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Your Financial Advice Newsletter

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Proposed superannuation measures announced in 2017/18 Federal Budget

The principal measures regarding superannuation just announced in the 2017/18 Federal Budget can be summarised as follows:

- The Government will **encourage home ownership** by allowing first homebuyers to 'build a deposit' inside their superannuation fund.

  More particularly, voluntary superannuation contributions of up to $15,000 per year, and $30,000 in total, can be contributed by first homebuyers from **1 July 2017**. The contribution must be within existing concessional and non-concessional caps. These contributions can then be withdrawn, along with deemed earnings, for a first home deposit, from **1 July 2018 onwards**.

- **From 1 July 2017**, the Government will improve the integrity of the superannuation system by including the use of **limited recourse borrowing arrangements (LRBA)** in a member's total superannuation balance and transfer balance cap.

  The concept of total superannuation balance is used to limit the ability of a fund member to make non-concessional contributions (NCCs) into superannuation and the transfer balance rules are designed to limit the value that a fund member is able to transfer into the tax-exempt pension phase to $1.6 million.

  This means that the outstanding balance of a LRBA will be included in a member's annual total superannuation balance and the repayment of the principal and interest of a LRBA from a member's accumulation account will be a credit in the member's transfer balance account.

- **From 1 July 2018**, the Government will allow a person aged 65 or over to make a NCC of up to $300,000 from the proceeds of selling their home. These NCCs will be in addition to those currently permitted under existing rules and caps and they will be exempt from the existing age test, work test and the $1.6 million balance test for making NCCs.

  This measure will apply to sales of a principal residence owned for the past ten or more years and both members of a couple will be able to take advantage of this measure for the same home.

- The Government will extend the current tax relief for **merging superannuation funds** until 1 July 2020.

  Since December 2008, tax relief has been available for superannuation funds to transfer capital and revenue losses to a new merged fund, and to defer taxation consequences on gains and losses from revenue and capital assets. This tax relief was due to lapse on 1 July 2017.

Note that the above measures are subject to the passing of legislation.

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Contributions made after retirement

Circumstances will arise where a member of an SMSF satisfies the 'retirement' condition of release, and further contributions are subsequently made (for the benefit of the member) into the member's SMSF. For example:

(a) A member of an SMSF who retires at age 60 to 64 could commence working for a new employer (before reaching age 65) who makes contributions into the member's SMSF.

(b) A member of an SMSF who retires at age 60 to 64 makes personal contributions to their SMSF after retirement (and before reaching age 65).

(c) A member of an SMSF who works for two employers ceases employment for one of the employers at age 60 to 64, and superannuation contributions are made for the member's benefit by the other employer.

This raises the question of whether the additional contributions made after the 'retirement' condition of release has been satisfied are 'preserved benefits' in the fund (in which case, a condition of release would need to be satisfied in respect of those benefits before they can be cashed).

Where a member satisfies the 'retirement' condition of release, that applies in respect of all benefits accumulated in a fund **up until the time of 'retirement'**. As a result, these benefits can then be cashed from the fund at any time (subject to the terms of the SMSF's trust deed).

The ATO has confirmed that, where further superannuation contributions are made for the benefit of the member at a later time (i.e., after retirement and before the member reaches age 65), these contributions become preserved benefits in the fund. That is, only the benefits in a fund **at the time** a member satisfies the retirement condition of release can become unrestricted non-preserved benefits (i.e., benefits that can be cashed at any time). As a result, these subsequent contributions can only be paid out of the fund if the member satisfies a condition of release in respect of these benefits (e.g., the member 'retires' or 'reaches age 65').

However, once a member has reached their preservation age (currently 56), the member will generally be able to withdraw their benefits as a non-commutable income stream, which has a 10% maximum annual draw down limit.

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Temporary Budget Repair Levy now ending

The Temporary Budget Repair Levy ('TBRL') was imposed on high income earners for the period **from 1 July 2014 to 30 June 2017** ('the TBRL years'). However, the TRBL ceases to apply as from 1 July 2017.

The TBRL's impact on superannuation funds during the TBRL years, and the change with its cessation as from 1 July 2017, is summarised below:

(a) **Excess Non-Concessional Contributions tax** – where an individual's Non-Concessional Contributions ('NCCs') exceeded their relevant NCC cap, the excess was subject to excess NCC tax at the rate of **49%** during the TBRL years (**47%** as from 1 July 2017).

(b) **Excess concessional contributions** (which are now included in the individual's taxable income and taxed at their marginal tax rate) may have been subject to **49%** tax for the TBRL years (**47%** as from 1 July 2017).

(c) **Non-arm's length income** – where a superannuation fund has derived 'non-arm's length income' as defined in the tax legislation, then this income is subject to a penalty rate of tax, which was **47%** for the TBRL years (**45%** as from 1 July 2017).

(d) **No-TFN contributions** – where a superannuation contribution has been made in respect of an individual who has not provided their TFN to the superannuation fund by the end of the year, then these contributions will be subject to a penalty tax which was calculated as **49%** (during the TBRL years, **47%** as from 1 July 2017) less the ordinary rate of tax paid by the fund (e.g., 15%).

(e) **Non-complying superannuation funds** – where a superannuation fund is a non-complying fund then its taxable income will be subject to a penalty rate of tax, which was **47%** for the TBRL years, **45%** as from 1 July 2017.

(f) **Departing Australian Superannuation Payments ('DASPs')** – For the TBRL years, the taxable component of a DASP was subject to withholding tax by the fund at the rate of **38%** if it was from a taxed superannuation fund and **47%** if it was from an untaxed superannuation fund. As from 1 July 2017 (similarly to before 1 July 2014), the respective tax rates are **35%** (from a taxed fund) and **45%** (from an untaxed fund). Note that different DASP rates apply for working holiday makers.