and his girlfriend in August and September 2016, made reservations for a holiday in Sri Lanka in November 2016 , then flying from Sri Lanka to the UK on 19.12.2016 for Christmas holidays with the taxpayer's parents in England.

The reservations were made at a time fares were cheap with the taxpayer unsure whether his employment situation in Australia would be long term. While in the UK, the taxpayer abandoned his Australian plans and secured long term employment there.

The Commissioner assessed the taxpayer for the income earned in Australia at non-resident rates on the basis the taxpayer was a UK resident, domiciled with a permanent place of abode there. This was disputed by the taxpayer contending he was a resident, first as an objection to the assessment and then before the AAT which held that at the relevant times the taxpayer was a resident of Australia. It said this conclusion was allowed in circumstances where the intention to live in Australia is temporary. Crucially the taxpayer had come to Australia with the intention to live here indefinitely. That intention remained until it became clear around October 2016 that he would not be unable to alter his employment and visa arrangements to achieve his objectives.

While in Australia, the taxpayer's connection with England was historical, which was not sufficient to constitute residence there within the ordinary meaning of the word.

bO2 READERS QUESTIONS AND ANSWERS...........

Question 1

I have a company client which is in receipt of the JobKeeper Funding from the Cwlth Government.

An employee of the company has taken some Annual Leave whilst in receipt of the JobKeeper allowance which is in excess of their normal weekly wage...under the NSW Hairdressers Award. About $460.00 gross before tax.

The question has arisen by my client......is the Leave Loading payment based on the payment effective for the employee's annual leave i.e. the JobKeeper payment, or is the leave loading only paid on what would have been the normal Annual Leave payment had it been paid on the usual weekly payment for the employee (about $460.00 gross)?

Are they just paid the $600.00 because it is more anyway, or is it $600.00 plus leave loading on $460.00?

Answer

Annual leave loading is paid on the wage that would be normally earned during non COVID non Jobkeeper payments.

Annual leave loading is only payable on the $460.00.

Yes, they are paid $600 as that amount is greater than $460 plus Leave loading.

Question 2

I have an employee who wishes to be paid out a portion of his annual leave entitlement.

Can you please advise if the annual leave pay-out is part of the annual leave accrual?

I am not certain it would be as it is a payment in addition to his ordinary time hours therefore if included, he would exceed his 20 days annual leave entitlement accrual.

Answer

It depends on what award the employee is covered by as to the allowance of how much annual leave an employee can cash in.

When you cash it in you do not accumulate annual leave on the cashed in portion you only accumulate on the leave you take, but rightly so you only accumulate 20 days a year.

Question 3

Thank you for your latest glossy Tax Essentials Manual. I have some questions regarding tax returns that are now due.

1. Page 2 of Losses Schedule. Do we need to satisfy the 'business continuity test, what is the test?
2. What is a 'superannuation income stream', Item 7 In Tax return for individuals?
3. Are we required to lodge a 'reportable tax position schedule', Item 25 in Company tax return?

Answer

1. The business continuity test applies for companies -

means you carry on the same business at the time the loss was incurred and at the time the loss is recouped.

You cannot derive new income from a transaction of a kind that you did not engage in when the loss was incurred or similarly from a new business activity.

The ATO applies this test strictly. You may however meet the continuity of ownership test - (greater than 50%) - if this is the case then you do not have to meet the continuity of business test.

2. SuperStream is the way businesses must pay employee superannuation guarantee contributions to super funds. With SuperStream money and data are sent electronically in a standard format.

   The ATO can see this in real time.

3. The Reportable Tax Position is a schedule contained in the company tax return. Whether it applies to you will be evident from criteria in the Company Tax Instructions published annually by the ATO.

Question 4

I have a question about the Jobkeeper extension. Can you still get JobKeeper part 2 if you have an actual drop in turnover of 29%?

Answer

The requirement is 30%. Given you are so close to the required turnover decline carefully consider:

- The definition is GST turnover, so we are dealing with taxable supplies
- Carefully peruse for non-assessable deposits which may have been included in error
- Check for deposits for work yet to be done which has not been invoiced.

There may be items you can exclude.

Question 5

Need your advice in relation to GST on goods we import from overseas.

We import goods such as materials and software from overseas companies.

When we receive an invoice for e.g. AUD $55,000 ,I'm wanting to know how can we account for GST when the invoice does not display the GST amount separately?

Answer

Generally, GST is payable before the goods are released by customs.

You should obtain clear written evidence that the GST has been paid. This can be ascertained by a review of customs documentation.

Clearly if you negotiated a price for $50,000 – then paid $55,000… it would appear that the GST has been paid.

However never assume this and always have the documentation on file to verify this.

We acknowledge an overseas supplier will not always issue a tax invoice in the prescribed format. Also check whether your company is participating in the deferred GST scheme.

The scheme allows you to defer the payment of GST on taxable importations until the first activity statement you lodge after the goods are imported.

Question 6

In calculating GST turnover to qualify for JobKeeper do you include the sale price of a business vehicle?

If not, how will you exclude it from the sales figure on the BAS return or will the ATO declaration for JobKeeper allow for adjustments of this type of transaction

Answer

All the eligibility criteria deal with "GST turnover." There does not appear to be exclusions.

The sale of a business vehicle by a GST registered entity is a taxable supply and included in GST turnover for calculating falls in turnover for JobKeeper 2 purposes.

Question 7

My question regarding GST when returning a car.

The facts of the matter are as follows:

- Mercedes C250 was bought in January 2018 on an agility program for approximately $57,778 including GST.
- GST component on this car was recovered in the BAS, in the first quarter of 2018.
- Monthly payments on this car were agreed and regularly paid monthly until December 2019.

- In December 2019, (almost two years on) the car was returned, and they valued it at $45,000.00 residual value.
- The price of the new car, C300 purchased in December 2019 was $57,966 including GST this. This car was also purchased on an agility program, and monthly payments where agreed upon for two years ($936.00 per month for 24months with some residual value).

My Question is:

“Does the $45,000 of the previous car balloon value (which was more than the expected residual value after two years of payments, therefore there were no out of pocket expenses and I only had to return the car). Does that $45,000 have any component of GST in it, in other words is it inclusive of GST?”

Answer

An entity registered for GST has just sold a business asset (Merc) for $45,000.

Just as you were able to claim the GST input tax credits on the purchase, in turn the sale has GST implications.

The amount is inclusive of GST and you need to remit 1/11th i.e. $4,091 to the ATO on your next BAS.

Question 8

I have a client who was operating a gym business as a sole trader when COVID-19 hit.

He qualified for Jobkeeper as an Eligible Business Participant and we are now looking to see if he will qualify for the Extension to Jobkeeper.

As his gym business income fell, he found a new type of business to get involved in.

He is still running the gym, and this is still operating at less than 30% of last year’s turnover. His new sales business is also run through his sole trader ABN.

As he has this additional business income now from the new business, would this mean that even though his gym would still qualify for the Jobkeeper extension, that all his income from all sources needs to be added together to determine his eligibility for Jobkeeper?

Answer

In general, eligibility for JobKeeper 2 compares turnover for the September 2020 quarter against the turnover of the September 2019 quarter. If the decline in turnover is more than 30%, then eligibility is maintained.

The new sales business will be included in the calculation of turnover because it is on the same ABN.

There are a number of alternative tests for newly formed businesses from 1.10.2020 under Jobkeeper 2, you should also explore those to see if your client qualifies.

Question 9

There appears to have been a change to legislation relating to CGT for non-residents who sell property while non-resident.

My client, an Australia citizen who is currently an expat working overseas, is planning on moving back to Victoria in January 2021 and becoming an Australian resident again. He intends to move back into his property in Victoria and use it as his principal place of residence. My client owns no other property. Below is a timetable of my client’s occupancy:

1. Property purchased in March 2010 and was occupied as Principal Place of Residence for 12 months to February 2011.
2. Client moved in with parents and property was rented from March 2011 to December 2012.
3. Client moved back in the property as principal place of residence from Jan 2013 to Sep 2013.
4. Client moved overseas as an expat non-resident and has been renting the property since September 2013.
5. Intends to move back into the property and become resident in Victoria in January 2021.

Does the 6-year PPOR absence and CGT exemption still apply if my client moves backs into the property and becomes an Australian resident and then subsequently sells the property?

Also, if my client moves back into the property and sets up all bills, water, gas electricity, but can’t find a job in Melbourne and is required to relocate to another Australian city, does the 6-year Principal Place of Residence CGT exemption reset and a new 6-year period apply?

Or is the exemption for a total of 6 years over the ownership? I believe the 6-year period resets every time the property is occupied as a PPOR?

In the example above, if my client moved back into the property as his PPOR then sells within a 6-year period from January 2021, I believe my client would only be liable for CGT for 16 months from Sep 2020 to Jan 2021, as my client has moved back into the property and reset the 6-year exemption in step 3?

My understanding is that if a dwelling is reoccupied as the main residence, the six-year exemption resets. Thus, another six years of exemption is available from the date it next becomes income producing. Is there a minimum period my client would have to live in the house to reset it as my Principal Place of Residence from January 2021?

Answer

To answer your questions in order:

1. Clearly the PPR in this period
2. 6-year temporary absence applies
3. PPR obviously
4. 6-year temporary absence applies until September 2019
5. Property again becomes PPR

In the event the client moves back into the property in January 2021, a property that has been owned for 10 years and 10 months will have the PPR exemption apply for 9 years and 6 months up until that point.

Clear evidence must exist for occupation (electoral roll, gas, power, internet, phone et al) and Australian residency for tax purposes must be clearly established prior to that in any case.

In the event the client is forced to move interstate to secure employment, the six-year PPR absence will be freshened up but once again the above evidence is crucial along with evidence of Victorian job applications.

There is no minimum period as such, but the evidence should establish there was a genuine intention to resume residence in Victoria.

For instance, if the client only made several job applications and only lived in the residence for say a fortnight… that is something the ATO might challenge.

In the event the client made say 35 job applications over 6 months in a very tough Victorian job market and then was offered a very good position in Sydney deciding to move there… then we suggest this would not be a problem.

Question 10

In 1989 client bought a larger home property .

They are now downsizing and plan to subdivide a block of land from the property title and sell it separately to the home block .

What is the cost base of the subdivide block for capital gains purposes ?

A. An apportionment of the land value in 1989

B. A valuation of the block at the date of subdivision

Answer

The answer is a reasonable cost base apportionment of the purchase cost of the land in 1989.

That is the true cost base. There is no basis to argue option B.

Question 11

We recently achieved settlement with an insurance company over our claim for damages caused by a fire from a neighbouring property.

A sum of $52,000 was paid, comprised as follows: It has been suggested that the total amount of $52,000 should be included in this year's income, is this true?

Item	**Cost claimed**	**Adjusted cost**
Fencing	53,585	26,792.50
Removal of fencing	14,500	8,000
Poly water pipe	341	310
Pipe fittings	135	262.10
Pine posts	673 121	38 @ avg. $26.92 = 1,022.96
Hydraulic hose on harrow	495.77	172.43 383.34
Topsoil	14,500	14,500
fertiliser	1,160	1,160
Total	85,466.07	52,000 (approx.)

Answer

Thank you for being a loyal subscriber down the years – it is much appreciated.

From past correspondence we understand you operate a primary production business. If this is the case, then you would have been able to claim the insurance premiums as a tax deduction.

Just as these premiums are tax deductible… then so are the insurance proceeds assessable income.

However, we do not consider you will have to pay tax on this assessable income. The repairs and restoration you will have to undertake will be an allowable tax deduction.

Even without the COVID-19 instant asset write-offs, there are generous tax concessions for primary producers.

In the event there is any unclaimed depreciation for items destroyed then of course this can be completely written off as a tax deduction.

In the event you had ceased your business of primary production prior to the fire then the proceeds would not be assessable.

Question 12

My client in Victoria has a private company CML Pty Ltd. They have taken a $20,000 loan from the company and want to open a clothes business (MP) .

The questions I have are:

1. Should this be set up differently not as a Sole Trader? Perhaps as a Trust Account?
2. Would a MP Trust Account be appropriate? How would it work?
3. Should MP be set up as a company instead like CML Pty Ltd with a MP Trust Account? How would it work?

Bottom line is they need a structure that can be insured for public liability and removes liability from them personally. They also need to be able to employ people who can be paid from company funds. Importantly, they need the sales revenue to be reused to purchase more stock to grow the business. And finally, once the shop starts to make profit, they need to be able to share the profit with investors.

They need something to be set up quickly. If it is hard, they can continue to operate as a Sole Trader until end of financial year and on 1 July 2021 change the business to a new business structure as by then it would have proven whether the business will be a success and requiring an appropriate structure to grow it.

Answer

Definitely a second structure should be set up for this.

We would suggest a company structure which would only take 24 hours to set up.

If there are other investors (as opposed to lenders) then they could be issued shares in the company.

In these volatile times a sole trader structure should be avoided.

Question 13

Can I please clarify. If I have a salary worker who is receiving a car allowance in her package, do I withhold PAYG Withholding on this and pay super?

Also if I'm paying cents per KM to another employee for his travel, do I withhold PAYG Withholding and pay super?

Thank you.

Answer

PAYG withholding must be deducted from the car allowance.

As the car allowance relates to the employee's ordinary hours of work, it falls within the definition of "ordinary times earnings" under Superannuation Guarantee ruling 2009/2.

This means superannuation at 9.5% is payable on the allowance.

The situation is different with a cents per kilometre payment to an employee.

Here the employer merely re-imburses an employee for an expense they have actually incurred, there is no PAYGW and no superannuation payable on this re-imbursement.

Question 14

Could you please help with clarifying the following?

Payments made by the ATO as an Income Boost via the BAS System.

- Are these to be included in the BAS Gross Income as Tax free?
- If so, do they come into calculation whilst applying for an extension of JobKeeper?

Answer

We believe that you refer to the cashflow boost.

It is a non-assessable government subsidy. It is not reportable (NT) item in the context of BAS reporting.

It does not form part of GST turnover when you determine your eligibility for Jobkeeper Extension.

Question 15

Just a query please – will we still need to advise ATO each month from 1st November the actual income for October, and the forecast for November ???

Seems to me to be silly when we are now looking at the quarterly figures July to Sept 2020 v's 2019 which if down by 30% allows payments of $1200 f/n from Oct to Dec.

Answer

Yes, this requirement is ongoing. We are in very unusual times.

Question 16

My client is looking to buy a residential house on a 1,000 sqm piece of land. His plan is to initially rent the existing house while he seeks planning permission to build 4 units on the land. Once he has received planning permission, he intends to build the 4 units and either rent or sell the units on completion (still undecided at this stage).

What is the best way my client should structure this acquisition with GST in mind?

He is looking to buy and engage the builder all in his personal name. Is there a way my client can structure (e.g. in a unit trust) reclaim the GST on the build inputs if he is on-selling and will he have to pay the ATO GST on the sale noting these will be residential properties?

At what point would my client need to be GST registered to benefit from the margin scheme?

He is going to bid in auction and wants to understand if he needs to be registered at the time of initial purchase or if it is it ok to register after the purchase once he has received planning and is certain he is going ahead with the build? He does not want to register for GST unnecessarily if he decides not to go ahead with the purchase.

Can he benefit from the margin scheme if he buys in his own name or does the acquisition have to be in a corporate entity? He has an ABN but is not GST registered currently.

Answer

As there is the possibility of some or all units being sold, it is recommended that your client register for GST to ensure the margin scheme can be claimed on the purchase contract.

There is absolutely no question that your client is conducting an enterprise meaning there are GST implications.

If your client thinks he can rent out the units for a period and then sell them GST free, then you need to refer to GSTR 2003/3 which deals with "sales of new property."

We refer you to the guidelines in para 22 which mentions section 40-75 and then para 26 and subsection 40-75 (1)(a). We suggest GST will be payable by the eventual purchaser

In the event there is a change of use... i.e. he proceeds on the basis he is going to sell but decides to rent long term, then there will be an increasing adjustment (a clawback) to the GST input tax credits claimed .

We cannot be more specific until your client is sure of his intentions.

Your client may also wish to consider a purpose-built entity for the development – possibly a trustee company with an underlying discretionary trust.

The margin scheme will automatically apply to anyone registered or required to be registered in these circumstances.

So, date of registration for GST is not crucial.

The 7% withheld by the purchaser and paid to the ATO under the margin scheme will be adjusted when the BAS including the sale are lodged by your client

Your calculations are broadly correct but check the profit margin and discuss with your client as the margins appear to be thin.

The margin scheme is available to corporate entities and individuals alike.

Michael's Corner

Article 008

HOW TO DO PERFORMANCE REVIEWS — REMOTELY FOR THE LONG-TERM

You may have conducted hundreds of performance reviews over the course of your career, but in the era of COVID-19 everything is different. You and your team have been working remotely for months now in an extremely difficult situation. How do you begin to evaluate your employees' performance at such a challenging time? How much should you consider the impact of COVID-19 on your assessment? And how do you make sure you are fair-minded given everyone's different circumstances?

In most states, you may be back in the office by now, or some staff may be continuing to work from home. Either way, having at least some staff working remotely is likely to be a permanent part of working life into the future. That means all sorts of processes will need to be adapted for those staff who work remotely – including performance reviews.

Clearly setting expectations earlier on can help you and your team members stay on task throughout the review, even in a virtual setting.

Deliberate your purpose

Performance reviews are important for both managers and employees. Think about why you are conducting these reviews in the first place — because, as the COVID-19 crisis flounders, you are not necessarily looking to weed out poor performers or decide who gets a raise. Rather, it is to strengthen your organisation's culture and reinforce its values.

How the company treats its employees in this situation will make or break the culture. So, think hard about what you aim to achieve with these evaluations. Performance evaluations are one of the strongest anchors and artifacts of your corporate culture, so should be used wisely. Talk to your management and colleagues about the company's near and long-term goals. Work together to figure out how to communicate those goals to your workforce as part of the evaluations. What leaders do and say now in these times is going to be remembered. Show your managerial mettle and tend to your team. And remember, your primary objective has not changed: You are still trying to help your employees become as strong as possible.

Give thought to what you are evaluating

Communication is vital to making employees feel valued and engaged. Similarly, be clear in your own mind what you are basing your assessment on. Are you looking at their performance prior to the health emergency or how well they are doing now? From a principled standpoint, think about what is most important.

Performance is a measure of success against a goal. And at most organisations, the targets that were set last year before the COVID-19 crisis emerged are no longer applicable as the goalposts have shifted and the context has changed. Since it would be unfair to judge your employees against the company's pre-pandemic objectives, concentrate on your individual employee's growth and learning. It would be really unfortunate if you focused on the transactional aspect of performance when instead you could look at employees' empathy, resilience, and capacity to adapt during this challenging period. Teamwork and collaboration are at a premium during this crisis, and those behaviors should be acknowledged and rewarded.

Gather compassion

Fully acknowledge the vastly different and varying circumstances your team members are operating under. After all, the pandemic has caused a lot of upheaval in the workplace, and not every employee will have the same reaction to the situation. With your team members working from home, your approach calls for a little more flexibility, a little more heart, and a little more leniency.

This is not a normal performance review, working from home does not necessary work for everyone.

Some may be juggling client calls with entertaining their toddlers or helping their teens with homework; others may be overseeing projects while caring for sick or elderly family members; still others may be trying to work while struggling with feelings of isolation. You do not know exactly how rough it is for your employees. As a manager, do not only look at the deliverables people are providing while ignoring their home situations, the psychological impact of COVID is hitting people in different ways. A little more latitude is required. Be compassionate and take time to acknowledge the person's effort, hard work and ability to adapt during this time of change.

Consider eliminating ratings

Temporarily suspending numerical ratings and consider conducting a more narrative form of assessment, instead of one focused on a set series of indicators. Rating your employees is going to be extremely difficult because, for objective reasons, many are not able to give 100%, adding that many schools have done away with student grades and are opting for a pass/fail model . In place of ratings, create a flexible system that recognises the hardships that many people are enduring, and doing more of a narrative assessment that provides employees with specific feedback and helpful information about what they've done well and where they could improve.

Compile an assortment of data

Ask for feedback, reviews should be a two-way conversation, so encourage your team to provide feedback in a variety of formats. One of the most difficult things about conducting performance reviews at a time when your team has gone remote is that you don't have as much data as you usually do because you're not seeing your employees in person.

Some employees may feel anxious and uncertain about performance reviews in general, let alone those conducted remotely. The risk is that your old biases, positive or negative, are going to be amplified. It is crucial to your team's success to allow all members to feel heard. Create a space for them to be honest by listening actively, validating what the person has said, and taking your time before compassionately responding. Your star performers are sure to be doing great while your stragglers are dropping the ball. To tackle the problem, you need and look for other sources of data. Request self-evaluations and canvas peers for their thoughts. Ask others, is this employee proactively communicating? How are they connecting with clients and colleagues? Who are they helping? Put those positive questions front and centre.

Lead the way

Be sure to make the performance review process clear. Mental exhaustion because of Zoom calls or webinars is very real, so for this type of conversation video is also important, it is more personal and humane. It also allows you to see people where they are — whether they are working from their living rooms, their kitchens, or bedrooms. Be open and warm. Pay close attention to body language — both yours and your employees. Because you are not face-to-face there are no contextual cues, so it is easy to have misunderstandings. On a screen, your employee's head is two-dimensional, so it is going to be harder for you to judge the subtext of what is happening. You are going to have to be much more explicit and much more verbal. Listen carefully and encourage two-way conversation . Spend the time to really make sure things are not lost in translation.

Proceed carefully; avoid offending poor performers...

As a rule, job reviews are a chance for managers to confront poor performers by demanding improvement. But these are not normal times, if someone is not performing, now is not time to beat them up. Approach any difficult conversations about performance with sensitivity, make a conscious decision which battles to fight, it is not worth it to run around chasing non-performers.

Instead, if someone on your team is not delivering, you need to find out why by asking what is going on in their lives, create some slack in the system to deal with problem employees. If ordinarily you would put someone on warning because they are struggling, you could instead offer a set time and some space to allow them to get used to remote working and turn things around. If an employee's underperformance is long-standing and continuing, offer a clear warning. There may come a point where you will need to make some tough decisions – but being empathetic and creating strategies for success should come first.

...And be effusive with your high achievers

On the other hand, it is critical to acknowledge your high performers — both for their morale and your organisation's ability to retain them. Reassurance and praise will mean a lot to your workers' peace of mind. Your top talent will always have places to go, even in a tough employment market. Make sure you seize this opportunity to recognise and show appreciation for employees who are working hard, engaged, committed, and offering their support to others. In this economy, people are experiencing a lot of dread and fear that they are going to be out of a job. The best way to help them cope with uncertainty is to create some certainty. Give people a baseline. If you know that somebody's performance is not going to put them at risk, let them know.

Plan toward the future

Talk about impact and the future. Remote work looks here to stay. Therefore, many will have to consider how they manage feedback and performance remotely for the long-term.

In this environment, you may need more frequent, smaller evaluations such as semi-annual or quarterly check-ins. This will give you, the manager, an opportunity to provide real feedback and gives employees the chance to make adjustments and calibrations, while thinking about how this crisis could be a catalyst for changing your organisation's performance culture. This period represents an opportunity to pivot toward a people-focused management system, built around resilience and agility, instead of efficiency and competitiveness at any cost. The former is more sustainable in the long run.

Fundamentals to remember

Do...	Do not...
• Recognise and show appreciation for employees who are engaged and working hard. It is critical for their morale — and for your organisation's ability to retain them. • Let your old biases creep in. Seek out alternative data. Ask colleagues and reports for information on how well other employees are communicating, collaborating, and helping. • Approach your evaluations with more flexibility, leniency, empathy, and compassion. Use video for this conversation. It is more personal and humane.	• Be hard-hearted toward your poor performers. Give them a time-bound grace period to get used to working remotely and to turn things around • Forget to talk about impact and the future. Remote work looks here to stay. Therefore, many will have to consider how they manage feedback and performance remotely for the long-term. • Revert to business as usual — instead, think about how to do performance reviews better. In this environment, semi-annual or quarterly evaluations may be optimal.

Please note that this is general advice for information only and any application of legislation and/or Industrial Relations or contractual requirements may require professional advice to suit your individual circumstances. If you have question for Michael's team send us an email info@bO2.com.au or sign-up for a Buzz Session...

Special Bonus Issue

2020 SUPERANNUATION (WEALTH ACCUMULATION TIPS)

WHAT'S NEW IN 2021?

YOUR FUTURE, YOUR SUPER FEDERAL BUDGET 2020/21

- New accounting standard AASB 2020.2 applies from 1.7.2020.
- Statutory Superannuation and the changing landscape – a warning for employers
- Change to age limits on superannuation contributions.
- Due to COVID-19 - a temporary deduction in minimum drawdown rates is available.
- Government passes more legislation to allow Australians to choose their superannuation fund.
- Laws passed to reunite Australians with their unpaid super.
- How to protect your superannuation savings from the superannuation death tax using testamentary trusts.
- Binding nominations and why Marsella v Wareham [CNO 2) 2019 VSC 65] is a landmark case
- SMSF and collectibles.
- Superannuation rates and caps updated.
- Due to COVID-19, superannuation guarantee to remain at 9.5% for the year ending 30 June 2022.
- Concerns from ATO on property developments and SMSFs.

CHECKLIST: 2020/21 tax planning opportunities for individuals

Use this checklist as a guide to 2020/21 year-end tax planning opportunities with a particular focus on superannuation.

SUPERANNUATION

Personal superannuation contributions

Individuals can now make a personal deductible superannuation contribution regardless of whether they are self-employed or not. Employed individuals should be able to review their payroll reports to determine the difference between the concessional limits and the employer contributions.

Note the concessional contributions cap is $25,000 for the 2020/21 income year.

In addition, individuals earning over $250,000 in taxable income should be mindful that Div293 tax will apply to concessional superannuation contributions. These additional contributions are taxed at 15% on top of the 15% contributions tax paid by the superannuation fund. The Div293 tax may be paid from an individual's own money or from their superannuation fund using a release authority.

Catch-up superannuation contributions

The current income year ending 30.6.2021 is only the second year in which individuals can carry forward unused concessional contribution limits for future use.

In order to make a catch-up superannuation contribution in the following year, an individual must have a total superannuation balance under $500,000 on 30 June 2020. When considering a catch-up contribution always be mindful of Division 293 tax – see above

An eligible individual may delay a personal deductible contribution in 2020/21 if they expect taxable income to be under $250,000 in income in 2021/2022 in order to avoid a Div293 liability.

Downsizing contributions

A person aged 65 years or older is able to make a contribution into superannuation of up to $300,000 from the proceeds of selling their main residence. This contribution is outside of non- concessional contribution rules.

To be eligible to make the contribution, they must have owned their main residence for at least 10 years. Also, the contribution is exempt from the age test, work test and the $1.6m total superannuation balance test.

First Home Super Saver Scheme

Voluntary contributions up to $15,000 can be made by an individual who has yet to purchase their first home into their superannuation account. The scheme allows the individual to withdraw this contribution plus earnings in order to be used for a first home deposit.

Voluntary contributions made after 1 July 2018 may be used for withdrawal in the Scheme.

Spouse contribution

A $540 tax offset is available for after-tax contributions (up to $3,000) to a complying superannuation fund on behalf of a spouse (married or de facto) where the spouse's annual taxable income is less than $37,000. A reduction of the maximum offset is available where spouse's income is between $37,000 and $40,000.

Note that from 1.7.2020 the age limit for spouse contributions increased from 69 to 74 years. The work test still it has to be satisfied to be eligible for this measure.

Superannuation government co-contribution

For low income earners, subject to certain conditions, the government makes a co-contribution of up to $500 if a taxpayer makes after-tax contributions of at least $1,000. The co-contribution begins to phase-out at a taxable income of $39,837 and is not available for taxable income above $54,837.

Individuals could also take advantage on increasing the amount that can be withdrawn under the First Home Super Saver Scheme. However, the co-contribution itself would not be included.

Insurance policies in super to become "opt-in"

From 1.7.2019, Superannuation members who are inactive need to "opt-in" with their life insurance and TPD providers to retain their current policies.

Inactive members are individuals who have not had a contribution or roll-over into their account for 16 months. Since 1 July 2019, this applies for accounts without a contribution or roll-over since 1 March 2018.

Prepayments

Subject to cash flow considerations, consider making deductible purchases by year's end in order to accelerate deductions. This applies particularly if the income in the following year is expected to be lower than in the current year.

In certain circumstances, an immediate deduction can be available for prepaid expenditure (e.g. interest on a loan relating to a rental property).

Nearing retirement

A taxpayer who is considering retiring near year end may find it worthwhile to defer discretionary income until after 30 June. In that subsequent year, their income will normally be smaller, and the marginal rate may therefore be less.

When considering the timing of retirement, keep in mind the restrictions on the concessional treatment of employment termination payments that apply.

Reforms to make your super work harder for you

Super supports all Australians

Australia's compulsory superannuation system is essential to the retirement incomes of its 16 million members.

Structural flaws in the system are letting too many Australians down:

- Unnecessary fees and insurance premiums are paid on unintended multiple accounts which are created when people change jobs and do not nominate a super fund. This results in a reduction in retirement savings.
- Australians are paying too much for their super with the fees amongst the highest in the OECD. Australians pay $30 billion a year in super fees which is more than what they pay for electricity and gas combined.
- There are too many underperforming products in the market, and this is costing members millions in lost retirement savings.
- Funds lack accountability to their members for their conduct and the outcomes they deliver and there is inadequate transparency on how funds are spending members' money

Your superannuation follows you

For the first time, you will keep your super fund when you change jobs, stopping the creation of unintended multiple super accounts and the erosion of your super balance.

A new super account will no longer be created automatically every time you start a new job.

Instead, your super will be 'stapled' to you, so that you keep your current super fund when you change jobs. Your employer will pay your super to your existing superannuation fund if you have one unless you select another fund.

By 1 July 2021:

- If an employee does not nominate an account at the time they start a new job, employers will pay their superannuation contributions to their existing fund.
- Employers will obtain information about the employee's existing superannuation fund from the ATO.
- The employer will do this by logging onto ATO online services and entering the employee's details. Once an account has been selected, the employer will pay superannuation contributions into the employee's account.
- If an employee does not have an existing superannuation account and does not make a decision regarding a fund, the employer will pay the employee's superannuation into their nominated default superannuation fund.

Benefits

There are 6 million multiple accounts held by 4.4 million people.

These multiple accounts mean $450 million in unnecessary fees are drained from the super accounts of millions of Australians each year.

This measure will result in 2.1 million fewer unintended multiple accounts over 10 years, saving workers about $2.8 billion by avoiding duplicate fees, insurance, and lost earnings across that time.

Empowering members

A new, interactive, online YourSuper comparison tool will help you decide which super product best meets your needs.

By 1 July 2021, the YourSuper tool will:

- Provide a table of simple super products (MySuper) ranked by fees and investment returns.
- Link you to super fund websites where you can choose a MySuper product.
- Show your current super accounts and prompt you to consider consolidating accounts if you have more than one.

This tool will make it easier for you to compare the fees and performance of super funds in the market, creating more competition and making super funds work harder to manage your money.

Selecting a well-performing product rather than an underperforming one can significantly boost members' retirement incomes.

Using the YourSuper comparison tool to choose a well-performing fund means:

- A typical young Australian entering the workforce in their 20s could be around $87,000 better off at retirement.

- A typical Australian already in the workforce at age 50 could be around $60,000 better off at retirement.

The measure will result in $3.3 billion in higher member balances over a decade. Holding funds to account for underperformance, the Government is ensuring your hard-earned retirement savings are protected from underperforming super funds.

From 1 July 2021, MySuper products have been subject to an annual performance test.

If a fund is deemed to be underperforming, it had to inform its members of its underperformance by 1 October 2021. This requirement is now ongoing.

When funds inform their members about their underperformance, they will also be required to provide them with information about the YourSuper comparison tool.

Underperforming funds will be listed as underperforming on the YourSuper comparison tool until their performance improves.

Funds that fail two consecutive annual underperformance tests will not be permitted to accept new members. These funds will not be able to re-open to new members unless their performance improves.

By 1 July 2022, annual performance tests will be extended to other superannuation products.

How will you benefit?

Helping you switch your super from an underperforming fund to a better fund will significantly boost your retirement savings.

A typical Australian spending their working life in the worst performing MySuper product would be up to $98,000 worse off at retirement.

Across the entire industry, holding underperforming funds to account will mean at least $10.7 billion more in retirement savings over 10 years.

Increasing accountability and transparency

The Government will ensure superannuation trustees are more accountable and transparent as to how they are managing the retirement savings of their members.

By 1 July 2021:

- Super trustees will be required to comply with a new duty to act in the best financial interests of members.
- Trustees must demonstrate that there was a reasonable basis to support their actions being consistent with members' best financial interests.
- Trustees will provide members with key information regarding how they manage and spend their money in advance of Annual Members' Meetings.

A temporary reduction in superannuation minimum drawdown rates is available

Many retirees have seen a negative effect on the account balance of their superannuation pension or annuity due to the effect of COVID-19 on financial markets.

As a result, the government temporarily reduced super minimum drawdown requirements for 2019–20 and 2020–21 income years. This means the minimum annual payment you need to make to your member's account-based pensions and annuities; allocated pensions and annuities and market-linked pensions and annuities has been reduced by 50%.

As a trustee of a self-managed super fund you must ensure the minimum drawdown rate is paid. However, your member can choose to receive more than the temporarily reduced minimum drawdown rate.

It is important that you talk to your members, who are receiving a pension, about their situation for the 2020–21 income year to find out if they want to take advantage of the temporarily reduced minimum drawdown rate.

Change to age limits on super contributions

As part of the Superannuation – improving flexibility for older Australians measure, from 1 July 2020 the draft regulations allow superannuation fund members to:

- make voluntary concessional and non-concessional super contributions without meeting the work test if they are younger than 67
- receive spouse contributions if they are 75 years old or younger.

Superannuation fund members must still meet all other eligibility criteria. They can use ATO online services to view some of these, including their total super balance, existing bring forward arrangements and unused concessional contributions.

Another change, to enable members to bring forward up to three years of non-concessional contributions if they are younger than 67 (rather than 65), was passed by parliament in the Treasury Laws Amendment (More Flexible Superannuation) Bill 2020.

SMSF borrowings to count towards $1.6 million transfer balance cap, and $1.6 million total superannuation balance.

From 1.7.2017, the outstanding balance of an LRBA is included in a member's annual total superannuation balance, and the repayment of the principal and interest from a member's accumulation account is recorded as a credit in the member's transfer balance account.

Higher SMSF penalties from 2017/2018 year.

The size of administrative penalties has increased from July 2017 for SMSFs doing the wrong thing.

Non-arm's length transactions subject to stricter rules.

From 1.7.2018, SMSFs using related party transactions on non-commercial terms aimed at increasing super savings, need to take into account expenses that normally apply to a commercial transaction when assessing whether the transaction is on a commercial basis.

THE $1.6 MILLION TRANSFER BALANCE CAP

From 1.7.2017 there has been a $1.6 million cap on the total amount of superannuation that can be transferred into a tax-free retirement account.

- The cap will index in $100,000 increments in line with the consumer price index, just as the Age Pension assets threshold does.
- Superannuation savings accumulated in excess of the cap can remain in an accumulation superannuation account, where the earnings will be taxed at 15 per cent.
- A proportionate method which measures the percentage of the cap previously utilised will determine how much cap space an individual has available at any single point in time.
    - For example, if an individual has previously used up 75 per cent of their cap, they will have access to 25 per cent of the current (Indexed) cap.
- Subsequent fluctuations in retirement accounts due to earnings growth or pension payments are not considered when calculating cap space.

Consequences for breach

Individuals who breach the cap will be required to remove the excess capital from their retirement phase account and are liable to pay tax on the notional earnings attributable to the excess capital. The amount removed from the retirement phase can be transferred into an accumulation account, where the earnings will be concessionally taxed at 15 per cent or withdrawn from superannuation.

Individuals can also apply to the Commissioner of Taxation to replenish their transfer balance cap space for anomalous situations that cause their retirement balance to be depleted, such as fraud, bankruptcy, or family law splits.

Example – Jason

Jason is 60 and plans to retire during the 2020-21 financial year. Jason expects he will have an accumulated superannuation balance of less than $1.6 million. This measure does not affect Jason.

Example – Agnes

Agnes 62 retires on 1 November 2020. Her accumulated superannuation balance is $2 million.

Agnes can transfer $1.6 million into a retirement income account. The remaining $400,000 can remain in an accumulation account where earnings will be taxed at 15 per cent. Alternatively, Agnes may choose to remove this excess amount from superannuation.

While Agnes will not have the ability to make additional contributions into her retirement account, her balance will be allowed to fluctuate due to earnings growth or drawdown of pension payments.

DEATH BENEFITS AND THE $1.6 MILLION TRANSFER BALANCE CAP

Since 1.7.2017, a 'transfer balance cap' has applied to the value of pensions that can be transferred to retirement phase including those already in place at 1.7.2017. The general transfer balance cap is set at $1.6 million for the 2020/21 financial year and limits the tax exemption on investments that support pensions in the fund. The cap is indexed to changes in CPI and increased in increments of $100,000.

Although this $1.6 million cap is indexed, due to deflation caused by the COVID-19 pandemic, there will be no increase for the year ended 30 June 2021.

Superannuation death benefits are paid to beneficiaries as income streams count against their personal transfer balance cap. Death benefits paid as lump sums withdrawn for superannuation are not measured against the $1.6 million transfer balance cap.

Depending on the circumstances, benefits payable on the death of a member are required to be paid either as reversionary pensions, death benefit pensions or lump sums. The beneficiary must ensure that the value of pensions already measured against their transfer balance cap plus the value of any death benefit pensions do not exceed their transfer balance cap.

If the beneficiary is paid a reversionary pension, they have up to 12 months to commute (convert to a lump sum) all or part of the pension, to ensure the aggregate value of all pensions come within the cap. Any excess death benefits are required to be paid out of the fund as a lump sum.

A beneficiary may have the option to commerce a death benefit pension under the fund's trust deed. The amount of a death benefit pension at commencement is counted against the transfer balance cap and, an adjustment will be required if an excess arises to bring the total value of pensions to come within the cap.

Any death benefit lump sums, including those which may arise from the commutation of a reversionary or death benefit pension, must be withdrawn from superannuation.

It is now possible to roll over death benefit entitlements to other funds without restriction.

Once the amount has been rolled over, it will continue to be recognised as a death benefit superannuation interest and, must be used immediately to commence an income stream from the recipient fund or cashed out as a lump sum. This allows a beneficiary to rollover a death benefit pension to a fund of their choice, including a SMSF and retain the concessional tax treatment associated with a superannuation income stream death benefit.

Death benefit strategies

Strategies that can be used to keep the total value of pensions within the member's transfer balance cap (where they are entitled to a death benefit) include:

- Commuting the death benefit pension to a lump sum or part lump sum and withdrawing it from superannuation.
- Continuing with the death benefit pension and commuting any existing pensions to a lump sum payable out of the fund.
- Continuing with the death benefit pension and transfer the balance of any existing pensions to accumulation phase.

As the efficacy of these strategies will depend on the individual's circumstances it is essential you seek professional advice before implementing any of them.

STRATEGIES TO REDUCE YOUR TOTAL SUPERANNUATION BALANCE

Having covered the post 1.7.2017, $1.6 million limit we see that there is a strong incentive for an individual to carefully manage their Total Superannuation Balance (TSB) over time. The TSB determines a fund member's superannuation rights and entitlements such as eligibility to contribute after tax amounts to super without an excess arising. Usually the focus on the TSB will be towards the end of the financial year.

Key components (not exhaustive) of an individual's TSB include:

- The accumulation phase values of their superannuation interests that are not in retirement phase.
- The amount of their transfer balance or modified transfer balance account – this generally captures the net realisable value of most types of pensions in retirement phase.
- Any roll-over superannuation benefit that has not already been included under the above steps; and
- Reductions for any structured settlement contributions.

So, what are the steps that may be taken?

1. Subject to the preservation requirements, payments of pensions and lump sum amounts are both outgoings that can lower an individual's TSB. Where full conditions of release have not been met, then there are limits on transition to retirement pensions of 10% maximum payment.
2. Close to financial year end, consider paying the following expenses prior to 30 June:
   - Accounting fees to prepare and lodge the annual return for the SMSF.
   - Audit and actuarial services.
   - Investment related expenses such as brokerage and bank fees.
   - The SMSF supervisory levy.
   - Annual review fees for a corporate trustee.
   - Operating expenses including management and administration fees.

The key here is that these expenses should be legitimate, arm's length and not artificial or contrived.

They must meet:

- the sole purpose test
- the payment standards; and
- the prohibition on providing financial assistance to members and relatives.

3. Consider applying tax effect accounting. Essentially this is the recognition of deferred tax liabilities where there is reasonable certainty that a future tax liability may arise for the SMSF. This application can potentially reduce the value of a SMSF's "net assets".
4. Contributions splitting between spouses can also reduce an individual's TSB – refer to Div 6.7 of the SISR. Normally the maximum splitable amount for a given financial year is the lesser of:
   - 85% of the concessional contributions
   - the current concessional contributions cap.

This is a complex area of law and it is recommended that expert advice be obtained. In turn advisers should be aware of the need for an Australian Financial Services Licence (Corporations Act 2001) and tax advice obligations under the Tax Agents Services Act 2009.

REFORMING THE TAXATION OF CONCESSIONAL CONTRIBUTIONS

The Government has lowered the annual cap on concessional (pre-tax) contributions to $25,000 and reduced the income threshold above which high income individuals are required to pay 30 per cent tax on their concessional superannuation contributions – commonly referred to as the Division 293 threshold – to $250,000 per annum.

From 1 July 2017, the Government has lowered the annual concessional contributions cap to $25,000 for all individuals. The cap is indexed in line with wages growth.

Additionally, from 1.7.2017, the Government reduced the income threshold, above which individuals will be required to pay an additional 15 per cent tax on their concessional contributions, from $300,000 to $250,000 per annum.

The additional tax is imposed on the whole amount of the contributions, up to the concessional cap, if your salary and wages are above the threshold. Otherwise, the additional tax is only imposed on the portion of the contribution that takes you over the threshold.

The additional tax is imposed on the whole amount of the contributions, up to the concessional cap, if your salary and wages are above the threshold. Otherwise, the additional tax is only imposed on the portion of the contribution that takes you over the threshold.

To be liable for a total of 30 per cent tax, a person needs to have at least $250,000 in combined income and concessional superannuation contributions.

- In 2017-18 approximately one per cent of fund members are expected to pay additional contributions tax as a result of this measure.
- These individuals will have an average taxable income of $270,000 and an average superannuation balance of $550,000.

Existing processes for the administration of the concessional contributions cap and the imposition of the additional 15 per cent tax on contributions will be maintained, although some processes will be streamlined.

Example – Madeline

In 2020-21, Madeline earns $260,000 in salary and wages. In the same year she has concessional superannuation contributions of $30,000.

Madeline's fund will pay 15 per cent tax on these contributions. Madeline will pay an additional 15 per cent tax on the $25,000 of concessional contributions resulting in these amounts effectively being taxed at 30 per cent.

The $5,000 of contributions in excess of the cap will be included in Madeline's assessable income and taxed at her marginal rate. Madeline pays $1,600 income tax on her excess contribution.

SUPERANNUATION REFORM: ANNUAL NON- CONCESSIONAL CONTRIBUTIONS CAP

From 1 July 2017, the Government has lowered the annual non-concessional (post-tax) contributions cap to $100,000 and introduced a new constraint such that individuals with a balance of $1.6 million or more will no longer be eligible to make non-concessional contributions. Individuals under age 65 will be eligible to bring forward 3 years of non-concessional contributions.

The new annual cap with the eligibility threshold replaces the lifetime $500,000 non-concessional contributions cap announced in the 2016-17 Budget.

This will better target tax concessions to ensure that the superannuation system is equitable and sustainable, ensuring those who have saved well in excess of what is required to be self-sufficient in retirement are not able to continue to access further concessional tax treatment. It will also provide flexibility recognising that non-concessional contributions are often made in large lump sums.

From 1 July 2020, the Government has lowered the annual non-concessional contributions cap to $100,000, which is four times the annual concessional contribution cap, with a three year bring forward ($300,000) for those aged under 67. Where an individual's total superannuation balance is $1.6 million or more, they are longer be eligible to make non-concessional contributions.

The $1.6 million eligibility threshold is based on an individual's balance as at 30 June the previous year. This means if the individual's balance at the start of the financial year (the contribution year) is $1.6 million or more, they will not be able to make any further non-concessional contributions. Individuals with balances close to $1.6 million are only able to bring forward the annual cap amount for the number of years that would take their balance to $1.6 million.

Transitional arrangements applied if an individual did not fully used their non-concessional bring forward before 1 July 2017, the remaining bring forward amount was reassessed on 1.7.2017 to reflect the new annual caps.

Individuals aged between 67 and 74 are eligible to make annual non-concessional contributions of $100,000 if they meet the work test (i.e. they work 40 hours within a 30 day period each income year), but are be able to access the bring forward of contributions.

The annual cap is linked to indexation of the concessional contributions cap. The $1.6 million eligibility threshold will be indexed as per the transfer balance cap.

Non-concessional contributions to defined benefit schemes and constitutionally protected funds will also be subject to the revised caps.

Eligibility Threshold

Individuals are eligible to make non-concessional contributions where their total superannuation balance is less than $1.6 million. Where their balance is close to $1.6 million, they will only be able to make a contribution in that year and access the bring forward of future years contributions that would take their balance to $1.6 million.

Superannuation Balance	Contribution and bring forward available
Less than $1.3 million	3 years ($300,000)
$1.3 - <$1.4 million	3 years ($300,000)
$1.4 - <$1.5 million	2 years ($200,00)
$1.5 - <$1.6 million	1 year ($100,000)
$1.6 million	Nil

BRIEF SUMMARY OF SUPERANNUATION RATES AND THRESHOLDS FOR 2020 - 2021

- **Concessional Contributions Cap – the cap will remain at $25,000 for the 2020/21 year.**

Concessional contributions are contributions that you or your employer make to your super. These are contributions that are claimed as a tax deduction. Sometimes referred to as employer or before-tax contributions.

- **Non-Concessional Contributions Cap – the cap for 2020/21 will remain at $100,000.**

Non-concessional contributions are contributions you or your spouse make to your super from your after-tax income. They are also referred to as personal or after-tax voluntary contributions. Anyone that has super worth over $1.6 million is not be eligible to make non-concessional contributions to super.

- **Superannuation Guarantee (SG)** – the SG rate remains at 9.50%, with the maximum super contribution base for 2020/21 increasing to $57,090 per quarter.

SG contributions are the compulsory contributions which most employees are eligible to receive, paid by their employer to super on their behalf.

- **Superannuation Co-Contribution** – the maximum co-contribution entitlement for the 2020/21 year remains at $500. The lower income threshold (for full entitlement) increases to $39,837 and the higher income threshold (cut-off for eligibility) increases to $54,837.

The super co-contribution is designed to help lower income earners save for their retirement by providing a government top-up where an eligible person makes a personal contribution to super.

Due to COVID-19, an increase in the rate to 10% due on 1.7.2021 has been postponed in the October Federal Budget.

- **Superannuation Benefits Caps** – the low rate cap amount for 2020/21 is now $215,000.

The low rate cap is the amount that is able to be withdrawn tax-free over a lifetime for people that have reached their preservation age (see below) but are not yet 60 (when super withdrawals become entirely tax-free) – please note other eligibility criteria apply for making a withdrawal.

- **Preservation Age** – to meet preservation age during 2020/21, your date of birth must be 30 June 1963 or earlier.

Super is preserved for your retirement and has government-placed restrictions on when it can be accessed. Some conditions for accessing super rely on a person firstly reaching their preservation age.

- **Capital Gains Tax (CGT) Cap Amount** – the CGT cap amount for 2020/21 is $1,565,000.

The CGT cap is the lifetime super contribution limit for proceeds from the disposal of eligible small business assets.

SUPPORTING AUSTRALIANS TO SAVE FOR THEIR RETIREMENT BY INTRODUCING THE LOW-INCOME SUPERANNUATION TAX OFFSET

The Government has introduced a Low-Income Superannuation Tax Offset to replace the Low-Income Superannuation Contribution. This will provide continued support for the accumulation of superannuation for low income earners and ensure they do not pay more tax on their superannuation contributions than on their take-home pay.

The issue

The superannuation system is designed to encourage Australians to save for their retirement. This is why superannuation is taxed at a lower rate than income outside of superannuation. However, for low income earners, the 15 per cent tax on superannuation contributions means they pay more tax on their superannuation contributions than on their other income.

The details

From 1 July 2017, the Government has introduced the Low-Income Superannuation Tax Offset.

Those with an adjusted taxable income up to $37,000 will receive a refund into their superannuation account of the tax paid on their concessional superannuation contributions, up to a cap of $500.

In effect, this means that most low-income earners will pay no tax on their superannuation contributions.

Low income earners, who are disproportionately women, will benefit from the Low-Income Superannuation Tax Offset. This is important because women, on average, had lower superannuation balances than men, despite having higher life expectancies. When introduced it was expected that around 3.1 million people (almost two-thirds of whom are women) will benefit from the Low-Income Superannuation Tax Offset.

The Low-Income Superannuation Tax Offset will effectively avoid the situation in which low income earners would pay more tax on savings placed into superannuation than on income earned outside of superannuation.

Implementation

The Australian Taxation Office will determine a person's eligibility for the Low-Income Superannuation Tax Offset, and this will be paid into the person's superannuation account.

Example - Katherine

In the 2020-21 financial year Katherine worked part-time as a nurse and earnt $35,000. Her employer made superannuation contributions of $3,325 on her behalf.

Katherine is eligible for the Low-Income Superannuation Tax Offset. She receives $498.75 of Low-Income Superannuation Tax Offset in her account.

Katherine would have received the same amount of Low-Income Superannuation Contribution.

EXTENDING THE SPOUSE TAX OFFSET

The Government also extended the current spouse tax offset to assist more couples to support each other in saving for retirement. This will better target superannuation tax concessions to low income earners and people with interrupted work patterns.

From 1 July 2017, the Government has extended the eligibility rules for claiming the tax offset for superannuation contributions partners make to their low-income spouses.

The current 18 per cent tax offset of up to $540 will be available for any individual, whether married or de facto, contributing to a recipient spouse whose income is up to $37,000. This is an increase from $10,800. As was formerly the case, the offset is gradually reduced for income above this level and completely phases out at income above $40,000.

No tax offset is available when the spouse receiving the contribution has exceeded their non-concessional contributions cap.

There are no changes to the age-based contribution rules. The spouse receiving the contribution must be under age 70 and meet a work test if aged 65 to 69.

Example – Anne and Terry

Anne earns $37,500 per year. Her husband Terry wishes to make a superannuation contribution on Anne's behalf.

Under the former arrangements, Terry would not be eligible for a tax offset as Anne's income is too high. There is no incentive for Terry to make a contribution on behalf of Anne.

Under the new arrangements, Terry would be eligible to receive a tax offset.

As Anne earns more than $37,000 per year, Terry will not receive the maximum tax offset of $540. Instead, the offset is calculated as 18 per cent of the lesser of:

- $3,000 reduced by every dollar over $37,000 that Anne earns; or
- the value of spouse contributions.

For example, Terry makes $3,000 of contributions and Anne earns $500 over the $37,000 threshold. Terry receives a tax offset of $450: 18 per cent of $2,500 as this is less than the value of the spouse contributions ($3,000).

If Anne were to earn more than $40,000 there would be no tax offset.

People with superannuation balances of $500,000 or less will be able to accrue additional concessional cap amounts from 1 July 2018.

Individuals will be able to access their unused concessional contributions cap space on a rolling basis for a period of five years. Amounts that have not been used after five years will expire.

This increased flexibility will make it easier for people with varying capacity to save and for those with interrupted work patterns, to save for retirement and benefit from the tax concessions to the same extent as those with regular income.

Individuals aged 65 to 74 who meet the work test are now able to access these arrangements.

Example - Cassandra

Cassandra is a 46-year-old earning $100,000 per year. She has a superannuation balance of $400,000.

In 2018-19, Cassandra has total concessional superannuation contributions of $10,000.

In 2019-20, Cassandra has the ability to contribute $40,000 into superannuation of which $25,000 is the amount allowed under the annual concessional cap and $15,000 is her unused amount from 2018-19 which has been carried forward.

The full $40,000 will be taxed at 15 per cent in the superannuation fund. Prior to the changes, her amounts in excess of the annual cap would have been subject to tax at her marginal rate, resulting in an additional $3,600 tax liability.

ENHANCING CHOICE IN RETIREMENT INCOME PRODUCTS

From 1 July 2017, the Government has extended the tax exemption on earnings in the retirement phase to products such as deferred lifetime annuities and group self-annuitisation products. These products seek to provide individuals with income throughout their retirement regardless of how long they live.

This will allow providers to offer a wider range of retirement income products which will provide more flexibility and choice for Australian retirees and help them to better manage consumption and risk in retirement, particularly longevity risk, wherein people outlive their savings.

In addition, the Government will consult on how these new products are treated under the Age Pension means test.

***Example - Emm**a*

Emma is a 65-year-old retiree who currently draws down her account-based superannuation pension at the minimum rates to ensure her superannuation savings do not run out.

Emma is energetic and healthy and would like to have the confidence that her superannuation savings will last throughout her retirement. However, as deferred, and pooled income stream products do not qualify for the retirement phase earnings tax exemption, these products are not widely offered in the market.

Extending the retirement phase tax exemption on earnings to a wider range of products will provide Emma with more choice and flexibility. This will allow her to maintain a higher standard of living in retirement and give her peace of mind knowing she will always have a guaranteed income stream.

IMPROVE INTEGRITY OF TRANSITION TO RETIREMENT INCOME STREAMS

The Government has removed the tax-exempt status of income from assets supporting transition to retirement income streams. Individuals are no longer allowed to treat certain superannuation income stream payments as lump sums for tax minimisation purposes.

Transition to retirement income streams were introduced in 2005 to provide limited access to superannuation for people wanting to move towards retirement by reducing their working hours and using their superannuation to supplement their income.

People can commence a transition to retirement income stream between preservation age and age 65.

To ensure access to transition to retirement income streams is primarily for the purpose of substituting work income rather than tax minimisation, the tax-exempt status of income from assets supporting transition to retirement income streams was removed from 1 July 2017.

Earnings from assets supporting transition to retirement income streams are now be taxed concessionally at 15 per cent. This change applies irrespective of when the transition to retirement income stream commenced.

Reducing the tax concessional nature of transition to retirement income streams ensures they are fit for purpose and not primarily accessed for tax minimisation purposes.

Further, individuals are no longer be able to treat certain superannuation income stream payment as lump sums for tax purposes, which currently makes them tax-free up to the low rate cap ($200,000).

An individual's preservation age depends upon their date of birth.

Date of Birth	Preservation age (years)
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Example – Sebastian

Sebastian is 57 years old, earns $80,000 and has $500,000 in his superannuation account. He pays income tax on his salary and his fund pays $4,500 tax on his $30,000 earnings.

Sebastian decides to reduce his work hours to spend more time with his grandchildren. He reduces his working hours by 25 per cent and has a corresponding reduction in his earnings to $60,000.

He commences a transition to retirement income stream worth $20,000 per year so that he can maintain his lifestyle while working reduced hours.

Currently, Sebastian pays income tax, but his fund pays nothing on the earnings from his pool of superannuation savings.

Under the Government's changes while the earnings on Sebastian's superannuation assets will no longer be tax free, they will still be taxed concessionally (at 15 per cent). He will still have more disposable income than without a transition to retirement income stream. This ensures he has sufficient money to maintain his lifestyle, even with reduced work hours.

Social Security Income Test

The Social Security Income Test for individuals in receipt of a defined benefit pension from superannuation was amended with effect from 1 January 2016 to exclude a maximum of 10% of actual pension payments drawn from assessment.

2018 FEDERAL BUDGET CHANGES RELATING TO PENSIONS

Pensions Home Equity

The Pension Loans Scheme is a reverse-mortgage style scheme that enables retirees to release equity in their home in the form of an income stream, which is administered by Centrelink. The Scheme is currently only open to retirees who are eligible for a part Age Pension and is not widely used. The Government has proposed to extend the Scheme to all retirees, including full rate Age Pensioners and self-funded retirees.

This will enable single retirees who own their own home to boost their income by up to $11,799 and couples to boost their retirement income by up to $17,800 without impacting their eligibility for the Age Pension or other benefits.

Pension work bonus

The Pension Work Bonus allows pensioners to earn up to $316 each fortnight (from 1.7.2020) without reducing their Age Pension. It will be expanded to allow pensioners to earn an extra $50 a fortnight ($1,300 a year) without reducing their pension payments.

The Pension Work Bonus will also be expanded to self-employed people who will be able to earn up to $12,428 a year.

The Government expects 88,000 people to take up the option to work more as a result of these changes.

Allowing retirees to make voluntary contributions in the first year of retirement

Retirees aged between 65 and 74 with a superannuation balance below $300,000 will be allowed to make voluntary super contributions for the first year where they no longer meet the work test requirements.

Currently, the work test restricts the ability to make voluntary superannuation contributions for those aged 65-74 to individuals who self-report as working a minimum of 40 hours in any 30-day period in the financial year.

The work test exemption will apply from 1 July 2019 and is intended to give recent retirees additional flexibility to get their financial affairs in order in the transition to retirement.

Existing contribution cap rules will continue to apply to contributions made under the work test exemption.

Developing framework for comprehensive income retirement products

The Government has proposed introducing a retirement income covenant requiring superannuation trustees to formulate a retirement strategy. It will require trustees to offer Comprehensive Income Products for Retirement.

Providers of retirement income products are now required to report simplified, standardised metrics in product disclosure to assist consumer decision making.

From 1 July 2019 new Age Pension means testing rules have been introduced for pooled lifetime income streams. The rules will assess a fixed 60 per cent of all pooled lifetime product payments as income, and 60 per cent of the purchase price of the product as assets until 84, or a minimum of 5 years, and then 30 per cent for the rest of the person's life.

SUPERANNUATION CONTRIBUTIONS

Contributions Caps

Concessional contributions caps: $25,000

General concessional cap is indexed to average weekly ordinary time earnings (AWOTE) in $5,000 increments.

EXCESS CONCESSIONAL CONTRIBUTION CHARGE

The excess concessional contributions (ECC) charge is applied to the additional income tax liability arising due to excess concessional contributions included in your income tax return. The intent of the ECC charge is to acknowledge that the tax is collected later than normal income tax. The charge is payable for the year a person makes excess concessional contributions and applies from the 2013–14 income year onwards.

The ECC charge period is calculated from the start of the income year in which the excess concessional contributions were made and ends the day before the tax is due to be paid under your first income tax assessment for that year.

The formula for calculating the ECC charge uses a base interest rate for the day plus an uplift factor of 3%. The base interest rate is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia.

This compounding interest formula is applied against the base amount (the additional income tax liability) for each day of the ECC charge period.

EARLY RELEASE SCHEMES

There are now new penalties for unlawful payments from superannuation funds.

These relate to the promotion of early release schemes designed to obtain the early illegal release of superannuation benefits.

STATUTORY SUPERANNUATION – THE CHANGING LANDSCAPE AND A WARNING FOR EMPLOYERS

The Superannuation Guarantee has been with us for nearly 30 years. In its early years it was estimated up to 30% of employers were behind in payments. On occasion their argument was that they were providing employment and could not always afford to pay their staff's super. So much has changed – the ATO can now check an employer's compliance in real time and their accounts.

Since 1.7.2012, Directors can be held personally liable for unpaid staff super.

Increasing community awareness around the importance of super along with widespread community disapproval of workers not being paid award minimum wages have markedly changed the narrative.

We have all heard of the term “wages theft”. Now, in a recent News Ltd article this term has been extended to superannuation.

It stated more than 1500 fines were sent to businesses in 2019 for stealing superannuation from Australian workers.

The ATO fronted a parliamentary inquiry investigating wage theft on 18.9.2020. Unsurprisingly this extended to superannuation.

Employers that do not meet their superannuation obligations can face penalties of up to 200 per cent of the unpaid contribution.

ATO spokesman John Ford told the committee it handed down the maximum fine nine times after audits during 2019.

A charge of between 150-199% was used 92 times, and fines between 149-200 per cent of the amount were issued 206 times.

A lower charge of between 99-150% of the contribution was used 1222 times.

More than 2233 director penalties notices involving 1572 companies were also issued by the ATO after bosses failed to pay the money in full by the due date.

At least $146 million in superannuation was not paid by the directors, with only $20.6 million recovered so far.

Workers made 35,400 reports of noncompliance in 2019-20, with the employer non-compliant 75% of the time

The last analysis of unpaid and stolen super undertaken in 2016-17 showed workers were robbed of $2.3 billion worth of payments.

An ATO pilot program conducted in 2019, which matched small business payroll data with payments from superannuation funds, identified 2600 employers underpaid workers or were late.

Treasury officials are in talks with the Attorney-General’s Department about including wage theft and superannuation guarantee in the employment standards but revealed progress had also been delayed during the coronavirus pandemic.

When the COVID-19 pandemic eases, we expect audit activity to pick up on unpaid super. It is an issue that has to be addressed by all employers.

CONTRACTORS AND THE SUPERANNUATION GUARANTEE CHARGE

Note that contractors are generally considered employees for SG purposes if the contract is wholly or principally for labour. In Superannuation Guarantee Ruling SGR 2005/1, the ATO indicates that a contract will be considered wholly and principally for labour (and the contractor is therefore an employee for SG purposes) where the contractor:

- Is remunerated (wholly or principally) for their labour or skills; and
- Must perform the contractual work personally (i.e. there is no right of delegation); and
- Is not paid to achieve a result.

For further guidance on the treatment of contractors, refer to SGR 2005/1, available at www.law.ato.gov.au. The ATO has also developed an employee/contractor decision tool, available at www.ato.gov.au.

ESTATE PLANNING AND RECENT SUPERANNUATION CHANGES

We have covered in detail the changes that have applied since 1.7.2017. In general, these changes have reduced the tax benefits found within super.

As a consequence, it would appear that testamentary trusts have come to the fore as a vehicle to preserve family wealth for future generations.

Testamentary trusts are established in Wills and are activated when the will maker dies. As well as providing asset protection for vulnerable beneficiaries, testamentary discretionary trusts are known for their tax advantages.

Testamentary discretionary trusts provide considerable flexibility to minimise tax by reason of:

- The ability to make distributions to minors using the full adult taxpayer tax-free threshold currently $18,200 and then lower marginal rates of tax.
- The flexibility to decide which person among a class of beneficiaries should receive a distribution and the amount of that distribution with a focus on beneficiaries in the lowest marginal tax rates.

- Flexibility in determining which beneficiaries receive different classes of income e.g. capital gains, franked dividends again with a view to minimise tax.

SELF-MANAGED SUPERANNUATION FUNDS - WHAT EXPENSES ARE DEDUCTIBLE IN A (SMSF)?

Common fund expenses

When considering if it is appropriate for the fund to pay a particular expense, it is important to ensure the payment is in accordance with a properly formulated investment strategy, allowed under your trust deed and the super laws.

Operating expenses

Operating expenses that are incurred by a SMSF are mostly deductible under the general deduction provision (section 8-1 of the Income Tax Assessment Act 1997 (ITAA 1997)) except to the extent they relate to the gaining of non-assessable income (such as exempt current pension income) or are capital in nature.

The following are examples of the types of operating expenses that are typically deductible under the general deduction provision:

Management and administration fees

These are costs associated with the daily running of the fund such as preparing trustees' minutes, stationery, and postage fees. Such costs must be apportioned if the fund earns both assessable and non-assessable income.

No apportionment is necessary for costs that are wholly incurred in collecting and processing contributions (for example, costs associated with obtaining an electronic service address (alias) to meet the data standards requirements).

A SMSF may incur other more specific management and administrative costs in running a fund that are dealt with under other headings.

Audit fees

A SMSF is required by the super laws to ensure that an approved SMSF auditor is appointed to give the trustee(s) a report of the operations of the entity for each year of income.

Audit expenditure that relates to meeting obligations under super laws is deductible but must be apportioned if the SMSF gains or produces both assessable and non-assessable income.

The administrative penalties that can be levied on a trustee under the super laws are not deductible to the fund as they are incurred by the trustee of the fund (or director of the corporate trustee) and must not be paid or reimbursed from the assets of the SMSF.

ASIC annual fee

ASIC charges an annual fee to special purpose companies; whose sole purpose is to act as a trustee of a regulated superannuation fund. While the vast majority of SMSFs operate under an individual trustee structure, many choose to use a corporate trustee arrangement.

Corporate trustees pay an initial ASIC registration fee but are also required to pay an annual fee. The ASIC annual fee is payable where a SMSF has a corporate trustee and, as such, this expense is deductible by the fund.

Investment-related expenses

The exact nature of the investment-related expenses is critical in determining deductibility. Examples of deductible investment related expenses include:

- interest expenses
- ongoing management fees or retainers paid to investment advisers
- costs of servicing and managing an investment portfolio such as bank fees, rental property expenses, brokerage fees
- the cost of advice to change the mix of investments, whether by the original or a new investment adviser provided it does not amount to a new financial plan.

If the investment related advice covers other matters or relates in part to investments that do not produce assessable income, only a proportion of the fee is deductible.

Example 1 - The trustees of a SMSF, approach a financial adviser with the aim to put in place a long term financial strategy incorporating the need to have sufficient liquidity to pay super income stream benefits, lump sum payments and continue with investments that in the long term will provide super or death benefits for the members.

A fee paid to an investment adviser to draw up an investment strategy for the fund in these circumstances would be a capital outlay even if some of the existing investments are maintained as part of the plan. This is because the fee is for advice that relates to drawing up a new investment strategy. The character of the outgoing is not altered because the existing investments fit in with this new strategy. It is still an outgoing of capital.

Example 2 - The trustees of a fund decide to seek the advice of an investment adviser as to what (as specified in the fund's investment strategy are permitted by the governing rules of the fund) listed securities they should invest in.

The cost of the advice as to what listed securities to invest in is deductible as it is part of the ongoing maintenance of the current investment strategy and not part of a new investment strategy or plan.

Tax-related expenses

A specific deduction is allowable under section 25-5 of the ITAA 1997 for an expense incurred in managing a fund's tax affairs or complying with a Commonwealth tax law obligation imposed on the trustee.

You cannot deduct capital expenditure under this section. However, an expense is not a capital expense merely because the tax affair relates to a matter of a capital nature. For example, the cost of applying for a private ruling on whether you can depreciate an item of property may be deductible under this section.

The following are examples of deductible tax-related expenses incurred in managing a SMSF's income tax affairs and complying with income tax laws:

- costs relating to the preparation and lodgement of the SMSF's annual return including the preparation of financial statements
- actuarial costs incurred in satisfying income tax obligations, for example to determine the amount of tax-exempt income (or exempt current pension income).

Statutory fees and levies

A SMSF is also liable to pay a supervisory levy under the Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Imposition Act 1991. The levy is a flat amount and is also deductible under section 25-5 of the ITAA 1997.

With respect to the costs incurred in preparing and lodging the SMSF's annual return, a possible interpretation of the relevant laws would necessitate apportionment between income tax and super-related expenses. Given that the return is one approved form covering both income tax and super law requirements, the ATO is of the view that it would be an impost for SMSFs to have to apportion between the two types of expenses and have taken the approach of allowing in full as a deduction the expenses incurred in preparing and lodging the return.

A tax-related expense does not need to be apportioned on account of a SMSF deriving both non-assessable and assessable income, unless the expenditure is in relation to audit fees paid by the fund. Audit expenditure that relates to meeting obligations under super laws is deductible under the general deduction provisions and must be apportioned if the SMSF gains or produces both assessable and non-assessable income.

Legal expenses

Some legal expenses are covered by specific deduction provisions (for example, legal expenses incurred in complying with income tax obligations under section 25-5 of the ITAA 1997).

Legal expenses that are not covered by a specific provision are generally deductible under the general deduction provision. This is excepted to the extent that they are incurred in deriving non-assessable income or are capital, private or domestic in nature.

Example: Borrowing Expenses – Capital in Nature

A SMSF engages a legal firm to set up a trust to hold an asset that the fund intends to acquire under a limited recourse borrowing arrangement (LRBA) (as required by the super law).

Section 25-25 of the ITAA 1997 is a specific deduction provision which enables a taxpayer to deduct expenses incurred for borrowing money to the extent that the money is used for the purposes of producing assessable income.

Borrowing expenses which can generally be claimed under this specific provision include:

- loan establishment fees
- obtaining relevant valuations
- costs of documenting guarantees required by the lender
- lender's mortgage insurance
- fees for property and title search fees, costs for preparing and filing mortgage documents, etc.

The costs in establishing a trust for an LRBA are not considered to be borrowing expenses because they are incurred for establishing the arrangement through which the borrowing occurs, not for the borrowing itself. Therefore, the SMSF cannot claim a deduction for its legal expenses in setting up the trust under section 25-25 of the ITAA 1997.

Also, the SMSF cannot claim these costs as a deduction under the general deduction provision because they are capital in nature.

Trust Deed Amendments

Trust deed amendment costs incurred in establishing a trust, executing a new deed for an existing fund and amending a deed to enlarge or significantly alter the scope of the trust's activities are generally not deductible as they are capital in nature.

Trust deed amendments required to facilitate the ongoing operations of the super fund are generally deductible under the general deduction provision. If a fund amends a trust deed to keep it up to date with changes to the super law, the expense in doing this will be deductible under the general deduction provision. This is unless the amendment results in enduring changes to the SMSF's structure or function or creates a new asset.

Example 1 - A SMSF is a two-member fund comprising a couple who are also the individual trustees of the fund. One of the members dies at a time before either member has retired. The surviving member decides to continue the SMSF with a corporate trustee of which they are the sole director.

The fund incurs legal expenses of $1,000 to amend the trust deed so the corporate trustee can be appointed. Making changes to the trust deed of the SMSF to permit appointment of a corporate trustee relates to the structure of the SMSF and the expenses are capital in nature. The legal expenses incurred in amending the trust deed are not deductible under section 8-1 of the ITAA 1997.

Example 2 - The trustees of a SMSF decide that the fund's trust deed is out of date. It refers to super law provisions which have been repealed and to contact addresses for the trustees that are no longer current.

The trustees decide to engage a legal firm to update the deed. The firm charges $500. As the changes to the trust deed are an ordinary incident of the day to day running of the fund and are not capital in nature, the $500 charged by the legal firm is deductible to the fund.

Example 3 - The trustees of a SMSF decide that, as part of a properly formulated investment strategy, they will borrow money to purchase an apartment under an LRBA.

The trust deed of the SMSF, as it currently stands, does not permit the trustees to borrow money. The trustees engage a legal firm to amend the trust deed so that it permits the trustees to borrow money under an LRBA.

The costs incurred in engaging the law firm to change the trust deed are not deductible. This is because the addition of borrowing powers is an enduring change to the function of the SMSF.

Death, total and permanent disability, terminal illness, and income protection insurance premiums

A specific deduction is available to the trustee of a complying super fund in relation to insurance premiums paid for insurance policies that are for current or contingent liabilities to provide death or disability benefits.

A deduction is available in relation to the insurance premiums to provide for the following types of death or disability benefits:

- super death benefits
- terminal medical condition benefits
- disability super benefits
- benefits provided due to temporary inability to engage in gainful employment for a specified period.

The amount that can be claimed by the fund is set out in the relevant income tax laws and there is no apportionment required for these expenses between those that relate to assessable and non-assessable income.

Collectables and artwork

Special rules apply to SMSF investments in collectable and personal use assets, such as artwork. These rules were introduced on 1 July 2011 to cover aspects such as storage and insurance.

Insurance costs for artwork and other collectables are deductible to the SMSF provided the items are insured in the name of the fund within seven days of acquisition and the receipt for the expense is in the name of the fund. You cannot, for example, insure the item as part of a trustee's home and contents insurance.

Storage costs for artwork and collectables are also deductible to the fund provided that these items are stored in accordance with the Superannuation Industry (Supervisions) Regulations 1994. In particular, the trustees must make and keep records of the reasons for deciding where to store the item number.

When you can claim

As a general rule, the trustee can claim the fund's expenses in the year the trustee incurs them. However, deductions for the decline in value of certain depreciating assets (such as plant and equipment) are claimed over the effective life of the asset rather than at the time the trustee incurs the expenditure.

Trustees should retain any invoices and/or receipts evidencing the fund's expenses. Invoices and receipts must be in the name of the SMSF, and wherever possible, the expense should be paid directly from the fund's bank account.

Deductibility of expenses

As a general rule, the deductibility of expenses incurred by a super fund is determined under section 8-1 of the Income Tax Assessment Act 1997 (also known as the general deduction provision) unless a specific deduction provision applies, for example, tax related expenses deductible under section 25-5 of the ITAA 1997.

If an expense is deductible under the general deduction provision, and the fund has both accumulation and pension members, the expense may need to be apportioned to determine the amount that the fund can deduct.

If an expense is deductible under one of the specific deduction provisions, then the wording of that provision will indicate whether the expense must be apportioned and on what basis.

Specific deductions

The following is a list of some of the specific deduction provisions that apply to SMSFs. Some can be claimed in full while others will require apportionment:

- Expenditure incurred to the extent that it is for managing the tax affairs of the SMSF or complying with an obligation imposed on the SMSF which relates to its tax affairs, for example the SMSF Supervisory Levy (section 25-5 of the ITAA 1997)
- Death, total and permanent disability, terminal illness, and income protection premiums to the extent specified in the relevant law (section 295-465 of the ITAA 1997)

General deductions

In the absence of a specific deduction provision, and subject to exclusions discussed below, a loss or outgoing incurred by a super fund is deductible under section 8-1 of the ITAA 1997 (the general deduction provision) to the extent that:

- it is incurred in gaining or producing assessable income
- it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.

Expenses that are an ordinary incident of the operations of the SMSF that gain or produce its assessable income fall under this general deduction provision (unless a specific provision could also apply and is more appropriate in the circumstances). This can include expenses such as:

- management and administration fees
- audit fees
- subscriptions and attending seminars
- ongoing investment related expenses.

Is a super fund carrying on a business?

The investment activities of SMSF trustees must be conducted in accordance with the trustees' duty to preserve and grow the fund for its members. In that context, the investment activities of most SMSFs would not be characterised as activities in carrying on a business (as compared to similar activities conducted by a trading company).

However, the activities of some SMSFs in dealing in shares and other investments may amount to the carrying on of a business having regard to factors such as the scale of the activities and the manner in which they are conducted.

Exclusions

Under the general deduction provision, a SMSF cannot deduct a loss or outgoing to the extent that:

- it is a loss or outgoing of capital, or of a capital nature
- it is a loss or outgoing of a private or domestic nature
- it is incurred in relation to gaining or producing income of the fund that is not assessable income such as exempt current pension income
- the income tax laws prevent the fund from deducting it.

You cannot claim more than one deduction for the same expenditure. If two or more tax provisions allow you deductions for the same expenditure you can deduct only under the most appropriate provision.

Apportionment

General deductions

Where an expense is deductible under the general deduction, the expenditure is deductible only to the extent to which it is incurred in producing the fund's assessable income.

Distinctly identified part

Where the expense is incurred partly in gaining or producing assessable income and partly in gaining or producing non-assessable income such as exempt current pension income, and the fund can identify a distinct and severable part devoted to gaining or producing assessable income, then this is the part that the fund should claim as a deduction under the general deduction provision.

Example - The trustee of the SMSF appoints a property managing company in respect of three investment properties held by the fund. One of those properties is a holiday rental home and is managed by the company's regional office. The holiday rental property is also a segregated current pension asset of the fund and so the income derived from this asset is exempt. The company charges the fund $2,000 for its services but the invoice identifies $500 of that amount as being the costs incurred by the regional office for managing the holiday rental home.

The amount of $500 can be distinctly identified as a cost incurred in gaining the fund's exempt income while the remaining $1,500 can be distinctly identified as a cost incurred in gaining the fund's assessable income. The fund may claim the amount of expenditure which relates to the assessable income, being $1,500, as a deduction.

Estimating an expense

Many expenses cannot be divided into distinct and severable parts in this way. For example, paying an approved SMSF auditor to provide an annual report for the fund is an expense that does not relate in any particular way to either the fund's assessable or non-assessable income.

In such a case, the fund has to estimate, in a fair and reasonable way, how much of that expense was incurred in producing the fund's assessable income.

It is not possible to prescribe a single method for apportioning expenditure of a super fund and Taxation Ruling TR 93/17 provides a number of examples, providing guidance on what the Commissioner may accept as a method producing a fair and reasonable outcome.

Example 1 - The trustee of the SMSF incurs audit expenses of $1,500 for providing the SMSF with a report in accordance with its regulatory obligations. The fund has unsegregated assets and therefore obtains an actuarial certificate each year to determine the exempt current pension income of the fund.

The percentage specified by the actuary in the relevant year is that 70% of the value of fund assets is held to support current pension liabilities. The remaining 30% of the value of fund assets is held to provide for assessable income in the fund.

The trustee decides that this percentage is a fair and reasonable method for apportioning the audit expenses. The expenditure that can be claimed as having been incurred in gaining assessable income is $450 (being $1,500 x 30%).

Example 2 - The trustee of the SMSF incurs audit expenses of $1,500 for providing the SMSF with a report in accordance with its regulatory obligations. The SMSF earned $60,000 in assessable and $100,000 in non-assessable income.

The trustees of the fund have decided that the following method is a fair and reasonable way to apportion these expenses:

- Audit expense x assessable income/total income
- $1,500 x $60,000/$160,000.

This results in an amount of $562 for audit expense that can be claimed as a deduction by the SMSF.

Example 3 - A SMSF has both pension and accumulation members and does not segregate its assets.

The trustees obtain an actuary's certificate to determine the proportion of the fund's income that is exempt current pension income. The actuary certifies that 40% of the fund's income is exempt.

The trustees of a SMSF engage an accounting firm to undertake the administrative functions of the fund. The accounting firm charges a fixed upfront fee of $1,500 per annum for the following services:

- preparation of annual financial statements
- preparation and lodgement of the fund's annual return
- arranging for the annual audit of the fund
- preparing member benefits statements
- preparation of reports on the fund's investments.

The fixed fee of $1,500 is not calculated according to the cost of each particular service. The expense therefore cannot be easily divided into distinct and severable parts.

The trustees decide that it would be fair and reasonable to use the exempt income percentage as certified on the actuary's certificate to determine the proportion of the accountant's fee that is deductible.

This is calculated as follows:

$$\frac{\text{Expense x assessable income \%}}{\$1{,}500 \text{ x } (100\% - 40\%) = \$900}$$

This results in a portion of $900 of the $1,500 fee that can be claimed as a deduction by the SMSF.

Capital versus revenue expenses

An expense that is incurred in establishing or making enduring changes to a super fund's structure or function is capital in nature and is not deductible under the general deduction provision. For example, the costs of establishing a SMSF are capital in nature. An expense incurred in acquiring a capital asset is also usually capital in nature. Refer to the example under trust deed amendments.

On the other hand, an expense that is incurred in making changes to the internal organisation or day to day running of the fund is not considered to be capital in nature provided such changes do not result in an advantage of a lasting character. If a super fund is carrying on a business, it may be entitled to deduct certain capital expenses under the specific deduction provision, section 40-880 of the ITAA 1997. Refer to Is a super fund carrying on a business?

Section 8-1 of the ITAA 1997 does not allow a deduction for expenditure of a capital, private or domestic nature or expenditure incurred in gaining or producing exempt income.

Example - One of the members in a two-member fund with individual trustees dies and a decision is made once the death benefit has been paid from the fund to change the SMSF to a single member fund with a corporate trustee.

In addition to the usual fund expenses incurred in running the fund, the following additional expenses are incurred:

- legal expenses to amend the trust deed to change the fund to a single member fund with corporate trustee – $300
- Australian Securities and Investments Commission (ASIC) fees associated with setting up the corporate trustee.

The SMSF will not be able to claim either of these amounts. The legal expenses of $300 are of a capital nature as they are incurred in making enduring changes to the structure of the fund. ASIC fees incurred in setting up the corporate trustee are also capital in nature and, in any event, are not considered to be expenses incurred by the fund.

CORPORATE VERSUS INDIVIDUAL TRUSTEE

It is obvious that ASIC, the ATO and advisers generally prefer corporate trustees for a SMSF. The following explains the reasons why...

Continuous succession

A company has an indefinite lifespan, allowing succession to control more certain on death or incapacity. Timely action can be taken on death to ensure the Trustee/ Member rules are satisfied. A sole individual Trustee/ Member SMSF – means there is no separation of legal and beneficial ownership and as such SMSF rules do not permit this.

Asset Protection

Companies have limited liability and provide some protection where a party sues the Trustee for damages. If an individual Trustee incurs any liability, their personal assets are also exposed.

Change in members

On admission or cessation of membership, that person becomes, or ceases to be, a director/shareholder of the company. Meaning, the title to all assets remains in the Company's name. When a member joins or leaves a fund, that person must become, or cease to be, an individual Trustee. As trust assets must be held in all Trustees' names, the title to all assets to be transferred to the new Trustees.

Penalties

The administrative penalty regime only applies to a company once for each contravention. A penalty can be imposed on each individual trustee for each contravention. Thus, having two individual trustees can double the administrative penalty that would otherwise apply to a corporate trustee.

Sole member Fund

A SMSF can have one individual as both the sole member and the sole director. A sole member SMSF must still have two individual Trustees.

Estate planning

A company offers greater flexibility for estate planning, as the trustee does not change as a result of the death of a member. The death of a member means unwelcomed administrative work at a time when people are grieving.

EARLY RELEASE OF SUPERANNUATION ON COMPASSIONATE GROUNDS TRANSFERRED TO THE ATO

On 1 July 2018, responsibility for the administration of the early release of superannuation benefits on compassionate grounds was transferred from the Department of Human Services (DHS) to the Australian Taxation Office (ATO).

SUPER AND DIVORCE

Due to recent changes, dividing superannuation has become easier. Super splitting laws treat super as a different type of property which allows separating couples to value their super and split payments between them.

One important development is that the law includes de facto couples (including same sex couples) in this regime.

Depending on how much agreement there is between the parties, couples may:

- Enter into a formal agreement to split the member-spouse's super. A formal written agreement involves certificates confirming both parties have had formal legal advice. Once both agree there is no need to go to court. This becomes a binding document which the super fund trustee must act on; or
- Seek consent orders to split the super; or
- Seek a court order to split the super.

While there is no legal requirement to obtain a valuation of the fund, it is sensible to do so, particularly in the case of defined benefit funds. The court is required to value the super interest of both parties if a court order is sought.

What the agreement must say

The laws state the superannuation agreement must specify:

- The base amount
- The method for calculating the base amount; and
- A percentage that is to apply to all splitable payments made in respect of the base amount.

Generally, only super accrued up to the time of separation is split and percentage shares used for super still in its growth phase (as opposed to the payment phase where amounts can be specified).

Where an agreement specifies a dollar amount, the non-working spouse is generally entitled to that amount adjusted for the performance of the fund.

The laws apply to married, or formerly married couples who had not finalised settlement of their property arrangements by a court order under section 79 of the Family Law Act or an agreement approved by a court under section 87 of that Act before the laws commenced on 28 December 2002, and de facto couples in most states and territories, whose relationship broke down on or after 1 March 2009 (and South Australian de facto couples, where their relationship broke down on or after 1 July 2010).

Points to Note

- You cannot access the super until you reach a condition of release, such as retirement.
- The non-member spouse can specify where they would like their entitlement to be rolled over to.
- You require legal advice and a legally binding agreement for the trustee to be bound by its terms.

The Government now taxes excess concessional contributions at the individual's marginal tax rate, plus an interest charge (recognising that tax on excess concessional contributions is collected later than personal income tax).

The Government has also confirmed that individuals with income greater than $250,000 will be subject to a 30 per cent rate of tax on certain non-excessive concessional contributions rather than the 15 per cent rate.

The imposition of an additional interest charge on excess concessional contributions is to curtail strategies for those on the highest marginal tax rate to deliberately make excess concessional contributions.

Currently, an individual on the 47 per cent marginal tax rate (including Medicare) is subject to the same rate of tax on personal income as excess contributions, but benefits by a timing arbitrage on the later, due to the collection of PAYG income tax compared to the tax of excess concessional contributions. Additional interest charges would appear to remove this benefit.

Ceasing Pensions

A member in receipt of a pension who is feeling 'financially unstable' should consider rolling it back into accumulation mode. This will ensure their super interests are fully protected (subject to the claw back provisions) in the event they become bankrupt.

SELF MANAGED SUPER FUNDS CAN STILL INVEST IN COLLECTIBLES AND PERSONAL USE ASSETS

Self-Managed Superannuation Funds (SMSF) will continue to be allowed to invest in collectibles and personal use assets like artwork or stamps, provided they are held in accordance with tightened legislative standards.

The Government has tightened the rules, so people cannot claim they are, for example, 'collecting' high-end sports cars, paying tax and then actually driving around in those vehicles.

The new rules will ensure these investments do not give rise to a personal benefit for SMSF trustees, but rather are held for the purpose of providing retirement benefits.

SENIOR AUSTRALIANS AND SUPER

From 1 July 2013, the upper age limit for compulsory super was removed.

TAX TIP - ACCESSING TWO CONTRIBUTIONS CAPS IN ONE INCOME YEAR

Here we are dealing with excess contributions.

- This can easily happen given the contributions cap is only $25,000 for the 2020 income year.
- Mistakes are easily made when salary sacrificing a performance bonus at year ends when not taking into account statutory super (9.5%).
- Further those with multiple employers also run into this problem.
- In Interpretative Decision ID 2013/22 the ATO has confirmed that a contribution is counted towards the cap in the year in which it is **allocated**.

Essentially this means a Super Fund that receives an excess contribution for a member in…say June 2020 can defer allocating the contribution to the member up until 28th July 2021. In many instances this will overcome the problem.

Always seek specialist advice before going down this path.

The ATO does require a form to be lodged, which serves to notify it that a member of a SMSF has made a concessional contribution in one financial year (year 1) but the SMSF did not allocate this to the member until the next financial year (year 2)

Most SMSFs use provisions in their trust deeds concerning contribution reserves to enable this strategy, commonly referred to as a "contribution reserving strategy". This is to allow contributions to be recognised for income tax deductibility and other purposes in year 1 while not being counted towards their concessional contributions cap until year 2.

Provided all the associated legal requirements are met, the ATO says this is a valid strategy under the tax and super laws according to the view outline in TD 2013/22.

The form "request to adjust concessional contributions" NAT 7485 may be accessed from the ATO website.

This from should be lodged before, or at the same time, as both the fund's annual return and the member's own individual tax return. By following this recommendation members will generally avoid needing to deal with incorrect assessments.

The trustees will need to keep records to support statements on this form. These include:

- A resolution by trustees in year 1 in accordance with the SMSF's governing rules not to allocate the contribution when it is made but to accept it into a reserve.
- Evidence of receipt of the contribution by the SMSF.
- A resolution by trustees to allocate the contribution from the reserve in year 2.
- Documentation in relation to any deductible personal contributions (notices and acknowledgements).
- This form does not apply to non-concessional contributions.

THE WITHDRAWAL AND RE-CONTRIBUTION STRATEGY IS STILL WORTHWHILE

This strategy aims to increase the tax-free component of a superannuation sum by withdrawing the taxable component, then re-contributing this amount back into the Fund as a non-concessional contribution, and in so doing increase the tax-free component of the members' funds.

This was very popular prior to 30 June 2007 when the laws changed to make a pension paid from a super fund generally tax free to those aged over 60 years.

However, this strategy is still very important for those less than 60 as they will still pay some tax on their pension withdrawals or on lump sums above the thresholds (currently $180,000) on their taxable component.

There is also an estate planning issue for those over 60 given the ultimate recipient of a lump sum benefit is often a non-dependant, such as an adult child, for income tax purposes.

This is because non-dependants generally pay tax on the taxable component of a lump sum death benefit.

Also, potential future legislative changes cannot be ignored – it is always a good defensive strategy for superannuation interests to be "non- taxable".

CONTRIBUTION SPLITTING

The role of contribution splitting

Up to 1.7.2017, contribution splitting to a spouse had assumed less importance in superannuation planning, could be used to:

- Even up the superannuation balances of two members of couple; and
- Allow superannuation to be concentrated in the name of someone who will reach preservation age first (to maximise access) or reach age pension age last (to minimise assets tested assets and maximise age pension entitlements).

The fact that only concessional contributions can be split in this way – and these are limited to $25,000 pa – meant spouse contribution splitting could only have modest impact.

However, the changes to carry forward unused concessional contributions for up to 5 years for use in a future year, means that potentially very large amounts of concessional contributions will be contributed from time to time. It is time to re-visit the contribution splitting rules.

Basic Conditions for spouse contribution splitting

It is only concessional contributions that may be split.

While reserve allocations may count towards the concessional contributions cap, they cannot be split unless they have been used by an employer to meet SG obligations.

Note this does not include a transfer from any other fund [SIS Reg 6.41(2)(a)] (including a foreign superannuation fund).

Where the contributions have been made personally, they can only be split after the relevant notices have been exchanged between the trustee and contributing member as, until that occurs, the contributions are regarded as non-concessional contributions.

Contributions must **not** be:

- Part of a defined benefit (but could be part of an accumulation account account-based pension, transition to retirement income steam); or
- Part of an interest subject to a family law splitting order or flag.

The lesser of the following may be split:

- 85% of the concessional contributions for the year; and
- The concessional contributions cap (including any additional amounts available because of the carry forward rules).

The recipient must be the spouse (known as the "receiving spouse"). Normal definitions apply – includes same sex, de facto etc.

At the time the application to split is made. The receiving spouse:

- Must be under 65; or
- If over preservation age, must not have met the retirement definition at the time of the application to split contributions, (could be disabled, suffering from a terminal medical condition etc).

Aside from the usual contribution acceptance rules, there are no additional requirements for the member by whom or for who the contributions were made. The above apply to the receiving spouse only.

Application to split contributions can only be made:

- During the financial year that immediately follows the year in which the contributions were received by the fund (e.g. an application can be made any time during 2020/21 for a contribution received by the fund in 2019/20); or
- During the financial year in which the contribution is made if the member's entire benefit is to be rolled over, transferred, or cashed in that year.

The transfer of a contribution splitting amount from the contributing member's account to the receiving spouse's superannuation account is treated as consisting entirely of a taxable component from the contributing member's account. This means that:

- The normal proportioning rule for benefits from an accumulation account do not apply
- It will not give rise to any tax-free component for the receiving spouse; and
- If the split amount comes from a pension account held by the contributing member, the tax-free proportion of that pension account is not re-calculated after the split.

The contribution splitting amount must be preserved in the name of the receiving spouse even if the contributing spouse had met a full condition of release. It will become unrestricted non-preserved when the receiving spouse meets a relevant condition of release.

THE RENEWED APPEAL OF PROPERTY

For many SMSF trustees still shell shocked from the last share market meltdown, property is looking like a far more attractive prospect than shares – particularly because it is possible to borrow within a SMSF.

These borrowing rules potentially lift the biggest obstacle on SMSFs investing in property; the lack of sufficient cash to buy a property outright.

Most people buying investment property do so to fund their retirement. However, only a small minority buy property through their SMSF.

On average, a property held within super for 20 years will be 35 per cent more profitable than one held in an individual's own name. That is even though the set-up costs are higher, the tax benefits of margin lending are reduced – at least in the first two years – and annual interest costs are generally 1 percentage point higher for SMSF loans.

Those on highest marginal tax must earn $1.96 for every dollar of net profit they receive, whereas inside a SMSF only $1.18 must be earned.

Properties held in a SMSF attract just 15 per cent tax on rental income, instead of being taxed at the individual's marginal tax rate. If the property is held until the pension phase it can be sold with no capital gains tax incurred.

Although properties sold on their depreciation benefits may be less profitable in the short term because of the lower value of the tax deductions within the low tax environment of the SMSF, people in their 40's to 50's may consider using their SMSF to buy property to build strong and consistent growth in a tax effective environment. These matters need to be carefully considered and discussed with a reputable financial adviser.

However, a trustee should always consider the superannuation fund's investment strategy.

Subsection 52(2) (f) of the SIS Act requires a superannuation fund trustee to formulate an investment strategy:

(f) To formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the entity including, but not limited to, the following:

i. The risk involved in making, holding, and realising, and the likely return from the entity's investments having regard to its objectives and its expected cash flow requirements.

ii. The composition of the entity's investments as a whole, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification.

iii. The liquidity of the entity's investments having regard to its expected cash flow requirements.

iv. The ability of the entity to discharge the existing and prospective liabilities.

The above considerations are incorporated in the 'operating standards' contained in Regulation 4.09 of the SIS Regulations.

Normally the above requirements are contained in SMSF annual trustee minutes or embedded in the notes to the annual financial statements and therein the problem lies. Too often the investment strategy is viewed as only a compliance afterthought at the end of the financial year and after the investment decisions have been taken.

Although technically the letter of the law may have been adhered to, it should be noted the above investment standards are there to protect the fund members and their retirement savings.

Of course, in SMSF's the trustees and the fund members are essentially one and the same. However, there is a real danger in a "get rich quick" mentality.

Really all SMSF Trustees should consider subsection 52(2)f of the SIS Act each time they make an investment decision and prepare a minute outlining the investment decision and how it complies with 52(2)f.

It is suggested this is a form of self-discipline which if taken in the recent past by SMSF trustees could have saved them from some losses.

PERSONAL DEBT AND SUPERANNUATION

In general superannuation cannot be accessed until genuine retirement. The ATO have recently issued a number of warnings about illegal early access schemes and has successfully prosecuted several trustees.

Recently a SMSF lost its complying status as a result of using superannuation monies to support a related business. The Administrative Appeals Tribunal upheld the ATO's decision to make a fund non-complying. The husband and wife trustees had difficulties in getting funding for their business and instead arranged for their SMSF to make loans to support the business. The loans were in breach of the 5 per cent in-house asset rule, which was reported by the fund's auditor. Although undertakings were made to repay the loans, this did not occur for a further two years.

There are, however, three situations where clients with debt difficulties may legitimately be able to use their superannuation prior to retirement:

1. Unrestricted non-preserved (UNP) monies

2. Severe financial hardship

3. Compassionate grounds

While legislation permits release of benefits under these conditions, not all superannuation funds will permit releases on all these conditions. Most public offer funds will permit release of UNP monies on groups specified by the Australian Prudential Regulation Authority (APRA). However, a significant number of funds do not allow severe financial hardship payments. The availability of these benefits in SMSFs will depend upon the terms of the fund's trust deed.

Unrestricted Non-Preserved Monies

It is worth reviewing clients' account balances to determine if they have any UNP monies. These may have arisen from voluntary contributions made prior to 1 July 1999, or from superannuation benefits rolled over from another fund where the rolled over amount has previously satisfied a condition of release.

Severe Financial Hardship

For clients aged below 55 years who wish to access their benefits on the grounds of severe financial hardship, there are two tests that must be met before a trustee is able to release a benefit. The client must:

- Be in receipt of a Commonwealth income support payment, and have been so continuously for the past 26 weeks (the objective test); and
- Satisfy the trustee that they are unable to meet reasonable and immediate family living expenses (the subjective test).

Compassionate Grounds

Preserved benefits and restricted non-preserved benefits may be released on specified compassionate grounds by the ATO where a client does not have a financial capacity to meet:

- Medical expenses and associated costs in difficult circumstances for a fund member or family member
- To prevent foreclosure of a mortgage of the member's principal place of residence defined in the legislation as an amount in each 12-month period that does not exceed an amount equal to the sum of:

  (i) Three months' repayments; and

  (ii) 12 months' interest on the outstanding balance of the loan.

To apply to the ATO, it is necessary to complete the relevant form available from the ATO website and to provide a written statement from the mortgagee that:

(a) Payment of an amount is overdue; and

(b) If the person fails to pay the amount, the mortgagee will:

  (i) Foreclose the mortgage on the person's principal place of residence or

  (ii) Exercise its express, or statutory, power of sale over the persons' principal place of residence.

The statement must also include information to calculate the amount of three months' repayments and 12 months' interest.

The temporary COVID-19 conditions for early release, only available in 2020 have been well documented.

DEATH BENEFITS

- All lump sum death benefits paid to dependants are tax free.
- Lump sums paid to non-dependants will be taxed at 15% for taxable component – taxed element and 30% for the untaxed element. The tax-free component is always tax free.
- Death Benefits can be paid to dependants in the form of lump sum and/or pension. Whereas non-dependants can only receive death benefits in lump sum.
- Special rules will apply to the taxation of pension death benefits paid to dependants depending upon the age of the deceased and beneficiary. If the deceased or beneficiary is age 60 or over, the pension death benefits with taxable component taxed element is tax free and the untaxed element is taxed at marginal tax rate less 10% tax offset. Where both the deceased and the beneficiary is under 60, the pension death benefits with taxable component – taxed element is taxed at marginal tax rate less 15% tax offset and the untaxed element is taxed at marginal tax rate without offset.

Payments Prior to Death

Consider a person over 60 who has:

- Assets in super and has met a condition of release
- Has no dependants
- Is terminally ill.

In this instance consideration should be given to getting assets out of the super fund to avoid the taxes outlined above.

THE SIMPLEST SOLUTION IS TO LEAVE YOUR SUPER TO YOUR ESTATE AND PUT A SUPERANNUATION TESTAMENTARY TRUST IN YOUR WILL

Whether a person is a 'dependent' for tax purposes is a question of fact. Every case is judged on the facts. However, from experience, we know that you can pass on your money tax free by:

- Speaking to your accountant and financial planner. Make sure your super gets into your Will.
- Putting a Superannuation Testamentary Trust into your Will. This protects your super from the Super Death Tax.
- Having your Tax Dependents in your Superannuation Testamentary Trust to receive the capital amount. If you are worth under $10M, then paying your grandchild's private school fees of $20,000 every second year would generally make that grandchild your dependent. The trust capital does not need to be paid out for 80 years from the date of your death. In the meantime, your children direct the income from the superannuation to themselves. If there is any money left after 80 years, it goes to your grandchild (or their family if dead).
- In summary, the Tax Dependent is decided at the moment of your death. Let us say it is one of your grandchildren. In 80 years, that grandchild gets the capital. In the meantime, the income is not subject to the Superannuation Death Tax. The income is distributed as per your children's direction as controllers of the Superannuation Testamentary Trust. Only the capital left in 80 years from the date of your death goes to that grandchild.

BASIC ESTATE PLANNING NEEDS

- Do you have a valid Will that is regularly reviewed?
- Have you considered a Power of Attorney where a person grants another person the power to make certain decisions on their behalf such as to buy or sell properties?
- Consideration should be given to an Enduring Power of Attorney that lets someone act on your behalf if you lose the ability to make decisions for yourself. If you don't have one in place, in the unfortunate event of not having the "capacity" to maintain your affairs, control of your assets may pass to a government body such as The Office of the Protective Commissioner.
- Binding nominations are effective choices as to which beneficiaries receive your superannuation entitlements and in what proportions. Note if these nominations are not kept up to date, you could find your super money is distributed in the way you had not preferred.

You should have a financial plan that considers tax effectiveness. The rules that apply to different assets, such as the tax treatment of a family home compared to shares or investment property must be considered.

SALARY SACRIFICE – SUPERANNUATION CONTRIBUTION

Here we acknowledge the change in legislation from 1.7.2017 which allows individuals a personal tax deduction for superannuation contributions up to $25,000 per annum less any employer contributions.

Salary sacrifice still remains valid given its enforced savings nature throughout the year towards the end of a financial year, many people want to contribute to super but simply do not have any funds available.

The Consequences of Salary Sacrifice Contributions Are as Follows:

- The salary sacrifice contribution is subject to 15% contribution tax.
- The salary sacrifice contributions and earnings on them are subject to preservation, which means the earliest most individuals (born prior to 1 July 1960) can access them is permanent retirement from the workforce at age 55. There is a "phase in" (1960–1964) regarding preservation, meaning a person born after 30 June 1964, has a preservation age of 60.
- If the ultimate benefit is taken as an income stream and the recipient is age 60 or more the income stream is tax free.
- Employers may restrict the amount that can be salary sacrificed up to the age-based tax deduction limits for superannuation contributions.

Salary sacrifice contributions **may be inappropriate** in the following situations:

- Where individuals require the extra cash flow to meet their living expenses (including the repayment of non-tax-deductible debt).
- Where individuals have planned capital expenditure such as home renovations in the immediate future (say within 18 months) and require the cash flow to meet that expenditure. It does not usually make sense to pay more interest than necessary on a non-tax-deductible bank loan.
- Individuals on the lowest marginal rate of tax.

Salary sacrifice contributions **are most appropriate** for individuals who are on the highest marginal tax rate.

Salary sacrifice contributions **may also be appropriate** for individuals who do not fall into either of the above categories, but it will depend on the particular circumstances.

The ongoing advantage of salary sacrifice contributions is that the money will be invested in the tax effective superannuation environment where investment earnings on the contributions are taxed at 15%. For individuals on the higher marginal rates of tax, this will generally be more tax effective than investing in their own name where the investment earnings will be taxed at more than 15%.

Structure of Salary Sacrifice Arrangements

Salary sacrifice arrangements that are not properly structured may be subject to ATO scrutiny and there is a danger these arrangements would be deemed to constitute tax avoidance. For instance, an invalid salary sacrifice arrangement would be one where the gross salary is paid to the employee directly and the employee redirects that gross salary into the superannuation fund.

Taxation Ruling TR 2001/10 issued by the ATO outlines the Commissioner's views on the consequences for employees and employers using salary sacrifice arrangements. The ATO's view is that a valid arrangement is one where an employee forgoes future or prospective entitlements to salary or wages (providing all relevant administrative procedures are adhered to). Conversely, retrospective salary arrangements are not valid and such payments would be considered to be income of the employee.

A retrospective salary sacrifice arrangement involves an employee directing a present entitlement to salary or wages be paid in a form other than salary or wages. Note than an employee is considered to have a present entitlement to salary or wages for services performed over a period even if the employee is not paid until a later period. For instance, an employee who will be paid on 30 August cannot on 25 August stipulate that their salary be salary sacrificed. This is because services have already been rendered for the period and the fact the salary has not yet been paid is irrelevant. The ruling should be consulted for those wanting more details.

Salary sacrifice arrangements that follow the guidelines below are likely to be considered valid and in accordance with the Tax Office's approval:

- The employer initiates the arrangement in conjunction with the employee's consent
- The employer documents the arrangement as an offer
- The employee signs an acknowledgement agreeing to accept the offer of the superannuation and salary arrangement made by the employer; and
- Arrangements are then put in place on a prospective basis.

MOVING ASSETS INTO SUPER PRE-RETIREMENT

There are many good reasons for setting up your own self-managed super fund (SMSF) or investing via a public offer discretionary master trust. Broad choices of managed and direct investments are available, and you can decide when assets are bought and sold.

Another key benefit is that you can usually transfer the ownership of certain assets directly into your fund. By making what is known as 'in specie' super contribution, you can take advantage of the low tax rate on investment earnings and make your retirement savings work harder.

If you own an asset outside super, you pay tax on the investment earnings at your marginal rate (which could be as high as 47%). However, if you transfer the ownership of certain assets into super, the investment earnings will only be taxed at a maximum rate of 15% - a tax saving of up to 32.5% pa.

Admittedly, the change in ownership of the asset may mean that capital gains tax (CGT) is payable. Nevertheless, the long-term benefits of a lower tax rate on investment earnings may more than compensate for any potential CGT liability.

You may also be able to minimise your CGT liability if you have any accumulated capital losses or you are eligible to claim your super contributions as a tax-deduction.

ACCESSING SUPERANNUATION BEFORE RETIREMENT

From 1 July 2005, a person who has reached their preservation age has been able to access their superannuation benefits in the form of a non-commutable income stream without having to retire or leave their current employment. Also, an account-based pension taken under these provisions can be stopped at any time and restarted at a later date. These measures are designed to cater for more flexible working arrangements towards the end of a person's working life. This is an investment product that provides the investor with an income stream without the facility to cash out lump sums.

The following case study shows the benefits of working part-time, as opposed to entering full time retirement.

Case Study - Paul is a single 58-year-old. He currently has a full-time position earning $50,000 gross per year. However, for health reasons he cannot work full-time, but he would like to continue to only work 2 – 3 days per week. He understands that the income from part-time work of say $25,000 per year (before tax) is insufficient to meet his income needs of $35,000 per annum. Paul currently has $350,000 in super and it is all preserved.

As Paul is over 55 years of age, he has the flexibility to semi-retire and still meets his income needs. The longer he is able to continue to earn an income from employment without drawing down on his investments, the better his long-term retirement position can be.

Paul could continue to work part-time and receive an income of $25,000 per annum before tax. He could invest $350,000 from his super into a non-commutable account-based pension and draw the minimum income of $14,000 in the first year at age 58. Although he cannot currently make lump sum withdrawals from this pension, he will be able to access the capital when he retires or turns 65.

ACCESSING SUPERANNUATION AFTER RETIREMENT

"Preservation age" is the age at which a super fund member can gain access to benefits that have accumulated in a superannuation fund or retirement savings account, provided that the member has permanently retired from the workforce. Depending on a taxpayer's date of birth, this age is between 55 and 60.

Since 1 July 2005, the Transition to Retirement rules has proven popular as a means of swapping a current employment income stream with a more tax effective pension. For taxpayers winding down their employment, the transitional pension enables a "top up" to their income levels.

An added advantage is that members are able to access the lower tax rates in a super fund (earnings on segregated assets supporting current pension liabilities) earlier in time than waiting for full retirement.

This strategy should be considered by anyone who is not otherwise able to access the maximum deductible contribution each year. Here we are dealing with someone with insufficient income to support their living expenses and the maximum level of contribution. The recommended course of action is to salary sacrifice employment income up to the maximum contribution limit, thus obtaining the maximum benefits of superannuation, while topping up their living requirements with a tax effective income stream from the fund.

Note that as discussed above, the tax-exempt status on income assets (within the SF) financing the transition to retirement pension was removed from 1 July 2017. The normal earnings rate of 15% will apply.

PURCHASE LIFE AND TPD INSURANCE TAX-EFFECTIVELY

Many people take out insurance via a personal policy in their own name. However, if you are able to make salary sacrifice contributions, you are eligible for a Government co-contribution, you have a low-income spouse or you are self-employed, you should consider the benefits of insuring through a super fund.

By holding life and total and permanent disability (TPD) insurance through super, you may be able to reduce the effective cost of your premiums – in some cases by up to 47%. When you take into account the potential tax savings, it is also possible to purchase a higher level of cover, when compared to insuring outside super.

The same tax deductions and offsets that apply when investing in super also apply to insurance purchased through a super fund.

- **If you are eligible to make salary sacrifice contributions, you may be able to purchase insurance through a sup**er fund with pre-tax dollars.
- **If you are employed, earn less than $54,837 p/a and make personal after-tax (non-concessional) super contributions,** you may be eligible to receive a Government co-contribution that could help you cover the cost of insurance.
- **If you make super contributions on behalf of a low-income spouse,** you may be able to claim a tax offset of up to $540 pa that could be put towards insurance premiums for you or your spouse.

These tax outcomes can make it significantly cheaper to insure through a super fund. All you need to do is nominate how your contributions should be allocated between your super investments and your insurance policy.

BINDING NOMINATIONS AND MARSELLA V WAREHAM (NO2) [2019] VSC 65

If there is no binding nomination and a SMSF member dies, the remaining trustees decide whether and to what extent the deceased's super goes to which SIS dependant or failing this the estate. Unless there is a binding death benefit nomination (BDBN), the trustees usually have an absolute and unfettered direction.

Sometimes trustees abuse this discretion for their own benefit disregarding other SIS dependants. Given there has not been much case law on this topic, the Marsella v Wareham case provides some guidance.

The Marsella v Wareham case involves a second spouse and children from a first marriage. Riccardo Marsella and Helen Swanson had married in 1984, when Helen's 2 children from her previous marriage – Caroline Wareham and Charles Swanson – were 12 and 14 years old, respectively.

Helen had a sole-member SMSF with her daughter Caroline as the second individual trustee and had nominated her grandchildren in a binding death benefit nomination (BDBN). However, this nomination had expired and was invalid given grandchildren do not qualify as SIS dependants.

Helen passed away on 27.4.2016 with around $450,000 in super.

Caroline, as the surviving trustee, appointed her husband Martin as the second trustee, paid the death benefit to herself and then took steps to wind up the fund.

Caroline's brother and her stepfather Riccardo received nothing. Riccardo took the matter to court. The court had to determine whether Caroline acted within her legal obligations as a trustee and decide how much discretion the surviving trustee has and whether they can simply ignore other SIS dependants.

Until the answer had been, "Probably Yes" with the Courts deciding to question how a trustee exercised their discretion. In past cases few plaintiffs questioned the exercise of discretion itself instead choosing to focus on the appointment of the trustee or whether a death benefit nomination was binding or even valid at all.

For this reason, Caroline's solicitors asserted in a letter to Riccardo's solicitors:

"You will know that a discretionary trustee is not required to give reasons for any decision and our client does not do so. You have asserted no foundation for an improper exercise of discretion....The trustee is permitted to exercise their discretion, to any eligible object, which includes herself. Our client owes no duty to the estate or other beneficiaries ...".

However, this case changed this long-held contention. This is the first case where a plaintiff successfully attacked the exercise of discretion itself.

A Justice McMillan noted that the trustee, when exercising discretionary power, has

"a duty to exercise the power in good faith upon real and genuine consideration and for the purposes for which the power was conferred".

The Court found that the trustees had a duty to consider Mr Marsella rejecting the assertion that he had "no interest" in the fund and found that being a "potential object of the exercise of discretion" i.e. a potential recipient of a death benefit, gave Mr Marsella an interest in the fund.

"While it is not the Court's role to consider the fairness or reasonableness of the outcome of the exercise of discretion and usurp the role of the trustee, the outcome itself, particularly where the result is grotesquely unreasonable, may form evidence that the discretion was never properly exercised, or was exercised in bad faith."

The Court came to *"the conclusion that there was a lack of real and genuine consideration"*.

The Court removed Caroline and her husband as trustees, overturned the fund's decision to pay the entire death benefit to Caroline and ordered the appointment of a new trustee.

The takeout here is that SMSF trustees no longer have a wild card for the payout of death benefits when there is no binding nomination.

One thing will not change - the courts will not consider whether a trustee's decision was correct or fair in determining whether a particular person should have received more or less. However, from now on the Court will consider whether the process taken to reach that decision was consistent with the trustee's legal obligation to act in good faith.

It is likely a trustee's discretion will move closer to the rules for family provision claim meaning trustees will need to act as if they were a judge in a family provision claim, considering the relative merits of each potential beneficiary – the deceased's children and spouse – including their financial circumstances.

Where Will You Super Go When You Die?

When it comes to allocating superannuation benefits from a deceased estate, your Will won't always provide the final word. Setting up a valid binding nomination can ensure you determine who receives your superannuation.

Many people assume their Will controls how their estate will be divided when they die. While this is true for assets like property and cash, the same rules do not necessarily apply when it comes to deciding what happens to your superannuation.

Special rules control how super fund Trustees are allowed to distribute superannuation from a deceased estate, and how that money will be taxed.

Knowing how these rules work, including the use of binding and non-binding nominations, can help make things easier for those who will be financially affected by your death.

When you join a super fund, you will be asked to nominate who you want your death benefit paid to, either as a 'non-binding' or 'binding' nomination.

Non-Binding Nominations Give the Trustee Final Say

A non-binding nomination is a preferred nomination only. The Trustee will take into consideration any nomination you make, but a non-binding nomination gives the Trustee final discretion in deciding who will receive your superannuation benefit when you die.

Binding Nominations Give the Final Say

A binding nomination allows you to decide which of your dependents receive your benefit when you die, and how much of the benefit they receive. Binding nominations ensure you decide how your superannuation is distributed rather than the Trustee. The nomination requires two witnesses' signatures and is only valid for three years from the date it is made. For many funds, a binding nomination will revert to being non-binding after a three-year period if the nomination is not confirmed and no new nomination is made.

Ensuring Your Binding Nomination Is Valid

To ensure your binding nomination meets the requirements of the Trustee, you should:

- Only nominate dependents or a Legal Personal Representative as beneficiaries
- Formerly you had to review and update your nominations every three years.

However, ...

Tips on How to Make Allocation of Your Superannuation Easier

It only takes a few simple steps to make things easier for everyone if you are a member of a super fund when you die:

1. Nominate who you want to receive your death benefit.
2. Keep your nomination up to date, especially if your wishes or personal situation changes (for example, you re-marry) for binding nominations. This can stop people from arguing that your nomination is no longer useful or relevant.
3. Let your fund know if you have several dependants. You can explain your wishes for each of them, which is far more helpful than giving your fund no guidance at all.
4. Explain your wishes to your dependants, to help prevent any disputes after you die.
5. Talk matters over with people who may need to prove their financial dependence on you. It can help to give them easy access to relevant financial records or written agreements about the support you were giving them in case they need to prove their claim.
6. Renew your binding nominations every three years.

Saving on Capital Gains Tax in a SMSF

Be aware of the potential to save on CGT by realising capital gains after your SMSF starts a pension, rather than while still in the accumulation phase.

All super funds pay tax on their investment earnings at a concessional rate of 15 per cent. Like individual investors, they are entitled to a CGT discount if their investments are held for 12 months or more. For Super funds, the discount means they are only taxed on two-thirds of any realised capital gains, which translates into an effective CGT rate of 10 per cent. However, pension funds pay no tax at all on their earnings. So, if you defer an asset disposal until you're in the pension phase, your capital gain is tax-free. For the many SMSFs which buy and hold assets for long periods, that can translate into significant savings.

If you do not have a SMSF it is worth noting a number of 'wrap'-style super accounts can offer a tax-free transition from super savings to pension. This is because these 'wrap' style arrangements attribute the savings to individual members rather than pooling them together.

PROPERTY DEVELOPMENTS IN SMSFs

Advisors often field calls from SMSF Trustees seeking to invest in property to make a short term and more substantial gain than a passive investor.

SMSF trustees may increase the value of their property by repairs, improvements and development undertaken by the members or related parties themselves. However, it is crucial that every property investment and related party activity must be carefully documented and managed.

However, it should be noted a SMSF should generally not acquire any assets such as materials or property from fund members or associates.

Section 66(1) of the SIS Act stipulates a SMSF trustee must not acquire assets from a member or related party of the fund unless the property is business real property.

It could be an issue if a member or related party pays for goods and materials used in the improvement or construction of a property.

Under the "doctrine of fixtures", if a fund member affixes something to a SMSF's land, that thing becomes part of the land.

The ATO has confirmed where the materials are "not insignificant" in value and function; the materials will be considered an acquisition by a superannuation fund trustee (SMSFR 2010/1 [19]).

This could result in a contravention of section 66 of the SIS Act with substantial penalties.

The SMSF trustees should acquire required materials directly from an unrelated supplier and pay for them from the SMSF's own bank account.

Alternatively, the materials could be acquired by the member or related party via an agency or bare trust arrangement that recognises the SMSF trustee as the party acquiring the materials.

It is possible for a SMSF to authorise a related party builder to operate a special bank account under an agency agreement or bare trust to acquire materials. Specialist advice should be obtained in structuring such an arrangement.

Arms-length requirements

A SMSF should deal with other parties on arms-length terms. This rule requires parties that are not at arm's-length to make sure their dealings are.

Consider whether a prudent, arms-length person, acting with due regard to his or her own commercial interests have done it (APRA v Derstepanian (2005)).

It is easy to forget when related parties are dealing with a SMSF; the fund must avoid any contraventions and document transactions with related parties with sufficient supporting evidence reflecting arms-length terms. This is done by obtaining quotes from third parties and gathering suitable evidence.

On 15 December 2014 the ATO finally published its formal view in ATO IDs 2014/39 and 2014/40 on interest-free (0%) or low rate loans to self-managed superannuation funds (SMSFs) from related parties for limited recourse borrowing arrangements (LRBAs) and whether that gives rise to non-arm's length income in the SMSF.

The ATO considers the impact of other non-commercial terms, and the risk of those loans giving rise to non-arm's length income as well.

Exercise caution in this area and seek specialist advice.

This is thrown into sharper focus given the announcements regarding arm's length terms in the May 2017 Budget.

Partial Considerations

There are also a number of practical hurdles that need to be satisfied before a SMSF undertakes property development (even if it is not a business). Every document including contracts, specifications and resolutions must be reviewed to ensure there is no contravention of any superannuation law.

Ensure the SMSF is authorised to undertake a property investment or development, especially if it is likely to constitute a business it is possible the SMSF deed and investment strategy may need to be revised.

Property development involves significant legal and financial risk. Cost overruns are not uncommon with renovation, building and construction projects.

It is essential the cash flow and the liquidity of a SMSF can manage these risks, which may result in large sums of additional money being required to complete a development.

Limited recourse borrowing SMSFs are prohibited from borrowing money to finance improvements or develop activity. This form of borrowing only allows borrowing for an acquisition and certain repairs.

Property development can also give rise to other "general" legal risks such as tradesman suffering injury.

It is recommended all SMSFs should have a sole-purpose corporate trustee, especially those undertaking any property investment.

Charge over assets

A SMSF must generally not give a charge over a fund asset. Many building contracts, however, provide for a charge over the land and property being worked on.

SMSFs should thoroughly inspect each relevant document, notably standard building contracts and take care to exclude any mortgage, lien, or other encumbrance.

Trustee remuneration

Note a SMSF trustee must not receive remuneration for services performed in their role as trustee (section 17A of the act). One must consider when should a trustee's services cease?

It is considered that building and construction would not fall within the ambit of a typical trustee service. Thus, this provides scope for payment.

However since 2012, a SMSF has been allowed to provide remuneration where the trustee or a director of a corporate trustee provides services to a fund and is remunerated, provided the trustee or director has the requisite qualifications and licence, carries on a business or provides the same services to the public generally and charges an arms-length rate for their services (section 17B of SISA).

Once again be certain you meet all the terms and conditions.

Structures

A number of structures can be used for property development by a SMSF.

SMSF solely undertakes the development

Here the SMSF buys/owns the property and undertakes the development itself. Subject to the usual limits, additional contributions can be used to top up any extra funding that may be required.

One risk with this structure is that borrowing is prohibited unless it meets the strict requirements of sections 67A and 67B of the act. Note that borrowing to fund improvements is expressly prohibited.

Joint Ventures

A SMSF could consider a joint venture with a builder to develop land owned by a SMSF and then share the output.

One scenario would be the SMSF purchases vacant land and then under the terms of joint venture arrangement a builder builds townhouses on that land. Upon completion by both the SMSF and builder share the output.

The main advantage for SMSFs is they can use equity beyond that in the SMSF. This overcomes liquidity issues as the builder pays for the costs of developing the land.

As always, the SMSF must consider contraventions of SISA including the arms-length test and related party dealings if the builder is a related party.

Intermediary

A SMSF may invest in units of a unit trust (geared), which will buy and develop the property. This structure allows multiple investors (including multiple SMSFs) to purchase property.

Note, if the unit trust is not a related trust then the trustee of the unit trust can borrow to fund any shortfalls during construction when developing the property.

The trust itself is the one developing the property and therefore legal risks associated with the development are quarantined at the unit trust level.

Development Agreement

It is possible for a SMSF with landholdings to enter a development agreement with a related or independent third party.

These are similar to unincorporated joint ventures and are used to develop property where the landowner does not have the necessary cash resources – consider a farmer and encroaching suburbia.

Here the landowner enters an agreement with a developer. The landowner retains full legal and beneficial ownership of the land at all times during the development. The developer agrees to fully fund the development and only be remunerated from the profits generated from the eventual sale of the completed development.

The main benefits of such a transaction from the landowner's viewpoint are that the landowner receives funding and expertise and will only be liable to pay a commission if the transaction is successful.

Further, from the developer's perspective, the agreement can also bring with it some positives. For instance, entering such an agreement to develop a property will save the developer from paying for the upfront cost of the land and for any stamp duty and related transaction costs on the "acquisition" of the property.

This is because the landowner retains ownership of the property at all times until a sale is ultimately consummated with an end user of a particular lot. Further land tax savings can also result.

The above is not an exhaustive analysis and SMSF trustees need to follow to letter of the law and take specialist advice.

CONCERNS FROM ATO ON PROPERTY DEVELOPMENT AND SMSFS

In SMSFRB 2020/1 the ATO notes an increase in the number of trustees entering into arrangements involving buying and then developing property (either with related or unrelated parties) that is subsequently sold or leased.

SMSFRB 2020/1 indicates that these arrangements must be carefully approached to ensure compliance with SISA and SIS regulations. For example, could investments of this sort be viewed as having a collateral purpose (that is, not within the sole purpose test), or if it crosses a line regarding the in-house asset's rules.

The ATO has concerns where the investment activity involves joint venture arrangements, partnerships or investments through an ungeared related unit trust or company.

The nature of property development can sometimes allow, and structures obscure income being inappropriately diverted into the concessionally treated SMSF. This may be in manner contrary to proper retirement outcomes.

Issues trustees need to be aware of that could affect the compliance status of their SMSF, it says, such as ensuring proper arm's length dealings, include but are not limited to:

- the purchase of land or other assets
- the value of services provided
- the terms (including the use of personal or related party guarantees) of any borrowing arrangements of the SMSF or other entities involved in the development, and
- the return on investment and income or capital entitlements.

The ATO is taking an active interest in property developments undertaken by SMSFs. Manipulation of the transfer balance account by deliberately undervaluing interests in a development is another concern when a fund enters retirement phase, and the asset would count towards the cap.

Any Trustees contemplating undertaking property development in a SMSF should carefully review SMSFRB 2020/1 which has listed several areas that a trustee's needs to be aware of. The ATO has published a table of these issues (with links to the appropriate paragraph number within the SMSFRB.

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GUIDANCE FOR SMSFs ON FRACTIONAL PROPERTY INVESTMENT

In November 2019, the ATO published guidance, confirming their approach to the sole purpose test for fractional property investment products, such as the DomaCom Fund that was the subject of the Full Federal Court decision in Aussiegolfa Pty Ltd (Trustee) v Commissioner of Taxation [2018] FCAFC 122.

As indicated in their Decision Impact Statement on the case, Self-Managed Super Fund (SMSF) trustees could potentially contravene the sole purpose test by investing in a Sub-Fund of the DomaCom Fund if the facts and circumstances indicate that the SMSF was maintained for the collateral purpose of providing accommodation to a related party. This is consistent with long-standing views held by the ATO as outlined in SMSF Ruling 2008/2.

To address this, DomaCom Ltd (DomaCom) have updated their product requirements to include a 'Sole Purpose Test Declaration' and made it available to their SMSF trustee investors.

By signing this declaration, the trustee undertakes to avoid behaviour that would give the ATO concern relating to contravention of the sole purpose test.

The ATO will not apply compliance resources to scrutinise the sole purpose test where a trustee investing in DomaCom's fund signs this declaration, and there is no evidence that their actions contradict it.

The ATO welcome others offering similar fractional investment products who are considering the sole purpose test implications of their product to talk with them to explore a similar approach. This supports their continued commitment to provide practical and administrative certainty to SMSF trustees.

GOVERNMENT PASSES LEGISLATION TO ALLOW AUSTRALIANS TO CHOOSE THEIR SUPERANNUATION FUND

Legislation giving Australians the power to choose their own superannuation fund, instead of being forced into a fund because of enterprise bargaining agreements, passed the Senate in August 2020.

The Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 will allow around 800,000 Australians to make choices about where their hard-earned retirement savings are invested, representing around 40 per cent of all employees covered by a current enterprise agreement.

The Bill addresses the findings of the Financial System Inquiry and the Productivity Commission Inquiry into the efficiency and competitiveness of the superannuation system which found that this reform was 'much needed' and that denying choice of fund can discourage member engagement and lead to them paying higher fees.

This reform is also supported by a recent decision of the Fair Work Commission which found that it was detrimental to employees to restrict them from being able to choose their own superannuation fund. Specifically, the Fair Work Commission determined that extending choice of fund to employees who were previously denied choice will prevent them from unnecessarily ending up with multiple superannuation accounts "with all the inconvenience and additional administration costs that this involves".

These changes also build on the Government's earlier reforms which protect superannuation accounts from being eroded through the capping of fees on low balance accounts and requiring insurance to be provided on an opt-in basis for new members under 25 years of age.

With around 16 million Australians having a superannuation account and around $2.9 trillion worth of superannuation savings, the Government will continue to ensure that the superannuation system is delivering for all Australians.

DISCLAIMER

The information statement and opinions expressed in this publication are only intended as a guide to some of the important considerations to be taken into account relating to taxation matters. Although we believe that the statements are correct, and every effort has been made to ensure that they are correct, they should not be taken to represent taxation advice and you must obtain your own independent taxation advice. Neither the authors, nor the publisher or any people involved in the preparation of this publication give any guarantees about its contents or accept any liability for any loss, damage or other consequences which may arise as a result of any person acting on or using the information and opinions contained in this publication.

Readers seeking taxation advice should obtain their own independent advice and make their own enquiries about the correctness of the information set out in this publication and its accuracy in relation to their own particular circumstances.

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