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LABOR'S DIVIDEND PROPOSAL

Labor has announced that, should it win Government, it will remove the ability to obtain a refund of excess imputation credits. If the policy is legislated, it is likely to adversely affect the retirement savings of many SMSFs.

INFO–The change is not law. Labor needs to win the next federal election and both houses of Parliament must approve of the change before the measure can apply.

Dividend imputation – a brief overview

A typical SMSF holds at least some investments in Australian companies – usually a company that is publicly listed on the Australian Stock Exchange (ASX).

A profitable company pays tax on its earnings at a rate of 30% (a lower tax rate applies for smaller companies). Credits for company tax flow down to shareholders via an 'imputation credit' embedded in the dividend. For an SMSF, these imputation credits are currently treated as follows:

- **Accumulation phase SMSF** – the fund's income includes the cash amount of the dividend plus the imputation credit. The imputation credits can offset tax payable on dividend and other income received by the fund, with any excess credits refunded.
- **'Retirement phase' SMSF** – the dividend and imputation credit are exempt to the extent the fund is in retirement phase, however, imputation credits are still available to the fund. If an SMSF is completely in retirement phase, the credits are refunded in full.

This is demonstrated in the table below:

Description	Accumulation phase SMSF	Retirement phase SMSF*
Company		
Company profit	$1,000	$1,000
Tax payment	– $300	– $300
Net profit	$700	$700
SMSF		
Cash dividend	$700	$700
Imputation credit	+$300	+ $300
Assessable income	$1,000	Nil
Tax payable	$150	Nil
Less: Imputation credits	– $300	– $300
Refund of imputation credits	$150	$300

* E.g., the SMSF is only paying account-based pensions.

Given that the credit for tax paid by the company (generally, 30%) is higher than the tax paid by the SMSF on the dividend (generally 15% or nil for an SMSF in 'retirement phase'), the refund of imputation credits provides many SMSFs with a significant financial benefit.

Labor to deny refunds of imputation credits

Labor has announced that, if elected, it will remove the ability of most taxpayers (including SMSFs) to obtain a refund of imputation credits – resulting in the credits being lost. In the table above, this means that:

- Accumulation phase SMSF – the fund will lose the excess imputation credits of $150; and
- Retirement phase SMSF – the fund will lose the excess imputation credits of $300.

Labor intends for this policy to commence from 1 July 2019.

STOP PRESS – Labor announced on 27 March 2018 that this change will not affect an SMSF with at least one Centrelink pensioner or allowance recipient.

Implications of the proposal

Should Labor's policy be legislated, both accumulation and retirement-phase SMSFs are likely to experience a reduced rate of return from investments in companies paying franked dividends.

This may lead to SMSF trustees rebalancing their investment portfolio. For example, an SMSF may reduce its investment in Australian companies and increase its investment in other asset classes offering a higher rate of return (e.g., property trusts, and/or overseas investments).

For SMSFs in retirement phase, removal of franking credit refunds may mean that there is generally no tax difference between the fund being in retirement phase and accumulation phase. That is, the SMSF pays no tax in either phase and the advantage of a higher refund of franking credits in retirement phase is eliminated because the franking credits are lost in both situations.

In light of this, some SMSFs may decide to return to accumulation phase. The pros and cons of this include:

- Being in accumulation phase means that no minimum pension payment is required to be drawn; and
- Members drawing a pension with a high tax free component may lose this advantage being in accumulation phase.

Other SMSFs in retirement phase may also consider bringing in new accumulation members to utilise the excess franking credits. Refer below to the Government proposal to increase the maximum member limit for SMSFs.

Longevity risk – Report released

A recent report called "Hope for the best, plan for the worst?" published by National Seniors (Australia) provides some interesting insights into the perceptions of retirees on the financial effects of increased life expectancy (an additional 6 years for Australians since the 1980's). Specifically, research conducted by National Seniors (Australia) and Challenger showed that:

- Whilst 85% of people aged 50+ were aware that life expectancy had increased by 6 years over the last 30 years, 22% said they hadn't planned at all for a longer life span.
- The survey also found that only 3% planned to spend more in later life – a period when they are more at risk of high cost services and medical needs.
- Conserving capital for the next generation is no longer a key issue for senior Australians – 3% wish to preserve their savings for the next generation, 51% expect to spend it entirely or mostly on themselves and 46% intend to preserve some and spend some.
- The report also noted the potential of new Government-led products that may improve living standards. These products include income insurance, which pays an income stream for the rest of your life if you live beyond age 85.

In summary, the Report noted that retirees generally have conservative investment plans but have not put in place adequate savings plans to account for living a longer life.

ATO UPDATE

The ATO has introduced a new form of advice called a 'Regulator's Bulletin'. The Bulletin is designed to update trustees and advisers on arrangements that create compliance headaches for the ATO.

The first 'Regulator's Bulletin' (SMSFRB 2018/1) deals with the use of 'reserves' by SMSFs. These 'reserves' are amounts in the fund that have not been allocated to any particular fund member. The ATO advises that reserves should only be used by SMSFs in very limited and specific circumstances. Google 'QC 54793' to access the Bulletin.

The ATO has also advised that SMSF members with balances in large super funds can now view their transfer balance account information in their myGov account. Google 'QC 54688' to read this update.

Also, the ATO has released a fact sheet discussing SMSFs and cryptocurrencies (e.g., Bitcoin). Google 'QC 54800' to access this fact sheet. Points from the fact sheet include:

- The investment must be allowed under the fund's trust deed, be in accordance with the fund's investment strategy and comply with the super laws; and
- The SMSF must have clear ownership of the cryptocurrency and value it correctly.

SMSF Trustee Q & A

Question

As an SMSF member – do I need an enduring power of attorney?

Answer

It is not compulsory for you to have an enduring power of attorney, but it is usually a good idea to have one.

A feature of an SMSF is that all members must generally be a trustee (or director of a corporate trustee).

However, to act as trustee, a member must have the capacity to do so. For example, if a member loses mental capacity, they can no longer act as trustee of the fund because they lack an ability to make decisions.

If no one can step in to act as trustee (or director) in place of the member, the SMSF would essentially come to a stand-still because decisions could not be made.

Worse still, depending on the deed, legal intervention may be required to appoint a trustee and make decisions.

The super laws do permit a person holding an enduring power of attorney to step in as trustee (or director) in place of the member.

This means that should, for example, the trustee lose capacity, the person holding the power can act on their behalf.

However, care must be exercised when choosing someone to act on your behalf as an enduring power of attorney. The person appointed has considerable power and must be trusted do the right thing.

INFO–A person holding an enduring power of attorney must be physically appointed as trustee or director – they are not automatically appointed simply because they hold an enduring power of attorney.

Question

Can a non-resident adult child receive a superannuation death benefit?

Answer

Yes, the super laws allow a fund to pay a superannuation death benefit to a non-resident.

A deceased's superannuation benefits must be paid to an eligible beneficiary soon after the member's death.

Generally, an adult child can only receive a superannuation death benefit by way of a lump sum – either directly or via the estate.

Super death benefits paid to a foreign resident from an SMSF are subject to the same withholding rates as payments to an Australian resident. However, the tax treatment of the payment depends on other factors – advice should be sought.

Key dates and reminders

30 June 2018

Last day for making concessional contributions for which a deduction can be claimed in the 2018 income year.

From 1 July 2018, members will be able to make 'carry-forward' concessional contributions if they have a total superannuation balance < $500,000.

2 July 2018

- General commencement date of transfer balance account reporting for SMSFs.
- Generally, last date for lodgment of the 2017 SMSF Annual Return and the last day for a fund to choose to apply the transitional CGT relief.

STOP PRESS – Change for SMSFs

The Government has announced that it will pass laws to allow SMSFs to have up to 6 members (the limit is currently 4).

The announcement follows the Labor Party's proposal to deny franking credit refunds for many SMSFs (discussed above). As noted above, increasing the number of fund members may allow excess franking credits to be used.

In addition, the Government will allow members to initiate and receive rollovers electronically between an APRA fund and an SMSF. This change is expected to accelerate the rollover process.

Both of the above changes are announcements only and are yet to be legislated.

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