



## SUPERANNUATION UPDATE - JUNE 2009

# Year End Strategies and What to Expect in 2009/2010



***As the end of the 2008/2009 financial year approaches, it is important that you are aware of the year end strategies to implement prior to 30 June, as well as the impact of recent changes to superannuation that will affect you in 2009/2010.***

### **1. 50% CONCESSIONAL CONTRIBUTION LIMIT REDUCTION:**

Concessional contributions are those made to superannuation where a tax deduction is claimed. They are taxed at 15% in the fund upon contribution. These contributions are subject to a cap, which is currently \$50,000 for taxpayers under age 50 (indexed), and \$100,000 for taxpayers over age 50 until 30 June 2012.

The Budget announced that from 1 July 2009 the concessional contributions cap will be reduced by 50%, which results in caps of \$25,000 and \$50,000 for those under and over age 50 respectively. If a member exceeds their contribution cap, the excess amount is subject to total tax of 46.5%.

The non-concessional contributions cap (contributions made from after-tax money) is linked to the concessional cap, being three times the standard cap of \$50,000. From 1 July 2009 this cap will be six times the standard concessional cap, resulting in the non-concessional cap remaining at \$150,000 per annum. No change has been made to the ability for those taxpayers under 65 to 'bring forward' two futures years of contributions and make a one-off of up to \$450,000.

## PLANNING OPPORTUNITIES

Due to this 50% reduction, it is vital to review your position and ascertain whether any year end planning opportunities are available with respect to your superannuation. Some strategies that may apply include:

- Maximising the \$100,000 contribution cap for 2008/2009 for those people over age 50. From 1 July 2009 this amount will be halved, so it is a great opportunity to add some further funds to superannuation tax effectively;
- For those over 50 who are retired, the tax deduction may be used to offset any investment income earned, or any capital gains tax if a contribution of shares, managed funds, business property or farming property is made to the fund (a work test may apply);
- If you are expecting a bonus for the 2008/2009 financial year, where possible it should be contributed before 30 June 2009, provided it wouldn't result in excessive contributions for the 2008/2009 financial year. If the contribution is made late, for example in July 2009, it will be included in the 2009/2010 contribution cap;
- From 1 July 2009 it will be important that any salary sacrifice arrangements are reviewed to ensure that the total contributions for the year do not exceed the new caps. It is essential that any employer contributions (super guarantee and insurance premium amounts) are also considered, as these amounts also count towards the cap. The penalty for excess contributions is severe.

## 2. REPORTABLE EMPLOYER SUPERANNUATION CONTRIBUTIONS

From 1 July 2009 any salary sacrificed superannuation contributions will be included in the calculation for eligibility under the 10% rule. The 10% rule applies to those taxpayers who wish to contribute to superannuation and claim a personal deduction for the contribution. One of the eligibility criteria to claim the deduction is that less than 10% of the taxpayer's total assessable income is from employment. Currently, to fall under the 10% rule a taxpayer can salary sacrifice superannuation contributions to reduce their assessable employment income. However, from 1 July 2009 this will no longer be the case.

The inclusion of these contributions may make it more difficult to be eligible to claim a deduction for personal contributions to super. If you have been adopting this strategy in the past (salary sacrificing superannuation contributions to reduce your assessable employment income to below 10% of your total assessable income), it needs to be reviewed.

**Example:** Dr Riviera (56) operates his own medical practice and works occasionally for the local hospital. The hospital pays him \$30,000 per annum, and he salary sacrifices it all to superannuation. Dr Riviera would also like to make a personal deductible contribution to super and optimise the use of his contribution limit. If Dr Riviera's assessable medical practice income was \$150,000, his eligibility under the 10% rule for 2008/2009 and 2009/2010 with a change in the rules would be as follows:

	2008/2009 \$	2009/2010 \$
Employment Income	30,000	30,000
Less: Salary Sacrifice Contributions	(30,000)	(30,000)
Total Assessable Employment Income	0	0
Assessable Medical Practice Income	150,000	150,000
<b>Total Assessable Income</b>	<b>150,000</b>	<b>150,000</b>
Eligibility for 10% Rule:		
Assessable Employment Income	0	0
Reportable Employer Super Contributions	N/A	30,000
<b>Maximum Earnings as an Employee *</b>	<b>0</b>	<b>30,000</b>
<b>Employee Earnings as % of Total Assessable Income and Employee Earnings</b>	<b>0%</b>	<b>16.67%</b>
* This amount is equal to assessable employment income plus reportable fringe benefits, plus reportable employer superannuation contributions from 1 July 2009.		

Therefore, in Dr Riviera's case, in 2009/2010 he wouldn't meet the 10% rule and would be unable to make an additional contribution to superannuation to utilise his cap of \$50,000.

Please note, this new concept of reportable employer superannuation contributions will also affect eligibility for other concessions, rebates and liability for some surcharges, including:

- Government co-contribution;
- Medicare levy surcharge threshold and liability;
- Pensioner and Senior Australian Tax Offsets.

## 3. NEW CONTRIBUTION RULING FROM ATO:

On 3 June 2009 the ATO released a draft ruling regarding superannuation contributions. This ruling outlines their view on what is and isn't classified as a contribution, and also outlines the timing of receipt of contributions in the fund. The main areas to note in this ruling are:

- Contributions don't necessarily have to be money or an asset, but can be "money's worth" (something that is the equivalent of a sum of money paid). For example:
  - Paying expenses on behalf of the fund and not seeking reimbursement;
  - Rendering services to the fund that are not at market value;
  - Increasing the value of an existing asset of the fund that isn't consistent with a return on an investment made by the fund;
  - Forgiving a debt of the fund or paying off a debt of the fund;
  - Forgoing a right of indemnity if you act as guarantor for a debt for the fund;

- The timing of in-specie contributions of assets to a fund is when the beneficial ownership in the asset changes, rather than the legal ownership. This is a favourable view, as in the past it was generally the time the legal ownership passed that was considered to be the timing of the contribution:
- This is significant for off-market share transfers implemented prior to 30 June, as the previous view was that it was when the share registry changed the ownership of the shares that the contribution occurred, rather than the relevant date the off-market transfer forms were signed. This could have the affect of the asset ownership not being legally changed on the registry until July, when the share transfer occurred in June;
- For property transfers this is also important – it would be the timing of the signatures on the offer and acceptance that would be relevant, rather than the timing of the change of ownership with the state titles office.

This ruling has some favourable views with regarding timing of contribution, however it will be very important to consider what is classified as a contribution, as the contribution caps are very limiting and accordingly additional unplanned or unforeseen amounts being classified as contributions may not be ideal nor tax effective.

#### 4. CO-CONTRIBUTION REDUCTIONS:

The Federal Budget has also proposed a temporary change in the co-contribution amount. This change will reduce the co-contribution that the Government will make if an eligible person makes a non-concessional contribution of up to \$1,000 to superannuation. Currently, the Government will add up to an additional \$1,500 to superannuation for a non-concessional contribution of \$1,000.

The proposal is to reduce the 150% co-contribution down for the next few years, re-instating 150% from 1 July 2014. The schedule is as follows:

Financial Year	Matching Rate
1 July 2009 to 30 June 2012	100%
1 July 2012 to 30 June 2014	125%
From 1 July 2014	150%

To optimise your co-contribution if you are eligible (your assessable income and reportable fringe benefits needs to less than \$60,342 in 2008/2009), making a personal after tax contribution of up to \$1,000 prior to 30 June 2009 may provide you with a higher amount in superannuation.

*If you have any questions please contact us on 08 6311 6900.*

#### 5. MINIMUM PENSION REDUCTION

On 18 February 2009 the Treasurer announced a measure of relief for self-funded retirees for the 2008/2009 financial year. This relief was in the form of a 50% reduction in the annual minimum payment required to be received from a retiree's superannuation pension, such that their retirement savings were not excessively eroded in a time of financial crisis.

The Treasurer announced in the Budget that this relief would be extended for the 2009/2010 financial year.

Under age 60 pension payments from superannuation still have the potential of being taxed. Therefore, the reduction in the minimum pension drawdown from superannuation could be beneficial as it would reduce the amount of taxable pension income that you are required to receive in order to benefit from the tax exemption on income and capital gains on the pension assets.

#### 6. BORROWING IN SMSFS

Superannuation funds and SMSFs are able to borrow to invest, which is an opportunity to acquire assets and boost the investments in the fund. Importantly the interest costs will be deductible to the trustee of the fund and a 12 month deductible pre-payment can be made. The fund is able to borrow from a related entity, provided it is on an arm's length basis.

#### Planning opportunities

Despite the speculation in the press, the Budget did not change the ability for taxpayers to commence a transition to retirement pension (TRP). A TRP is able to be commenced upon a member attaining their preservation age (currently 55), with the member then able to access their superannuation in the form of a non-commutable income stream, whereby they are unable to make lump sum withdrawals and are subject to a 10% maximum pension drawdown.

The benefits of a TRP are that you are generally able to make additional contributions to superannuation as you can receive a regular income stream from the fund to supplement your earned income to meet your living needs. Additionally, the assets supporting the pension are tax exempt.

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