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PERSONAL CONTRIBUTION TO SUPER

As part of the recent superannuation reforms, the Government abolished the 10% rule with effect from 1 July 2017. In this article, we cover how the personal superannuation deduction rules operate from 1 July 2017, including planning tips and traps to consider.

Background – personal superannuation contributions

The superannuation laws allow eligible individuals to claim a tax deduction for personal superannuation contributions made, provided certain requirements are met.

One of the eligibility criteria to deduct personal superannuation contributions has traditionally been that the individual must meet the '10% rule'. Broadly, this rule required that less than 10% of an individual's overall 'income' can come from employment.

In the past, this rule has restricted personal superannuation claims to individuals who receive little or no superannuation support from their employer.

This disadvantaged employees who were not offered the ability to salary sacrifice, as well as substantially self-employed individuals who received 10% or more of their income from employment.

'10% rule' scrapped from 1 July 2017

The law has now been changed to remove the '10% rule' from 1 July 2017. This means that individuals can generally deduct personal superannuation contributions from this time if they:

- contribute to a complying fund (exceptions apply);
- make the contribution by 28 days after the end of the month in which they turn 75. For individuals under 18 on 30 June of the contribution year, they must have derived business or employment income during the income year; and
- provide the fund with a valid notice of intent to deduct the contribution, and the fund acknowledges the notice in writing (time limits apply).

INFO–Personal superannuation contributions for which an individual claims a tax deduction are taxable to the fund, and count towards the individual's concessional contributions cap.

Planning opportunities from 1 July 2017

The effect of this law change is that eligible individuals will generally be entitled to claim a tax deduction for personal superannuation contributions from 1 July 2017 – irrespective of the level of superannuation support received from their employer. From 1 July 2017, this means that:

- Employees – generally, all employees (including full-time workers) can potentially claim a tax deduction for personal superannuation contributions.
- Salary sacrifice – individuals who are not permitted by their employer to salary sacrifice into superannuation can now make deductible personal superannuation contributions instead.
- Termination payments – the tax law does not permit a termination payment to be salary sacrificed into superannuation. The law change allows eligible individuals to overcome this restriction by contributing to super personally and claiming a tax deduction for the contribution in their own tax return.
- Reduce personal tax– individuals in receipt of income such as capital gains or trust distributions, can now legally reduce their taxable income by making deductible personal superannuation contributions.

What to watch out for

Although scrapping the '10% rule' is generally favourable, individuals need to be aware of the following pitfalls:

- Exceptions apply–personal contributions made to certain funds, such as a Commonwealth Public sector super scheme, are not deductible. Members of these funds can, however, generally deduct personal contributions made to other funds (e.g., an SMSF).
- Losses–individuals cannot create a tax loss with a personal superannuation

contribution. For example, assume an individual with income of $10,000 makes a personal contribution of $25,000. Of the $25,000 contribution, they can only claim up to $10,000 (assuming the other deductibility conditions are met).

- 'Global' contributions cap–all concessional contributions (e.g., personal deductible contributions and employer contributions) count towards an individual's concessional contributions cap.
- Work test–individuals aged 65 to 74 need to meet the 'work test'.The 'work test' requires these individuals to work at least 40 hours in 30 consecutive days during the income year in which the contribution is made.

2017-18 Federal Budget – Update

Two housing-related superannuation measures were recently announced in the 2017-18 Federal Budget.

Firstly, the Government proposed a 'First Home Super Saver Scheme' to allow first home buyers to save for a deposit inside the superannuation system. Under the proposal, voluntary superannuation contributions of up to $15,000 annually (and $30,000 in total) can be made for first home buyers from 1 July 2017.

Assuming the law is passed, from 1 July 2018, the first home buyer can withdraw the contributions, along with deemed earnings to put towards their first house. Withdrawn concessional contributions and earnings are expected to be taxed at marginal rates less a 30% tax offset.

The second housing-related measure proposes to allow home owners aged 65 and over to make a non-concessional contribution of up to $300,000 ($600,000 for a couple) from the proceeds of selling their home.

Importantly, the proposal requires the property to be owned for at least 10 years. Further, the measure only applies to contracts of sale signed from 1 July 2018, meaning that sales contracts entered into before this time will not qualify if the measure proceeds as proposed.

INFO–The Government has released draft law on both measures for consultation purposes. The measures are not yet law.

ATO UPDATE

Recently, the ATO has increased its focus on 'non-arm's length income' earned by SMSFs. This is where a fund earns income that is higher than would be expected if the transaction was on commercial terms.

This rule aims to prevent income being diverted to a superannuation fund to shelter it from the normal tax rates that apply outside of super.

Such income is taxed at a much higher rate – 47% (45% from 1 July 2017) instead of 15% (or nil for assets supporting a 'retirement phase' pension). Transactions that are cause for concern include:

- investments that are not on commercial terms (e.g., a factory rented to a related party with rent that exceeds a market rate);
- limited recourse borrowing arrangements that are out of the ordinary (e.g., zero-rate loans);
- trust distributions owing to SMSFs that remain unpaid for more than 12 months; and
- discretionary trust distributions to an SMSF.

In the 2017-18 Federal Budget, the Government proposed to expand the ATO's ability to treat non-commercial transactions as non-arm's length income, meaning that these transactions will continue to be a focus area for the ATO.

SMSF trustee Q & A

Question

"If I make regular lump sums on top of minimum pension payments, are those regular commutations treated as 'debits' against my transfer balance account?"

Answer

Yes, regular commutation amounts over and above the minimum pension payment will be 'debited' to the transfer balance account.

The transfer balance cap limits the capital that can be transferred into 'retirement phase' (e.g., to support an account-based pension). Briefly, payments from your pension account are treated as follows under the transfer balance cap:

- pension payments – no debit to the transfer balance account arises for meeting the minimum pension payment; and
- lump sum ('partial commutation') – a debit arises to the transfer balance account for a lump sum payment (irrespective of whether the commuted amount is paid out of super or transferred back to accumulation).

Therefore, a partial commutation payment is treated more concessionally under the transfer balance cap as compared to a pension payment.

Note, individuals with amounts in accumulation phase can draw extra living costs from this account instead of their pension to maximise the tax-free earnings from pension assets.

WARNING–From 1 July 2017, a partial commutation payment is not counted towards the minimum annual pension payment. Individuals need to ensure that sufficient pension payments are drawn each year to cover the minimum.

Question

"Does the age pension or a foreign pension count towards my transfer balance cap?"

Answer

No, neither of these pensions count towards an individual's transfer balance cap.

The ATO has now clarified that the age pension (and other types of Government assistance payments) are not a 'pension' for superannuation purposes and, therefore, do not count towards the transfer balance cap.

Similarly, a foreign pension is not a superannuation pension and does not count towards an individual's transfer balance cap.

INFO–The above questions were adapted from the ATO's frequently asked questions on the super reforms.

Key dates and reminders

1 July 2017

Commencement date for the following superannuation reforms, including (this list is not exhaustive):

- $1.6 million transfer balance cap;
- removal of tax free income status for fund earnings on TRISs that are not in the 'retirement phase';
- $25,000 annual concessional contributions cap for all individuals;
- $100,000 annual non-concessional contributions cap. Individuals with 'total

superannuation balances' of $1.6m+ as at 30 June 2017 have a NCC cap of zero for the 2018 income year; and

- The Division 293 'income' threshold has been reduced from $300,000 to $250,000.

14 August 2017

Due date for the PAYG withholding annual report. This report is required to be lodged by SMSFs who provide payment summaries to members for benefits paid.

31 October 2017

Due date for SMSF tax returns where prior year income tax returns were outstanding at 30 June 2017 (unless these returns are all lodged by 31 October 2017).

31 December 2017

Last opportunity to correct transfer balance cap breaches of < $100,000 as at 1 July 2017 without penalty.

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