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Practice Update

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JANUARY - MARCH 2023

The 'Super' Wars



A consultation paper released by Treasury has sparked a national debate about the role, purpose and access to superannuation ahead of the 2023-24 Federal Budget.

The announcement doesn't propose any changes to the transfer balance cap or the amount that a member can have in the tax-free retirement phase.

What is the purpose of superannuation? At first glance, the consultation released by Treasury in February titled Legislating the objective of Superannuation sounds innocuous enough. The consultation seeks to anchor future policies relating to superannuation to a legislated objective:

The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside Government support, in an equitable and sustainable way.

But what seems self-evident has opened a Pandora's Box of what superannuation is not. If superannuation is to "preserve savings", that is, restricting access to superannuation savings to retirement only, by default it is not a means of accumulating wealth in a concessional tax environment. It is not a strategy to manage intergenerational wealth. The definition would also prevent initiatives such as the COVID-19 early access scheme used widely during the pandemic

to give those in financial distress access to quick cash (over 3 million people withdrew \$37.8 billion from their superannuation funds). And, it is not a method of purchasing a home sooner.

As an aside, the Treasurer points out that the average super balance in Australia is \$150,000 - taking account of all those with a super balance including new entrants into the workforce. For those 65 and over, the average balance is around \$400,000 across all income brackets.

Superannuation and national building

The second component of the Treasury consultation is nation building. At a recent speech, the Treasurer stated, "to my mind, defining super's task as delivering income for retirement isn't to narrow super's role in our economy...it's to elevate it, and broaden it." The consultation states:

"There is a significant opportunity for Australia to leverage greater superannuation investment in areas where there is alignment between the best financial interests of members and national economic priorities, particularly given the long-term investment horizon of superannuation funds."

The compulsory superannuation guarantee (SG) was introduced in 1992 at a rate of 3% rising to 9% by July 2002. Now, Australia's superannuation pool has grown from around \$148 billion in 1992 to over \$3.3 trillion. It now represents 139.6% of gross domestic product (GDP) and is projected to grow to around 244% of GDP by 30 June 2061.

Australia's pool of pension assets is now one of the largest in the world, and the fourth largest in the OECD.

The consultation does not define how "leveraging greater superannuation investment" would be achieved.

*The Treasurer has ruled out changes to the existing early access hardship provisions for super.

Future earnings for super balances above \$3m taxed at 30% from 2025-26

The Government has announced that from 2025-26, the 15% concessional tax rate applied to future earnings for superannuation balances above \$3 million will increase to 30%.

The concessional tax rate on earnings from superannuation in the accumulation phase will remain at 15% up to \$3m. From \$3m onwards, the rate will increase to 30%. The amendment applies to future earnings; it is not retrospective.

80,000 people are expected to be impacted by the measure.

The announcement doesn't propose any changes to the transfer balance cap or the amount that a member can have in the tax-free retirement phase.

The Federal Budget is released on 9 May 2023. Look out for our update with all the relevant news to you, your business and your super.

Significant change to claiming working from home expenses



Before 1 July 2022, an individual taxpayer that incurred additional deductible expenses as a result of working from home, had a choice of three methods to claim these expenses.

These choices were:

- ☐ The shortcut method – which was available from 1 March 2020 to 30 June 2022;
- ☐ The fixed-rate method – which was available from 1 July 1998 to 30 June 2022; or
- ☐ Actual expenses, that is calculating the actual expenses incurred as a result of working from home (*Editor: This method can be burdensome to apply in practice*)

From 1 July 2022, as a result of the release of PCG 2023/1 by the ATO, the shortcut method and the fixed-rate method have been abolished.

A replacement method that can be used instead of the actual expenses method (which has not been abolished) is the revised fixed-rate method.

Under the revised fixed-rate method, a deduction can be claimed of 67 cents per hour for energy expenses (electricity and gas), internet expenses, mobile and home phone expenses, and stationery and computer consumables.

Other expenses associated with working from home, such as depreciation of home office furniture and a personally owned computer used at home for work purposes, will need to be calculated on an actual basis when using the revised fixed-rate method.

To claim a deduction under the new fixed-rate method, an individual needs to meet three criteria, which are:

- ☐ The individual is working from home while carrying out their employment duties or carrying on their business on or after 1 July 2022;
- ☐ They are incurring additional running expenses of the kind outlined in the above discussion as to what the 67 cents per hour amount reflects, as a result of working from home;
- ☐ They keep and retain relevant records in respect of the time they spend working from home and for the additional running expenses (covered by the rate per hour) they are incurring.

There are strict record keeping requirements associated with this new method.

For the year ending 30 June 2023, a taxpayer using this new method will need to keep a record which is representative of the total number of hours worked from home during the period from 1 July 2022 to 28 February 2023.

The taxpayer will also need to keep a record of the total number of actual hours they worked from home for the period 1 March 2023 to 30 June 2023.

The record of the actual hours worked from home could be maintained by timesheets, rosters, time-tracking apps, logs of time spent accessing employer systems or online business systems, or a diary kept contemporaneously.

For the year ending 30 June 2024 and later income years, a taxpayer using this method must also keep a record of actual hours worked from home for the entire year.

Under both the short-cut method and the previous fixed-rate method, there was no need for detailed record keeping of the actual hours worked from home. Estimates were acceptable. This is a significant change and increases the record keeping burden on taxpayers.

Another significant change, which results in an increase in record keeping obligations under the revised fixed-rate method, is that in relation to running costs such as energy costs, phone and internet costs, a taxpayer needs to maintain at least one monthly or quarterly bill.

This is because the ATO now requires proof that the individual has incurred the running costs represented by the 67 cents per hour deduction.

1 July 2023 Super Balance Increase but no Change for Contributions

The general transfer balance cap (TBC) – the amount of money you can potentially hold in a tax-free retirement account, will increase by \$200,000 on 1 July 2023 to \$1.9 million. The TBC is indexed to the consumer price index each December.

The TBC applies individually. If your transfer balance account reached \$1.7m or more at any point before 1 July 2023, your TBC after 1 July 2023 will remain at \$1.7m. If the highest amount in your account was between \$1 and \$1.7m, then your cap is proportionally indexed based on the highest ever balance your transfer balance account reached.

That is, the ATO will look at the highest amount your transfer balance account has ever been, then apply indexation to the unused cap amount.

For example, if you started a retirement income stream valued at \$1,275,000 on 1 October 2022 and this was the highest point your account reached before 1 July 2023, then your unused cap is \$425,000 (\$1.7m-\$1.275m). This unused cap amount is used to work out your unused cap percentage ($\$425k/\$1.7m=25\%$). The unused cap percentage is then applied to the indexation increase ($\$200k*25\%=\$50k$) to create your new TBC of \$1,750,000.

But don't worry, you don't have to calculate this yourself, you can see your personal transfer balance cap, available cap space, and transfer balance account transactions online through the ATO link in myGov.

The caps on the contributions you can make into super however, will remain the same. That is, \$27,500 for concessional contributions and \$110,00 for non-concessional contributions. The contribution caps are linked to December's average weekly ordinary time earnings (AWOTE) figures.

ATO and Australian Federal Police crackdown on GST-fraud promoters



A raft of enforcement activity has been undertaken across the country by the ATO-led Serious Financial Crime Taskforce, including the execution of search warrants and issuing of warning letters.

At 31 December 2022, the ATO took compliance action on more than 53,000 clients and stopped approximately \$2.5 billion in fraudulent GST refunds from being paid to individuals seeking to defraud the system.

Two individuals have been sentenced to jail time for their crimes so far, following their arrest in 2022.

This follows 87 earlier arrests across the country, with many more to come. The ATO has commenced writing to more than 20,000 individuals involved in the fraud, warning them of the serious consequences coming their way unless they come forward and repay the money they have defrauded.

The fraud was first detected in early 2022 and involved offenders inventing fake businesses and Australian business number (ABN) applications, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund.

Promoters of the fraud use social media and other channels to recruit participants.

The ATO has been issuing warnings to the community to be on the lookout for fraud schemes that are being promoted through social media and other channels.

For those who may be tempted by the promise of big gains, the ATO has sophisticated risk models and works with banks, law enforcement agencies, and other organisations to share information and detect fraud. It also has access to intelligence through community tip offs, social media platforms, and other information sources.

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Electric vehicle FBT exemption legislation is now law



Legislation to make certain electric vehicles exempt from Fringe Benefits Tax ('FBT') has now been enacted into law.

Certain zero or low emissions vehicles provided as a car benefit on or after **1 July 2022**, can be exempt from FBT.

For this exemption to apply various criteria need to be satisfied.

The car needs to have been both held and used for the first time by the employer on or after 1 July 2022 and it cannot have been subject to the luxury car tax when it was first purchased.

For the 2023 income year, to qualify for this exemption, the car needs to cost less than the luxury car tax threshold for fuel efficient vehicles of \$84,916.

A vehicle is a zero or low emissions vehicle if it satisfies both of these conditions:

- ☐ It is a:
 - battery electric vehicle; or
 - hydrogen fuel cell electric vehicle; or
 - plug-in hybrid electric vehicle.
- ☐ It is a car designed to carry a load of less than 1 tonne and fewer than 9 passengers (including the driver).

Motorcycles and scooters are not cars for FBT purposes and do not qualify for the exemption, even if they are electric.

Please note that in relation to plug-in hybrid electric vehicles, there is a specific limitation on the FBT exemption.

From 1 April 2025, a plug-in hybrid electric vehicle will not be considered a zero or low emissions vehicle under FBT law.

There are special provisions allowing the exemption to continue when a plug-in vehicle was provided as an exempt benefit under an agreement entered into before 1 April 2025 that continues after this date.

Although the private use of an eligible electric car is exempt from FBT, an employer still needs to include the notional value of the benefit when working out whether an employee has a reportable fringe benefits amount ('RFBA').

An employee has an RFBA if the total taxable value of certain fringe benefits provided to them (or their associate) is more than \$2,000 in an FBT year. The RFBA must be reported through Single Touch Payroll or on the employee's payment summary.

The amount of an RFBA reported for an employee is not added to an employee's taxable income for determining income tax and Medicare Levy liabilities.

However, it is added to an employee's taxable income for calculating Medicare Levy Surcharge liability, and is included in income tests for family assistance, child support assessments, and some other government benefits and obligations.

Further eligibility age change for downsizer contributions



In another recent legislative change, the eligibility age to make a downsizer contribution into superannuation has been reduced to 55 from 1 January 2023.

This further reduces the downsizer eligibility age, which changed from 65 to 60 from 1 July 2022.

From 1 January 2023, eligible individuals aged 55 years or older can choose to make a downsizer contribution into their super fund of up to \$300,000 per person (\$600,000 per couple) from the proceeds of selling their home that has been held for at least 10 years and qualifies for at least a partial main residence exemption.

There are no changes to the remaining eligibility criteria.

Key dates for downsizer contributions:

- ☐ Eligible individuals aged 55 years or older can make a downsizer contribution from 1 January 2023.
- ☐ For any downsizer contributions made between 1 July 2022 and 31 December 2022, eligible individuals must be aged 60 years or older at the time of making their contribution.
- ☐ Prior to 1 July 2022, the eligibility age was 65 years and over.

Other important information to consider for 55-59 year olds:

- ☐ Individuals have 90 days from receiving the sale proceeds of their home to make a downsizer contribution. This means if an individual receives the proceeds of sale prior to 1 January 2023,

they can make their contribution after 1 January 2023, so long as they are still making it within 90 days of receiving the proceeds.

- ❑ If 1 January 2023 falls outside of their 90 day window to make a downsizer contribution, they will not be eligible. It is unlikely the ATO would grant an extension of time in these circumstances.

Unlike most other contributions into superannuation, there is no upper age limit for being eligible to make a downsizer contribution. Even a 95 year could make a downsizer contribution, and there is no need to satisfy the work test!

Builder unable to obtain refund of incorrectly charged GST

The Administrative Appeals Tribunal has held that a builder was unable to receive a refund of GST incorrectly charged on the sale of a residential premises that had been rented for just over five years since construction was complete.

The taxpayer claimed the GST charged on a unit was charged in error, on the basis that the sale was actually an input taxed supply. Accordingly, the taxpayer sought a refund of the GST previously remitted to the ATO on the unit.

For residential premises to fall outside the definition of 'new residential premises' and therefore be input taxed rather than a taxable supply, it needs to meet the requirements of S.40-75(2)(a) of the GST Act.

Broadly, to meet the requirements of this section there needs to have been a continuous five-year period since the premises first become residential premises, during which the premises have "only been used for making supplies that are input taxed" (i.e., being used as a rental property).

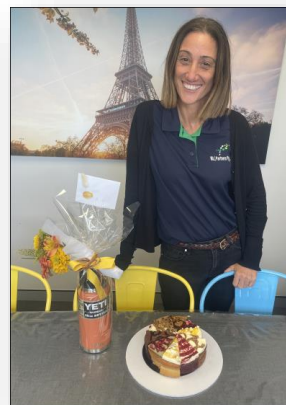
Unfortunately for the builder, this requirement was not satisfied because the unit was also marketed for sale a few months before the completion of the five-year period since the issue of the certificate of occupancy.

A lesson to be learnt here is that any time a residential premises is both rented and on the market for sale it does not meet the requirements to count towards the five-year continuous period that it has "only been used for making supplies that are input taxed"

SMSF reporting changes from 1 July 2023

If you have an SMSF with a total balance of less than \$1 million, from 1 July 2023 you will need to report quarterly to the ATO instead of annually. Previously, SMSFs with a balance under \$1m reported annually at the same time as lodging the SMSF annual return.

Staff News



The Ayr office sadly fare welled Alicia Butterworth in March. Alicia has been a valued member of the Accounting team in Ayr and has made the tough decision to swap her blue & green for orange. Best of luck with your new role Alicia!

The Townsville office is growing! A very warm welcome to Kelly Venning who commenced part-time in the Townsville office in February. Kellie is a CPA and has many years' experience in public practice. Kellie is an ex Burdekin girl and has worked for John & Peter in the past, so she will be a very valued addition to the team. Welcome Kellie!



Quote of the month

"Without effort, your talent is nothing more than unmet potential. Without effort, your skill is nothing more than what you could have done but didn't." - Angela Duckworth, Author of *Grit: The Power of Passion and Perseverance*

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.