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Superannuation Changes

Presented by Paul Dutton & Alanah Boylon

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What we will be covering

- Changes to concessional (tax deductible) contributions
- Changes to non-concessional (after tax) contribution cap
- Changes to transition to retirement income streams
- Changes to spouse superannuation contribution tax offset
- Changes to Division 293 Tax
- New $1.6 million transfer balance cap
- Case study
- Other considerations

Changes to concessional (tax deductible) contributions

- Unless otherwise mentioned the changes we are discussing today commence on 1 July 2017
- The annual concessional contribution cap will reduce to $25,000 (currently $30,000 for people under age 50 and $35,000 for people aged 50 and over)
- Concessional contributions are the sum of SGC contributions, salary sacrifice contributions and contributions that a person has claimed as a tax deduction in their tax return
- Abolishment of the 10% rule. That is, people who earn salary and wage income may be able to claim a deduction for personal superannuation contributions they make. This means that you will no longer need to make salary sacrifice contributions to maximise the use of the $25,000 cap

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Changes to concessional (tax deductible) contributions (cont)

- If your concessional contributions exceed the $25,000 cap the amount above the cap will be included as additional income in your tax return. However, you will incur an excess concessional contributions charge.
- There is an exception to the $25,000 cap. Employer contributions that are made to an untaxed superannuation fund such as Super SA Triple S can exceed the $25,000 cap. However, in these circumstances you will no longer be able to also make concessional contributions to another superannuation fund.
- Individuals aged between 65 and 74 will only be allowed to make superannuation contributions if they meet the ‘work test’. The work test is paid work for 40 hours in a 30 day period during the financial year.

Changes to concessional (tax deductible) contributions (cont)

- From **1 July 2018** people with superannuation balances less than $500,000 will be able to make catch up unused concessional superannuation contributions for the previous 5 years.
- Note - unused concessional contributions for financial years ending on or before 30 June 2018 can **not** be caught up.

Example

As at 30 June 2021 Bill has $300,000 in superannuation accounts and his employer has made $10,000 of SGC contributions in each of the last 3 years.

For the year ending 30 June 2022 Bill and/or his employer could make concessional contributions of $70,000.

Changes to non-concessional (after tax) contribution cap

- If an individual's superannuation balance is below $1.6 million, that individual will only be allowed to contribute up to $100,000 of non-concessional contributions per year (currently the annual non-concessional contributions cap is $180,000)
- If an individual's superannuation balance is $1.6 million or more, they will no longer be allowed to make any non-concessional contributions.
- This eligibility threshold will be based on the sum of all of an individual's superannuation balances at 30 June the previous year
- The $1.6 million will be tied to and indexed to the $1.6 million transfer balance cap that can be in the tax-free retirement phase.

The 3 Year Bring Forward Rule

- The 3 year bring forward rule will continue to apply for individuals with superannuation balances below $1.6 million_(i.e. individuals under the age of 65 may be able to contribute 3 x $100,000 = $300,000 over a 3 year period).

Total super balances on prior 30 June	NCC for first FY	Bring forward period in years
< $1.4m	$300,000	3
$1.4m < $1.5m	$200,000	2
$1.5m < $1.6m	$100,000	1
$1.6m or more	Nil	N/A

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The 3 Year Bring Forward Rule (cont)

- People aged between 65 and 74 who meet the work test will still not be able to apply the bring-forward rule for non-concessional contributions.
- Care should be taken if the bring forward rule is triggered before 1 July 2017 (i.e. an apportionment will be required between the existing $540,000 bring-forward amount and the $300,000 bring-forward amount from 1 July 2017). For example (note for the amounts with * it also depends on your total superannuation balances):

Year ending	Year 1	Year 2	Year 3
30 June 2016	$180,001 to $540,000	Balance to $540,000	Balance to $460,000 *
30 June 2017	$180,001 to $540,000	Balance to $380,000 *	Balance to $380,000 *
30 June 2018	$100,001 to $300,000 *	Balance to $300,000 *	Balance to $300,000 *

Maximum Contributions

- All these changes mean that, from 1 July 2017, individuals could be able to contribute:
  - until their total superannuation balances reach $1.6 million- a total of $125,000 per year made up of $25,000 of concessional contributions and $100,000 of non-concessional contributions (note – this may be higher if able to use 3 year bring forward rule)
  - Once their total superannuation balances exceed $1.6 million– only $25,000 of concessional contributions per year

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Small Business CGT Concessions

- Proceeds from the disposal of assets exempt from CGT, currently up to a lifetime CGT cap of $1.415 million, or those that fall within the $500,000 CGT retirement exemption, will **not** count towards the non-concessional cap.
- Such amounts can be contributed to superannuation **without** breaching any non-concessional contribution cap rules.

Changes to transition to retirement income streams

- The tax exemption on earnings from assets supporting a TRIS (transition to retirement income stream) will **cease**
- TRIS payments to a person age 60 or over will **continue to be tax free**
- Consideration will need to be given to ceasing a TRIS on 1 July 2017
- Note - the tax exemption on earnings from assets supporting a retirement phase income stream will **remain**

Changes to transition to retirement income streams (cont)

- A TRIS become a retirement phase income stream when a person retires.
- For superannuation purposes, a person retires when:
  - If they are aged from preservation age (from 1 July 2017 this will be age 57) to age 59, an arrangement under which the member was gainfully employed has come to an end **and** the trustee is reasonably satisfied that the person intends never to again to be gainfully employed either on a full-time or part-time basis
  - If they are aged 60 to 64 an arrangement under which the member was gainfully employed has come to end **after** the person turned 60 **or** the trustee is reasonably satisfied that the person intends never to again to be gainfully employed either on a full-time of part-time basis
  - They turn 65

Changes to spouse superannuation contribution tax offset

- Applicable where a person makes a superannuation contribution for their spouse (whether married or de facto)
- The income threshold for the recipient spouse for the spouse contribution tax offset increases from $10,800 to $37,000
- Maximum offset is 18% of $3,000 contribution = $540
- Maximum income threshold will increase to $40,000 (previously $13,800)
- The spouse contribution counts towards the non-concessional contribution cap
- Your receiving spouse has to be under the age of 65, or between age 65 and 69 and has met the work test **and** not exceeded the $1.6 million cap

Division 293 Tax

- The income threshold at which high income earners pay an additional 15% contributions tax (called Division 293 tax) will reduce from $300,000 to $250,000.
- Income includes:
  - taxable income,
  - adjusted fringe benefits amount (total reportable fringe benefits amounts x 0.51)
  - tax-free government pensions or benefits (such as disability pension, carer payments and defence pensions)
  - reportable superannuation contributions and personal concessional contributions
  - net investment loss

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1.6 million transfer balance cap

- Limit imposed on the total amount a member can have in retirement phase (where earnings are exempt from tax) from 1 July 2017
- From 1 July 2017 the general transfer balance cap is $1.6 million for the 2017/18 financial year
- The cap will be indexed in $100,000 increments inline with the CPI
- Any increment is only available if the member has not fully utilised the cap & only on the proportion the member has left

  ie 25% remaining of cap, only receive 25% of the increment
- Each individual will have their own ‘personal transfer balance cap’. A member’s available cap capacity is subject to a system of debits and credits recorded in a ‘transfer balance account’
- Earnings and capital growth will be ignored when applying the personal transfer balance cap

1.6 million transfer balance cap (cont)

- Members with super balances greater than $1.6 million will need to
  - commute the balance to an accumulation account (earnings taxed at 15%) or
  - withdraw the excess from superannuation
- Includes all superannuation accounts including defined benefit pensions
- Transition to retirement income streams do not count towards the transfer balance cap as they will no longer receive earnings tax exemption from 1 July 2017

Transfer balance account - credits & debits

Credits

- Value of assets supporting pension liabilities on 30 June 2017
- Capital value of new pensions commenced from 1 July 2017
- Capital value of a spouse reversionary pension – 12 month window to rectify if this makes the account in excess
- Notional earnings that accrue on excess balances

Debits

- Commutation (partially or fully) of the capital of a pension back to accumulation
- Relief from family law payment splits or reductions from bankruptcy or fraud

(ordinary pension withdrawals do not impact on the account)

Excess personal transfer balance cap

- If in excess of the cap, the ATO will direct the super provider to commute (reduce) the retirement phase interest by the amount of the excess including earnings on this excess.
- Liable for excess transfer balance tax on the earnings
- For the first breach, the member will be subject to 15% tax on the earnings and 30% for subsequent breaches
- Transitional arrangements for existing super pensions at 1 July 2017 allowing 6 months to rectify the excess if less than $100,000
- A member’s transfer balance cap only closes upon death
- If a pension reverts to the member’s spouse on death, this death benefit pension amount will count towards the surviving spouse’s cap. If an excess then occurs, the spouse has 12 months to fix – reversionary pensions only

Defined benefit pensions

- Special rules due to inability to commute amounts that exceed the cap
- Value to be included in the Transfer Balance Account
  - Lifetime pensions **(annual payment * 16)**
  - Term pensions - life expectancy and market linked pensions

    (annual payment * term remaining at 1 July 2017)
- Pension payments from an untaxed source including constitutionally protected funds will continue to be taxed at marginal rates but would normally be eligible for the 10% tax offset. This offset will not apply to any excess ie annual pensions over $100,000 capped at $10,000
- Pension payments from a taxed source are still tax free over the age of 60, but if pension payments result in an excess, then 50% of the excess will be assessable to the recipient

Segregation

- No access to segregation of assets to accumulation and pension accounts if the fund has at least one pension in existence and
  - a person has a total super balance in excess of $1.6 million
  - the person is in receipt of a super income stream from any fund

Capital gains relief

- Ability to use if there are pensions in place in the SMSF and the commutation of pension back to accumulation is required to meet the $1.6 million transfer balance cap or the member is impacted by the TRIS changes
- Potential to reset the cost base of selected assets to market value at 30 June 2017
- The asset is deemed to have been sold and repurchased at market value
- Unable to then apply discounting until after 30 June 2018
- Choice must be applied on an asset by asset basis with election made prior to 1 July 2017

Capital Gains Tax relief

- Where an asset is already partially supporting an accumulation account, the fund will have a capital gains liability on the non-exempt proportion of the unrealised gain. The liability can be paid in that financial year or deferred until the asset is sold
- Differing rules for segregated assets & unable to change to segregation of fund assets post 9 November 2016
- Election is irrevocable

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Strategies if a member is over $1.6 million

- Start a second SMSF and roll accumulation balances into that fund holding assets with less earnings ie interest bearing securities
- Withdraw amount over $1.6 million from the SMSF and invest in personal names bearing in mind other assessable income and tax offsets
- Withdraw amount over $1.6 million and re-contribute for spouse into super if availability to do within their transfer balance and contribution caps

Case study

Bill aged 68 and Brenda aged 69 both retired and have the following:

- Personal names (joint)
  - Shares valued at $100,000, bank account $20,000 and investment property valued at $500,000
  - They receive $30,000 of income from these, $15,000 each
- in their SMSF
  - Bill pension valued at $1.2 million
  - Brenda pension valued at $700,000

  Pension of $95,000 taken from the SMSF
- Bill also has a defined benefit pension paying him $50,000 per year (untaxed source)

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Case study

- Bill is over $1.6m with combined SMSF and Defined Benefit pension

  ie value = $1.2m (SMSF)+ ($50,000 * 16) $800,000 = $2m
- His lifetime pension is non commutable so the excess will need to be commuted from his SMSF. Potential to withdraw the $400,000 excess from SMSF and invest in own name
- Bill already has taxable income of $65,000 including his assessable pension
- Potential to invest the $400,000 in Brenda's name as she only has $15,000 in taxable income and will potentially pay little or no tax
- Also need to consider that if withdrawn unable to be re contributed as both retired and over 65
- If funds kept in the SMSF and commuted back to accumulation, consider applying the CGT relief on assets held in the fund that are in a gain position
- Instead if both passed the work test, Bill could only make the $25,000 concessional contribution and Brenda could make concessional and non concessional contributions

Other considerations

- Resetting cost bases requires each asset to be reviewed separately and for more complex assets like property will require new valuations
- Potential need for SMSF deeds to be updated. Most deeds have not been updated since 2007. Deeds need to cater for the changes in the superannuation law
- Need for members to calculate the total updated values of super balances across multiple super funds especially in determining if non concessional contributions can be made from 1 July 2017
- Consideration of commuting back pensions into accumulation prior to June 2017 and whether to use higher taxable % pensions

Thank you