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Budget superannuation changes on the way

The Federal Government has been consulting on draft legislation to give effect to most of its 2016–2017 budget superannuation proposals. Here are some of the key changes.

Pension \$1.6 million transfer balance cap

The total amount of accumulated superannuation an individual can transfer into retirement phase (where earnings on assets are tax-exempt) will be capped at \$1.6 million from 1 July 2017. Those with pension balances over \$1.6 million at 1 July 2017 will be required to “roll back” the excess amount to accumulation phase by 1 July 2017 (where it will be subject to 15% tax on future earnings).

Concessional contributions cap

This cap is to be reduced to \$25,000 for all individuals (regardless of age) from 1 July 2017. The concessional cap will be indexed in increments of \$2,500 (down from \$5,000 increments). Contributions to constitutionally protected funds and untaxed or unfunded defined benefit superannuation funds will be counted towards an individual’s concessional contributions cap. However, any excess concessional contributions in respect of such funds will not be subject to tax, but instead limit the individual’s ability to make further concessional contributions.

Note that the Government has decided to:

- dump the proposed \$500,000 lifetime cap on non-concessional contributions (which would have been backdated to 1 July 2007) – instead, the lifetime cap will be replaced by a reduced non-concessional cap of \$100,000 per year for individuals with superannuation balances below \$1.6 million;
- not proceed with the proposal to remove the work test for making contributions between ages 65 and 74; and
- defer to 1 July 2018 the start date for catch-up concessional contributions for superannuation balances of less than \$500,000.

TIP: The government says it intends to introduce the proposed changes in Parliament “before the end of the year”. It remains to be seen if the changes will pass smoothly through Parliament. In any case, it would be prudent to check in with your professional adviser to see if and how the proposed changes would affect your retirement savings strategy.

Primary producer income tax averaging

Legislation has been introduced in Parliament that proposes to allow primary producers to access income tax averaging 10 income years after choosing to opt out, instead of the opt-out choice being permanent. The Federal Government says this will assist primary producers, as averaging only recommences when it is to their benefit (ie they receive a tax offset) and they can still opt out if averaging no longer suits their circumstances. The changes are proposed to apply for the 2016–2017 income year and later income years.

TIP: Primary producers have to meet basic conditions to be eligible for income averaging. Please contact our office for further information.

Research and development tax incentive rates change

The Federal Government has reduced the rates of the tax offset available under the research and development (R&D) tax incentive for the first \$100 million of eligible expenditure by 1.5 percentage points. The higher (refundable) rate of the tax offset has been reduced from 45% to 43.5% and the lower (non-refundable) rate of the offset has been reduced from 40% to 38.5%. Here are some relevant points to note:

- Eligible entities with annual turnover of less than \$20 million, and which are not controlled by an exempt entity or entities, may obtain a refundable tax offset equal to 43.5% of their first \$100 million of eligible R&D expenditure in an income year, and a further refundable tax offset equal to the amount

by which their R&D expenditure exceeds \$100 million multiplied by the company tax rate.

- All other eligible entities may obtain a non-refundable tax offset equal to 38.5% of their eligible R&D expenditure and a further non-refundable tax offset equal to the amount by which their R&D expenditure exceeds \$100 million multiplied by the company tax rate.

The changes apply from 1 July 2016.

TIP: AusIndustry and the ATO manage the R&D tax incentive jointly. The R&D tax incentive aims to offset some of the costs of undertaking eligible R&D activities. A company must lodge an application to register within 10 months after the end of its income year. Please contact our office for further information.

SMSF related-party borrowing arrangements

The ATO has issued a taxation determination (TD 2016/16) concerning whether the ordinary or statutory income of a self managed super fund (SMSF) would be non-arm's length income (NALI) under the tax law, and therefore attract 47% tax, when the parties to a scheme have entered into a limited recourse borrowing arrangement (LRBA) on terms which are not at arm's length.

The ATO has also updated a practical compliance guideline (PCG 2016/5) which sets out the Commissioner's "safe harbour" terms for LRBAs. If an LRBA is structured in accordance with the guideline, the ATO will accept that the LRBA is consistent with an arm's length dealing and the NALI provisions (47% tax) will not apply. Trustees who do not meet the safe harbour terms will need to otherwise demonstrate that their LRBA was entered into and maintained consistent with arm's length terms.

TIP: The ATO has allowed a grace period to 31 January 2017 for SMSFs to restructure LRBAs on terms consistent with the compliance guideline's safe harbour terms (or bring LRBAs to an end before that date). Please contact our office for further information.

Travel expense and transport of bulky tools claim denied

An individual has been unsuccessful before the Administrative Appeals Tribunal in a matter concerning certain deduction claims for work-related travel expenses. The individual was a sheet metal worker whose home was located some 60 km from his employer's main work site. The individual made a number of work-related deduction claims. However, after various concessions made by both the individual and the Commissioner of Taxation, the remaining issue between the parties was whether the taxpayer

was entitled to a deduction for work-related travel expenses.

The man argued that his employer required him to supply his own tools and that they were too bulky to be transported to work other than by car. He also questioned whether his employer provided secure storage facilities for his tools. In refusing the taxpayer's claim, the Tribunal noted it was the taxpayer's own admission that it was his own personal choice to transport his various hand tools out of security concerns. The Tribunal also said the taxpayer's security concerns were "not supported by objective evidence". The taxpayer's claim was therefore refused.

TIP: The ATO reminds individuals to make sure they get their deductions right. In certain circumstances it will contact employers to verify employees' claims. In this case, the ATO contacted the taxpayer's employer to check his claims, including whether the employer supplied safe storage facilities.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.