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Practice Update

Please read this update and contact this office if you have any queries

September - October 2016

Making Sense of the Super Reforms

If you are waiting for the superannuation reforms announced in the Budget to pass Parliament before working out what they mean to you, you might miss out on any opportunities available.

When enacted, the reforms will represent the single biggest change to superannuation since its inception. While there has been a softening of the original Budget announcements, there are still some very big changes coming your way.

Accumulators: Under 65

The reforms likely to impact on you are:

Reduction in non-concessional contribution caps

If you are close to retirement age and looking to build your super balance, this change is incredibly important. From 1 July 2017, the annual non-concessional contributions cap will be reduced to $100,000 (from the current $180,000).

This means that if you are approaching retirement age, you have until 30 June 2017 to use the current caps and contribute up to $540,000 this financial year. You can do this using the 'bring forward' rule. This rule allows you to bring forward up to three years worth of non-concessional contributions in one year (and then make no or limited contributions for the next two years until you reach your three year cap). The advantage of using the bring forward rule now is that your three years worth of contributions utilise the current caps. If you contribute more than $180,000 this financial year but not the full $540,000, you still trigger the bring forward rule but any further contributions from 1 July 2017 are subject to the new $100,000 cap. That is, instead of your cap being $540,000 across three years, it might be $460,000 or $380,000. And, if you wait until after 1 July 2017 to trigger the bring forward rule, you will only be able to contribute up to $300,000.

If you want to make in-specie contributions - that is, contributions to super that are not cash such as listed shares, etc., then you should look at whether the cap reduction affects your ability to do this.

People with Large Super Balances & High Income Earners

The Government thinks that you are not using superannuation for its intended purpose – to fund retirement. As a result, the reforms introduce a whole series of measures that pare back the tax advantages for people with large super balances:

Non-concessional contributions capped at $1.6 million

Once your super balance has reached $1.6m, from 1 July 2017 you will no longer be able to make non-concessional contributions to super. So, you have until then to maximise your contributions (see *Reduction in non-concessional contribution caps*). Going forward, your super balance will be assessed at 30 June each year.

Concessional contributions cap reduced

From 1 July 2017, the annual concessional contribution cap will be reduced to $25,000 for everyone (currently $30,000 for those aged under 50 and $35,000 for those aged 50 and over).

30% tax on super extended to more taxpayers

High income earners with incomes of $300,000 or more pay 30% tax on contributions they make. From 1 July 2017, this threshold will reduce to $250,000.

Retirees and those Transitioning to Retirement

The reforms likely to impact on you are:

Tax concessions limited to pension balances up to $1.6 million

The reforms introduce a $1.6m ‘transfer cap’ on the amount you can hold in a superannuation pension. This means that if you are in pension phase, the balance of your pension needs to be no more than $1.6m.
If not, from 1 July 2017 the Tax Commissioner will direct your fund to reduce your retirement phase interests back to $1.6m and you will be subject to an excess transfer balance tax. Your overall super balance can be more than $1.6m but only $1.6m can be transferred into a tax-free pension. Keeping the excess balance in super may still be worthwhile because of the low 15% tax rate.

If your spouse has a low superannuation balance, it might be worth thinking about how you can maximise your returns as a couple.

Earnings on fund income no longer tax-free

From 1 July 2017, the income from assets supporting transition to retirement income streams will no longer be exempt from tax but included in the fund’s assessable income. For example, if your super fund earns interest from a term deposit, that interest is currently tax-free in a transition to retirement pension. From 1 July, that interest will be included in the fund’s assessable income.

Lump sum withdrawals no longer meet minimum pension requirements

The Government has closed a quirk in the superannuation system that allowed people under 60 to withdraw from their pension and in certain circumstances have that withdrawal treated as a tax-free lump sum. From 1 July 2017, the ability to take a lump sum from an account based pension will be removed. Generally, from age 60 these pension payments become tax-free.

Still Going: Over 65 and Still Working

Currently, if you are 65 or over, your superannuation fund can only accept contributions from you if you work at least 40 hours in a 30 consecutive day period in the financial year. The original Budget announcements abolished this work test. Unfortunately, this reform is not progressing and the work test will remain.

Contractors & Self-Employed

There is good news if you are partially self-employed and partially a wage earner. Currently, to claim a tax deduction for your super contributions you need to earn less than 10% of your income from salary or wages. From 1 July 2017, the 10% rule will be abolished.

This change will be useful for contractors who hold their insurance through super as they will be able to claim a personal tax deduction for these insurance premium contributions. The caveat here is that these contributions must remain within the reduced $25,000 concessional cap.

Low Super Balances and Broken Employment

There is a lot in the reforms for people who have not had the opportunity to build their super balances. The reforms likely to impact on you are:

‘Catch up’ super contributions

Normally, annual caps limit what you can contribute to superannuation. The reforms allow people with broken work patterns to ‘catch up’ their concessional super contributions. From 1 July 2018, people with super balances below $500,000 will be able to rollover their unused concessional caps for up to 5 years. Unused cap amounts can be carried forward from the 2018-19 financial year; which means the first opportunity to use these new rules will be 2019-20.

Tax offset for low income earners

A new tax offset will be available for people earning less than $37,000. The offset refunds any tax paid on super contributions.

Tax offset for topping up your spouse's super

Currently, if your spouse earns less than $10,800, you can claim a tax offset of up to $540 if you make super contributions on their behalf. This offset is being extended to spouses who earn up to $40,000.

Pre-retirees: Avoid 'too good to be true' tax schemes

The ATO has launched a new project called 'Super Scheme Smart', an initiative aimed at educating individuals about the potential pitfalls of 'retirement planning schemes', to keep them safe from risking their retirement nest egg.

According to the ATO, individuals most at risk are those approaching retirement, including anyone aged 50 or over, looking to put significant amounts of money into retirement, particularly SMSF trustees, self-funded retirees, small business owners, company directors, and individuals involved in property investment.

While retirement planning schemes can vary, there are some common features that people should be aware of.

Usually these schemes:

- are artificially contrived and complex, usually connected with a SMSF;
- involve a lot of paper shuffling;
- are designed to leave the taxpayer with minimal or zero tax, or even a tax refund; and/or
- aim to give a present day tax benefit by adopting the arrangement.

Individuals caught using an illegal scheme identified by the ATO may incur severe penalties under tax laws, which includes risking the loss of their retirement nest egg and also their rights as a trustee to manage and operate a SMSF:

"Retirement planning makes good sense provided it is carried out within the tax and superannuation laws. Make sure you are receiving ethical professional advice when undertaking retirement planning, and if in doubt, seek a second opinion from an independent, trusted and reputable expert".

For more information about the specific schemes, they can visit their website at *www.ato.gov.au/superschemesmart.*

Deductibility of gifts provided to clients

The ATO has confirmed that a taxpayer carrying on business is generally entitled to a deduction for expenses incurred on a gift made to a former or current client, if the gift is characterised as being made for the purpose of producing future assessable income.

However, the expense may not always be deductible (e.g., if the gift constitutes the provision of entertainment that is not deductible).

The ATO's recent determination also highlights that a deduction will be denied where expenditure on gifts is more accurately described as being 'private' in nature (for example, where a gift is provided to a relative outside a business' usual practice of providing client gifts).

Deductibility of airport lounge memberships

The ATO has also confirmed that the cost to a business taxpayer of a yearly airport lounge membership (e.g., Qantas Club, Virgin Lounge) that will be used by its employees is ordinarily deductible, and should not give rise to any FBT liability for the employer (even if the majority of (or indeed *only*) use of the airport lounge membership is for private purposes).

Phoenix Taskforce swoops on dodgy businesses

The ATO's stance against phoenix activity has continued with multiple search warrants issued, and many business and residential sites accessed without notice across Victoria and Queensland, as part of a criminal investigation into unpaid superannuation, employee withholding, GST, and income tax.

'Phoenix activity' refers to a business that shuts down whilst still owing creditors, employees and the ATO lots of money, and then starts up again perhaps somewhere else or under a new name.

Deputy Commissioner Michael Cranston said *"By showing up unannounced we're able to access records that we might otherwise never have seen. This information is then used to take further compliance action, and shared among our partner agencies to better inform our strategies targeting the 50 highest-risk phoenix operators."*

What employees of these companies should be looking out for

Mr Cranston stated that there are a number of signs that a business someone is working for may be involved in phoenix behaviour:

"Employees may be pressured to take leave or have their employment status changed from permanent to casual. They may also notice that there are frequent changes in the identity of the company that is paying their wages, or that their superannuation entitlements are not paid."

Employees who suspect that a company they are dealing with is exhibiting any of these signs should get in touch with the ATO by reporting it online or by calling 1800 060 062.

ATO exposes dodgy deductions

With over eight million Australians claiming work-related expenses each year, the ATO is reminding people to make sure they get their deductions right this tax time.

Assistant Commissioner Graham Whyte said that, in 2014/15, the ATO conducted around 450,000 reviews and audits of individual taxpayers, leading to revenue adjustments of over $1.1 billion in income tax.

"Every tax return is scrutinised using increasingly sophisticated tools and data analytics developed (by) the ATO. This means we can identify and review income tax returns that may omit information or contain unreasonable deductions," Mr Whyte said.

The ATO also set out some case studies, which provide a fascinating insight into the ATO's methods, including:

- ❑ A medical professional who made a claim for attending a conference in America, and provided an invoice for the expense, but when the ATO checked, it found that the taxpayer was *still in Australia* at the time of the conference (the claims were disallowed and the taxpayer received a substantial penalty); and

- A taxpayer who claimed deductions for car expenses, but the ATO found they had recorded kilometres in their log book on days where there was *no record of the car travelling on the toll roads*, and further inquiries identified that the taxpayer was out of the country. Their claims were also disallowed.

Update on 'BackpackersTax'

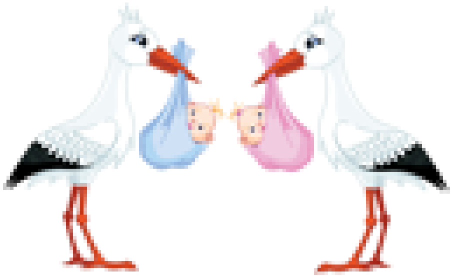
The Treasurer made an announcement in September that employers of working holiday makers must register with the ATO to be able to deduct tax at 19% on earnings up to $37000 with ordinary marginal rates to apply after that. If you do not register, you are required to deduct tax at the rate of 32.5%. This legislation has not yet passed through parliament, but is to take affect from 1/1/17.

Once the law has passed through parliament the registration process will be made available, but at the moment, the information to hand is found in the link below:

Tax rules to change for temporary working holiday makers

Staff Changes

Jenna Ryder & Carly Caspanello both commenced maternity leave this month with Jenna expecting her first child & Carly expecting a sibling for Daley in November. Stacy Lawson has also returned to the Ayr office on a part-time basis. Wishing Jenna & Carly a safe arrival of their undoubtedly beautiful babies and welcome back to Stacey.



Quote of the month

"As long as you blame someone or something else - something outside you that's bigger than you are - as the source of your problems, the problems won't get solved."
Robert Kiyosaki, Author

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.