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Wealth & Advisory

The new superannuation rules

The last Federal Budget resulted in substantial changes to superannuation and a summary of the main changes is set out below.

Pension changes

Introducing a transfer balance cap of $1.6 million for pension phase accounts

From 1 July 2017, a $1.6 million superannuation transfer balance cap will apply to the total amount of superannuation an individual can transfer into the tax-free retirement phase.

The cap will be applied to both current retirees and to individuals yet to enter their retirement phase. The cap will be indexed in $100,000 increments, in line with increases in the consumer price index (rate of inflation). If you exceed the transfer balance cap of $1.6 million, the ATO will direct your pension fund provider to commute (reduce) your pension by the amount of the excess and you will be liable for excess transfer balance tax.

If you have more than $1.6 million in superannuation pensions you will need to take action by 1 July 2017 and either:

- transfer the excess amount to an accumulation account (which is subject to 15% earnings tax), or
- withdraw the excess amount from your pension fund.

Please note that special rules apply to defined benefit pensions.

For accumulators who are yet to enter their retirement phase, amounts above the $1.6 million cap will need to stay in accumulation phase, with the earnings on those accumulation amounts continuing to be taxed within the fund at the rate of 15%.

Some key points

The $1.6 million transfer balance cap applies to each individual, which means a couple could have up to $1.6 million each in separate pension accounts.

Once the transfer balance cap is applied to an existing pension balance as at 1 July 2017, or a new super pension balance from 1 July 2017, any subsequent increase in a retirement balance due to earnings, or drops in the balance due to pension payment withdrawals, are not counted towards (or deducted from) the $1.6 million transfer balance cap.

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Once you have fully utilised your $1.6 million transfer balance cap you cannot take future advantage of the periodic $100,000 indexed increases in the transfer balance cap. But you can if you have not yet fully utilised the cap.

If you don't have, and don't expect to ever have a balance in excess of $1.6 million in your super account, these changes won't impact you, other than if you run a TTR.

Transition to retirement (TTR) pensions

From 1 July 2017, earnings and gains from investments held in a Transition to Retirement (TTR) pension will no longer be tax free and will be taxed at 15%. This change will apply to existing and new TTR income streams irrespective of the commencement date. A TTR strategy may still be worthwhile for you, but in more limited circumstances. There is no change to the amount of personal tax you pay on the amounts you receive from a TTR.

CGT relief

The legislation introducing the $1.6m pension transfer cap includes some capital gains tax relief for superannuation fund members. The CGT relief allows the cost base of asset(s) to be reset to market value as at 1 July 2017. If a super fund uses the CGT relief then the 12-month timeframe for the 33% discount also restarts. A super fund can choose not to take advantage of the CGT relief.

The CGT relief not only includes account based pensions but also transition to retirement pensions rolled back to accumulation. To access the exemptions there are a number of actions that must be taken before 1 July 2017.

For an SMSF, how the CGT relief is applied to assets depends on whether the fund currently uses the segregation or the proportionate method for calculating tax payable on accumulation accounts.

Removal of the option to treat a pension payment as a lump sum for tax purposes

From 1 July 2017, the minimum draw down requirement must be taken as a regular pension payment and can no longer be treated as a lump sum for tax purposes.

Concessional contribution changes

A recent Federal Budget resulted in substantial changes to superannuation and a summary of the main changes affecting concessional contributions is set out below.

Reduction of the concessional (pre-tax) contributions cap to $25,000 per annum

From 1 July 2017, the concessional contributions cap will be reduced to $25,000 for all individuals. The cap is indexed in line with average weekly ordinary time earnings (AWOTE), in increments of $2,500 (rounded down).

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Concessional contributions generally consist of contributions made from pre-tax income (such as superannuation guarantee (SG) and salary sacrifice) or contributions for which a deduction has been claimed (personal deductible contributions).

If all you receive is the minimum SG required from your employer, then the reduction in annual limits is unlikely to have an impact on you. If you make salary sacrifice contributions you need to review your arrangement with you employer each year to ensure you don't exceed the cap.

If the cap is exceeded you will pay tax on the excess at your marginal rate less the 15% already paid within your superannuation fund. Interest penalties will also apply. You can withdraw the excess from superannuation so it is not also counted towards the non-concessional contributions cap.

Concessional contribution tax for high income earners

Your concessional contributions are generally taxed within the fund at 15%, however for high income earners there is an additional tax on their contributions making the effective rate 30%. The income threshold at which this extra tax applies has been decreased from $300,000 to $250,000 from 1 July 2017. Even though your concessional contributions are taxed at 30% it is still likely to be beneficial to continue contributing up to the cap as that tax rate would be significantly less than your marginal tax rate.

Catch up concessional contributions

From 1 July 2018, you may be able to accrue your unused concessional contributions and carry these amounts forward to enable you to make concessional contributions in excess of your annual cap in subsequent years. Amounts will be carried forward on a five year rolling basis. As the new regime will only apply to unused amounts accrued from 1 July 2018, the first year you may be eligible to use a carried forward amount will be the 2019/20 financial year. To make use of carried forward concessional contributions, your super balance cannot exceed $500,000 on the 30 June of the previous financial year. Unused amounts which you have not used within five years cannot be carried forward.

Low Income Superannuation Tax Offset (LISTO)

From 1 July 2017, the Low Income Superannuation Contribution (LISC) was renamed the Low Income Superannuation Tax Offset. If you have an adjusted taxable income of less than $37,000 you may receive a LISTO contribution from the Government paid into your superannuation fund equal to 15% of your total concessional super contributions for an income year, capped at $500.

The ATO will determine your eligibility for the Low Income Superannuation Tax Offset and advise your superannuation fund annually.

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Personal super contributions deduction

Previously an individual (primarily self-employed) can claim a deduction for personal super contributions where they meet certain conditions. One of these conditions is that less than 10% of their income is from salary and wages.

From 1 July 2017, this condition was removed. The remaining conditions remain the same.

So, from 1 July 2017 you have the option of making (extra) concessional contributions directly to your fund. It will be important to consider which method is most appropriate for you, and for many employees, salary sacrifice will remain a valid option due to its relative simplicity.

Non-concessional contribution changes

There have been recent substantial changes to superannuation and a summary of the main changes affecting non-concessional contributions is set out below.

Lowering the non-concessional (post-tax) contributions cap to $100,000 per annum

Non-concessional contributions (NCC) generally consist of contributions from after-tax income, such as personal non-deductible contributions and spouse contributions.

From 1 July 2017 the annual non-concessional cap was reduced from $180,000 to a lower limit of $100,000. In addition, you must have total super savings of less than $1.6 million at 30 June to be eligible to make any non-concessional contributions in the following year.

The 'bring forward' rule

If you are under age 65 on 1st of July in a financial year you may be able to trigger the 'bring-forward' rule to make larger contributions.

The 'bring-forward' rule effectively groups contributions over a three year period. It allows you to bring forward two years' worth of non-concessional cap and add it to the current year's cap.

From 1 July 2017 the 'bring forward' rule allows you to contribute up to $300,000 in one year with no further contributions in the next two years. This limit will reduce if your total superannuation savings are more than $1.4 million on the 30th of June prior to the financial year in which you trigger the bring-forward rule. These rules are complex so it is important that you get advice.

If you exceed your non-concessional contribution cap, you can choose to have the excess contributions and associated earnings (as calculated by the Tax Office) refunded with penalty tax only applied to the earnings. If not withdrawn, the excess contributions are taxed at the highest marginal tax rate. The tax payable must be withdrawn from superannuation.

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Change in eligibility criteria for Co-contributions

The superannuation co-contribution is a government initiative to help people on low to medium incomes to boost their superannuation savings. Currently to receive a Government Co-contribution, you need to meet all of the following criteria:

- make an eligible non-concessional (after-tax) contribution into a complying superannuation fund during the financial year (and before you reach age 70)
- pass two income tests:
  - earn less than $52,697 (2018/19) per year (including assessable income, fringe benefits and reportable super contributions), and
  - earn 10% or more of your income from eligible employment, running a business, or both
- have not held a temporary visa at any time during the financial year (unless you are a New Zealand citizen or holder of a prescribed visa)
- lodge an Australian income tax return for the relevant financial year.

From 1 July 2017, you must also have a total superannuation balance of less than the general transfer balance cap ($1.6 million for the 2018-19 financial year) and must not have made non-concessional contributions of more than your non-concessional contributions cap ($100,000 for 2018-19).

Spouse tax offset

Another change that took effect from 1 July 2017 is that the requirements to be eligible for a tax benefit for making a non-concessional contribution for your spouse have been relaxed. Previously the spouse could earn no more than $13,800 for the contributing spouse to receive the benefit. From 1 July 2017, the receiving spouse can earn up to $40,000.

The intent of this change is to extend the current spouse tax offset to assist more couples to support each other in saving for retirement. This will better target super tax concessions to low-income earners and people with interrupted work patterns.

Date: 1 July 2018

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