NTAA ADVICE

The NTAA's Financial Advice Newsletter Edition No. 37

Amendments announced regarding Budget super reform changes

Extensive superannuation reforms were announced in the 2016/17 budget, mostly in relation to superannuation contributions.

Perhaps the most controversial of these superannuation reforms was the proposed imposition of a lifetime **non-concessional** contributions cap of $500,000 (taking into account all non-concessional contributions made on or after 1 July 2007), to replace the existing non-concessional contributions cap.

However, "following extensive consultation", the federal government has just announced that it now does **not** intend to proceed with the $500,000 lifetime non-concessional contributions cap. Instead, it has proposed that the existing annual non-concessional contributions cap be reduced from $180,000 to $100,000, as from 1 July 2017.

Under this new proposal, individuals under 65 will continue to be able to 'bring forward' three years worth of non-concessional contributions, to make a contribution of $300,000 (currently $540,000).

However (as just announced) a new eligibility condition is to be imposed, as from 1 July 2017, on any person who holds a superannuation balance of more than $1.6 million at the start of the financial year (i.e., 1 July) will not be able to make any further **non-concessional** contributions. This limit will be tied and indexed to the proposed 'superannuation transfer balance cap' of $1.6 million (being part of the 2016-17 budget superannuation reforms).

Other amendments just announced to the 2016/17 budget superannuation reforms are as follows:

- The proposed abolishing of the work test as from 1 July 2017 for people aged between 65 and 74 will not proceed, so that people in that age group will still need to satisfy the prescribed work requirements in order to make superannuation contributions;
- The start date of 1 July 2017 for the proposed 'catch-up **concessional** superannuation contributions' measure will be deferred by 12 months to 1 July 2018. (Under this proposed measure, individuals with a superannuation balance of less than $500,000 are to be able to make additional **concessional** contributions where they have not reached their concessional contributions cap in previous years.)

The 2016/17 budget superannuation reforms (subject to the above and any other future amendments) will mostly only take effect as from 1 July 2017 or later, assuming that they actually become law.

Additional super reform changes announced in the Budget

With the adjustments proposed for concessional contributions, below briefly outlines the remaining budget super reform changes (which would mostly only take effect as from 1 July 2017, assuming that they become law.)

- From 1 July 2017, the government will remove the **anti-detriment (deduction) provision.**

  Briefly, the anti-detriment provision allows the spouse (or former spouse) and/or children of a deceased fund member to effectively obtain a refund of all contributions tax paid by the deceased member during their lifetime.

ADVICE

- The government will remove the rule that allows individuals to **treat certain superannuation pension payments as lump sums** for tax purposes (which currently makes them tax-free up to the low rate cap of $195,000).

  Currently, an individual drawing down an account-based pension from their superannuation fund can generally make an election for a benefit withdrawal not to be treated as a pension benefit, so that the benefit withdrawal is treated (and taxed) as a lump sum benefit instead. The withdrawal can then be tax-free up to the low rate cap (currently $195,000), where the recipient member has reached their preservation age (but is under the age of 60).

- From 1 July 2017, the government will **increase access to the low income spouse superannuation tax offset** by raising the income threshold for the low income spouse to $37,000 (from $10,800). The offset is gradually reduced for income above this level and completely phases out at income above $40,000.

  The low income spouse tax offset provides up to $540 per annum for the contributing spouse.

- From 1 July 2017, the government will introduce a **Low Income Superannuation Tax Offset** ('LISTO') to reduce tax on superannuation contributions for low income earners.

  The LISTO will provide a **non-refundable tax offset** to superannuation funds, based on the tax paid on concessional contributions made on behalf of low income earners, up to a cap of $500. The LISTO will apply to members with adjusted taxable income of **up to $37,000** that have had a concessional contribution made on their behalf.

  The LISTO will replace the Low Income Superannuation Contribution when it ends on 30 June 2017.

When does a TRIS become a standard ABP?

It is important to understand the circumstances in which a transition to retirement income stream ('TRIS') can become a standard account-based pension ('ABP').

By way of background, a TRIS can commence to be paid from an SMSF as soon as the member attains their preservation age (currently 56), even if the member is still working. However, an ABP can only commence to be paid once the member has satisfied a 'full' condition of release ('COR') (i.e., with a 'nil' cashing restriction), such as 'retirement', or attaining the age of 65. Also, under a TRIS, no more than 10% of the member's TRIS account balance may be withdrawn each year, whereas no maximum limit applies to an ABP.

A TRIS in effect automatically changes to a standard ABP on a 'full' condition of release being satisfied.

For example, suppose that Harry has been receiving a TRIS from his SMSF since he attained his preservation age of 55 on 1 October 2012. On 1 September 2016, at the age of 59, Harry retires permanently from the workforce. As this retirement is a full condition of release, Harry's TRIS as from 1 September 2016 converts to an ABP, and Harry could then withdraw more than 10% (up to the full balance) of the pension.

Now suppose the same facts in the above example, except that Harry continues working until after he turns 65, and does not satisfy any other COR before then. In that case, Harry's TRIS would remain a TRIS until he turns 65 (which is itself a COR), and Harry could not withdraw more than 10% of the TRIS before attaining that age.

While a TRIS may by default convert to an ABP on a COR being satisfied, it is nevertheless recommend that this be documented, e.g., by detailed trustee resolutions. Detailed advice should be sought in this regard as required.

Finally, it was announced as part of the 2016/17 budget that, as from 1 July 2017, the tax exemption on earnings of assets supporting a TRIS (as opposed to an ABP) is to be removed. For this reason also it is important to note when a TRIS may convert to an ABP following a COR being satisfied.

SMSF exposed to payroll tax liabilities

A recent Queensland Supreme Court decision illustrates how an SMSF may be exposed to payroll tax liabilities.

In certain circumstances a number of legal persons may be grouped together for payroll tax purposes, in which case, the payroll tax amount is calculated on the total combined wages of that group.

All members of a group are jointly and severally liable for any unpaid amounts of payroll tax. In this case, an SMSF was held to be part of a group (notwithstanding that it did not pay wages), and so the trustees of the SMSF were potentially liable for unpaid payroll tax.

In this case, two properties were held by a related company on separate trusts for an SMSF as beneficiary under limited recourse borrowing arrangements ('LRBAs'). One of the properties was leased to another related company on non-arm's length terms.

The Queensland Office of State Revenue ('OSR') advised the trustees of the SMSF that they (and other related parties) were regarded as a group for payroll tax purposes, and on this basis, the OSR issued an assessment notice for primary tax in excess of $2.6 million.

The SMSF was included as part of the group primarily because the SMSF via one of the LRBA trusts was leasing business premises to a related company, and the same individual trustees controlled the SMSF and the two LRBA trusts.

This case illustrates how an SMSF may be exposed to payroll tax liabilities if the SMSF is linked with a family group business. Care should be taken in this regard, especially as all members of a group (which may include an SMSF) are jointly and severally liable for any unpaid amounts of payroll tax, as stated above.

Refer *Scott and Bird & Ors v Commissioner of State Revenue* [2016] QSC 132