

Superannuation and asset succession

Strategy review and reset

KM Private Clients Tax Update
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The Federal Government has now laid its cards on the table concerning its current term legislative agenda in relation to Superannuation taxation arrangements.

As telegraphed in the May 2016 Federal Budget, it was the Federal Government's clear intention to limit tax concessions applying to the Superannuation system. However, for those people who have been able to maximise benefits within Superannuation, a Superannuation Fund is still a very tax effective vehicle for maintaining investment assets.

Two significant changes which become effective 1 July 2017 require a major rethink of how you can continue to take advantage of the current Superannuation tax concessions. The application of these new rules need to be considered in light of your own unique personal financial circumstances.

Now is the time for a 'Strategy review and reset'.

Can I contribute more to superannuation?

Notwithstanding the tightening of the Superannuation tax concessions, holding investments within a Superannuation Fund still provides a maximum 15% tax on investment earnings and 10% tax on realised capital gains where the asset is held for at least 12 months.

As such, we now need to determine how we can best utilise these concessions.

Concessional contributions

For the year ending 30 June 2017, there is a concessional contribution cap of \$30,000 for those under the age of 49 years as at 30 June 2016 and \$35,000 for those aged over 49 years on 30 June 2016.

This cap will be lowered to \$25,000 for everybody on 1 July 2017.

Action required

Consideration needs to be given as to whether or not you should be maximising your concessional contribution in the current year in anticipation of the concessional contribution cap being lowered.

Non-concessional contribution reprieve

Due to Parliamentary pressure, the Federal Government have decided not to introduce changes to the non-concessional contribution caps until 1 July 2017. At that time, if you have more than \$1.6 million in accrued Superannuation benefits, you will not be eligible to make any further non-concessional contributions. Accordingly, the current financial year could be your last opportunity to make significant non-concessional contributions to Superannuation.

Tests that need to be applied to determine eligibility to make Non Concessional Superannuation Contributions

1. Have you already reached your Non-Concessional Contribution Cap?

You need to determine whether or not you have maximised your non-concessional contributions by bringing forward non-concessional contributions prior to 1 July 2016. Whilst the annual cap was \$180,000, there was a possibility of making up to \$540,000 of non concessional contributions once every 3 years. If you took full advantage of this concession prior to 1 July 2016, it is likely that you are unable to make further non-concessional contributions in the current financial year.

2. Are you aged 65 or over as at 30 June 2016?

If you are aged 65 or older as at 30 June 2016 and no longer working, you are not permitted to make further contributions to Superannuation (either concessional or non-concessional). If you are aged 65 to 75 as at 30 June 2016 and have not previously utilised your Non-Concessional Cap and still working, you will only be permitted to make a maximum \$180,000 Non-Concessional Contribution in the current year.

3. Are you aged 64 or younger as at 30 June 2016?

Provided you have not previously exceeded your Non-Concessional Contribution Cap, you will be able to make further non-concessional contributions up to a maximum of \$540,000 in the current financial year.

Action required

You need to consider:

1. Whether you are permitted to make Non-Concessional Contributions; and
2. Where you will source the resources to make such a contribution.

If you have assets outside the Superannuation system, you need to determine what the transaction costs will be to transfer them into Superannuation.

There are various means of transitioning assets into Superannuation.

You need to seek advice as to what the most tax effective way of making that contribution is prior to 30 June 2017.

Preparing for the \$1.6m pension transfer cap

Last week I outlined the proposed rules for the introduction of the Cap on concessional income sourced from Superannuation Pensions. The rules (if legislated in their current form) make the management of the new system relatively simple. However, there is detailed planning required in transitioning to that new system.

First Question – Are all members of your Self-Managed Superannuation Fund currently in Pension Mode?

If they are not, is it possible for them to move into pension mode?



The Federal Government proposes to introduce a 'Mark to Market' rule to allow Superannuation Funds to reset the cost base of capital gains taxable assets that are moved to retirement phase (i.e. funding pensions) to the accumulation phase prior to the 1 July 2017, to comply with the new Pension Transfer Cap Rules. This includes assets that are supporting a Transition to Retirement Pension.

To take advantage of this concession, the Capital Gains Tax asset must be supporting a pension prior to 30 June 2017.

There are many ways of qualifying to commence a pension, even if you are still working. Primarily you need to be aged at least 55 as at 30 June 2016 (i.e. born before 1 July 1961). Accordingly, if you have a Member of your SMSF aged 55 or over as at 30 June 2016 and not currently in pension mode please seek advice as to mechanics of commencing a pension.

Impact of restricting pension assets to \$1.6 million from 1 July 2017

From 1 July 2017, new rules will apply to Superannuation Funds apportioning assets between those supporting the retirement phase (i.e. in pension mode) and those in accumulation mode.

You need to start preparing for that change now.

The issues you need to consider are as follows:

1. Do you have more than \$1.6 million per Member in Superannuation benefits? The new pension rules apply on a per Member basis, irrespective of where the accumulated Superannuation entitlements are. Accordingly, it is important for you to measure all of your entitlements, especially if they are in more than one Fund.
2. If you are just over the \$1.6 million cap, consideration needs to be given as to whether or not you withdraw the amount over \$1.6 million prior to 1 July 2017. Transitional Rules apply to transfer cap breaches of less than \$100,000 that occur on 30 June 2017. Such breaches do not give rise to a penalty provided they are rectified by 31 August 2017.

Accordingly, in reflecting on whether to withdraw the excess over \$1.6 million, you need to determine:

1. What your current cash needs are in the 12 months from 30 June 2017.
2. What you will do with this excess once it is out of the Superannuation System? Will the tax on the investment earnings be more than the 15% tax on earnings within the Fund?
3. What are the tax characteristics of the amounts remaining within the Superannuation Fund supporting the \$1.6 million pension? Withdrawing the amount prior to death may save the tax payable on benefits upon death which can be up to 15% of the Fund balance.

All of these matters need to be addressed on a person by person basis, taking into account your own unique financial circumstances.



Asset succession issues to consider in light of the superannuation tax changes

The change in the Pension Rules has major ramifications for your asset succession planning.

Traditionally Reversionary Pensions were used to maintain assets within the Superannuation system until the death of the surviving spouse or last Member of a Self-Managed Superannuation Fund. With all Superannuation benefits in excess of \$1.6 million now required to be in accumulation mode, such strategies now need to be reconsidered.

What does this all mean?

If you have more than \$1.6 million in the Superannuation System as at 1 July 2017, your Binding Death Benefit Nomination becomes important from that date. If you have a Reversionary Pensioner nominated to succeed you on your death, this will deal with your pension succession. For your accumulation benefits (i.e. those great than \$1.6 million), your Binding Death Benefit Nomination will need to nominate the recipient of this asset. Whilst this may be your spouse, if your spouse has already taken advantage of the \$1.6 million pension cap, he or she will need to withdraw both the reversionary pension benefit he or she receives from you on your death as well as your accumulation benefit bequeathed to him or her. Such benefits must now be withdrawn from the Superannuation system within a reasonable time period after your passing.

This is a major change to the way we traditionally have dealt with the succession management of Superannuation interests. For couples who each have at least \$1.6 million in Superannuation, on the death of the first of them, the Deceased's benefits will need to be withdrawn from Superannuation and invested in a structure established outside of the Superannuation System.

Accordingly, Discretionary Trusts may need to be rethought of as an appropriate vehicle to take account of assets now outside Superannuation and the corresponding asset succession and control issues that the use of such Trusts will create.

Next steps

Whilst legislation still needs to pass through a hostile Federal Parliament, action needs to commence now to prepare for these changes.

Not only does your Superannuation strategy require reconsideration but so does your asset succession management.

Gathering details of your unique personal financial situation needs to take place so that consideration of the impact of these changes can commence.

Please do not hesitate to contact me if you would like to discuss these matters in greater detail in relation to your own specific circumstances.

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Anthony's passion is managing the implementation of personal financial strategies for High Net Worth individuals particularly focussing on the issues associated with asset succession. He is a Specialist Self-Managed Superannuation Fund Advisor and Fellow of the Tax Institute of Australia. He has over 30 years' experience in the Industry.



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