supernews

issue 40 • march/april 2015

CURRENT STATE OF PLAY…

No doubt many of you have been keeping up to date with the latest conversations surrounding taxation. Most importantly taxation relating to superannuation. It's hard to avoid. Opinions are being offered from various interest groups which would have you thinking that people over 60 are the reason to blame for the budget problems, or that excess franking credits are the devil eating away at the budget pie or perhaps anyone who has built up a substantial superannuation balance is clearly a tax avoider. Depending on which side of the fence you sit, you may or may not agree.

There is no doubt the current taxation system, to some extent, is unsustainable. There is doubt however as to how best to tinker with the taxation system particular in relation to superannuation. The recent Intergenerational Report highlighted that Australian's are living longer and as a result placing increased pressure on the taxation system, social security system and health care system.

The Labor party released their proposals[1] on 22 April 2015 with regards to superannuation which were:

- Earnings on superannuation pensions will be taxed at 15% when a pension account earns more than $75,000 a year. All super pension earnings are currently exempt from tax.
- Taxpayers who earn more than $250,000 a year, based on the special definition of adjusted taxable income, will pay an extra 15% tax on super contributions, taking the tax bill on all concessional contributions, including compulsory contributions, to 30% for each dollar contributed. Currently those taxpayers who earn $300,000 a year pay 30% on concessional super contributions.

You may recall that the former Labor government had a similar policy to introduce a tax when a pension account earns more than $100,000 a year and this was discarded due to the administrative complexities involved. For example, how are people with multiple super accounts affected? How are one off asset sales of lumpy assets, such as a property treated, which may give a distorted capital gain one year and not the next? Is averaging going to be considered to allow for market volatility?

The Labor proposals don't have a lot of detail at this stage. Currently, the Coalition has commissioned a discussion paper which is to feed into the taxation white paper (issued later this year) which will then form the basis of a comprehensive review of the entire taxation system, not just superannuation. Until then, any comment relating to superannuation taxation is speculative.

It is also worth noting that the Abbott government on 19 April 2015 reaffirmed their commitment of no major changes to superannuation in their first term. That includes next month's Federal Budget. Stay tuned.

[1] Will only be considered if elected.

LONGER WAIT BEFORE ACCESSING SUPER

The age at which you are generally permitted to access your super will gradually increase from age 55 to age 60 between 1 July 2015 and 1 July 2024. This article discusses the implications of this increase in the 'preservation age'.

What is 'preservation age' and why is it important?

The superannuation rules are designed to ensure your superannuation savings are accumulated for retirement, thereby reducing your dependency on the Age Pension.

To help achieve this, all current-day superannuation contributions made for people under age 65 must be 'preserved' until a condition of release is met. Earnings on these contributions are also generally required to be preserved (exceptions apply).

Once you reach age 'preservation age' (currently age 55) you can access your 'preserved' superannuation savings, as follows:

- Retired: if you have 'retired' for the purposes of the superannuation rules, you can access your superannuation benefits as a lump sum and/or an account-based pension; or
- Still working: you can access a transition to retirement income stream.

TIP

If your superannuation benefits are made up of the 'unrestricted non-preserved' component, you can usually access this part of your superannuation savings at any time. You can see the preservation components of your superannuation savings on your member statement in your SMSFs accounts.

Phasing in the changes

The concept of 'preservation age' is critical to determining when you can access your superannuation savings.

Currently, preservation age is 55, but will rise to age 60 over the next nine years or so. The following table outlines how the change in preservation age affects the age at which you can access your retirement savings:

DATE BIRTH	PRESERVATION AGE
Before 1 July 1960	55
1/7/60 to 30/6/61	56
1/7/61 to 30/6/62	57
1/7/62 to 30/6/63	58
1/7/63 to 30/6/64	59
From 1 July 1964	60

As you can see from the table above, all individuals born after 30 June 1960 will have a higher preservation age than 55. Individuals born after this time will generally be unable to access their preserved superannuation benefits in any form until they reach the preservation age in the table.

EXAMPLE

Jean is currently age 57 (she was born on 2 February 1958), and has just permanently retired. Her superannuation savings are all preserved. Jean can access her superannuation savings as a superannuation lump sum and/or an account-based pension.

What if Jean was born 2 Feb 1964?
Based on the table above, Jean could not access her superannuation benefits in any form until she reached age 59 (even though she has 'retired').

Transition to retirement income streams and preservation age

Once you reach 'preservation age', you can start a transition to retirement income stream, even though you may still be working. In contrast to an account-based pension, you are restricted to drawing pension payments of up to 10% of your account balance (generally worked out on 1 July each year).

In line with the gradual increase in the preservation age detailed in the table to the left, the age at which you can access the transition to retirement income stream will increase for individuals born after 30 June 1960.

EXAMPLE

Francis was born on 1 August 1962, and plans to continue with his full-time employment. Francis cannot access a transition to retirement income stream until his 58th birthday (ie. 1 August 2020).

ATO ALERT – USING SUPER TO GET A MORTGAGE

The ATO has warned SMSF trustees against investing in entities which effectively provide them access to their superannuation savings to take out a mortgage.

How the arrangement works

The ATO has stated that arrangements are currently being promoted where the following takes place:

1. the SMSF deposits money into a unit trust or pooled investment trust (less a management fee);
2. the money is lent back to an SMSF member, their company or an entity that they control; and
3. the money is then used to help the members obtain a personal or business related mortgage - meaning that they have accessed their superannuation savings early.

INFO

New trustee penalties apply from 1 July 2014. Trustees may be personally liable for a fine of $10,200 for lending to members and relatives.

What is the ATO view?

The ATO considers that these arrangements contravene the superannuation laws for the following reasons:

- the arrangement allows individuals and their associates access to their superannuation savings, instead of using their own assets held outside of the fund; and
- by accessing superannuation savings before retirement, the fund is in breach of the 'sole purpose test'. This is because the fund is being used for a purpose other than providing retirement benefits to members

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