What the proposed housing-based super contribution initiatives offer

After waiting for what seems like an eternity, the government has finally put to Parliament its draft legislation around two of its schemes.

Contact Us

Welcome to this month's issue of our newsletter. Our aim is to keep you informed about current tax and superannuation related matters. If you would like to discuss anything raised in the newsletter, please contact us. In the meantime ... good things.

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The proposed schemes, the *First Home Super Saver* and *Contributing the proceeds of downsizing to superannuation*, are both pieces of legislation that are an attempt to bring into action proposals from the 2017 Federal Budget.

The proposals aim to:

1. assist first home buyers to save a deposit through their superannuation, and
2. assist retirees to use some of their superannuation money from downsizing their present living arrangements.

What the proposed housing-based super contribution initiatives offer *cont*

The First Home Super Saver might sound a little familiar; the ALP introduced a similar scheme under the Rudd government that the then Coalition opposition opposed. In fact, proposals to use superannuation for housing go back as far as Paul Keating in 1993 who put up the idea of all Australians being able to use up to $10,000 of their superannuation, and is constantly raised by those who may not fully understand the policy intent of superannuation.

The second proposal is a little more novel; the government believes that many retirees are not selling their existing homes, and downsizing to a more livable space, due to the new contribution caps. It is hoped the proposal will encourage retired Australians to downsize their home, offering those homes to the market and thereby increase the supply of dwellings (and hopefully putting downward pressure on house prices). However as the amounts transferred will count towards pension tests, some retirees may choose not to readily jump at the idea. If you are a retiree and considering this, talk to this office to determine its effectiveness for you and the impact, if any, it could have on your government pension.

First Home Super Saver (FHSS)

The budget proposed that from 1 July 2017 eligible first home buyers would be able to contribute up to an extra $15,000 per year, up to a total maximum of $30,000, into their superannuation that would then be able to be released if used to buy a home. However the contributions still count towards the annual concessional and non-concessional caps and are not in addition to those caps.

Eligibility is limited to those aged 18 and over who have not used the FHSS before and have never owned real property in Australia. If you are purchasing with another person who already has property, you would not be disqualified from using the FHSS.

However, there can only be one request for a release of the amounts held in superannuation. If you withdraw less than the total $30,000 plus earnings in an initial release you cannot later seek to withdraw further amounts.

Contributing the proceeds of downsizing to superannuation

The second proposal has two aims — one, to assist older Australians to downsize their living arrangements, and two, to increase the supply of housing to first home buyers thus reducing some of the supply constraints that are keeping housing prices high.

Who is eligible?

To be eligible under the proposed policy:

- a person must be aged 65 or older
- the property sold must have been held by the person for at least 10 years and been their principal place of residence for that period
- the property must be in Australia and cannot be a houseboat, caravan or other mobile home
- the contribution must be made within 90 days of the disposal of the dwelling, or such longer time as allowed by the Commissioner
- the individual must choose to treat the contribution as a downsizer contribution, and notify their superannuation provider in the approved form of this choice at the time the contribution is made, and
- the individual cannot have had downsizer contributions in relation to an earlier disposal of the main residence.

How much can be contributed?

You can contribute up to $300,000 from the sale of the home as a non-concessional contribution into superannuation savings. The amount is $300,000 per person, so a couple will be able to contribute up to $600,000 out of the sale of their residential home.

The new rules apply to the proceeds of contracts entered into on or after 1 July 2018.

Downsizer contributions are not tax deductible and can be made for an individual in relation to one sale of the main residence. Further, downsizer contributions cannot be made in the future in relation to the sale of another main residence. Therefore if you sell your house at age 65 but only contribute say $200,000, if you later sell an eligible home you will not be able to contribute any of that to make up the amount not initially contributed. However, you can make multiple contributions (up to the cap amount) from the sale of the same residence.

While the amount from selling the home under the scheme is limited to $300,000, there is no restriction on the person making other contributions from the sale of their home into superannuation. These further contributions will however not be under the scheme and be subject to the contribution caps.

Downsizer contributions do not count towards the contribution caps

In order to encourage people to take up the scheme, the contributions eligible under this proposal will not count towards the new contributions cap. This will be

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Considering ride-sharing for income? **Tips and traps**

Have you or someone you know considered taking up ride-sharing (also called ride-sourcing) to earn extra income, or even as an alternative form of employment? When providing ride-sharing services through Uber or GoCatch and other facilitators for a fare, there are things you need to know, and traps you need to be aware of.

The first issue to make plain however depends on if you have already started offering ride-share services without considering the tax outcomes. If this is indeed the case, be pre-warned that come financial year's end there's a very real possibility that you may have built up a tax debt. Some drivers can be former salaried workers who don't always realise how small business works (and may not even realise they *are* a small business now), and many think of sharing-economy services as "money on the side" without realising that tax rules still apply.

For now, the items that every ride share driver needs to know include:

1. Income earned from ride-share activities is assessable income and must be reported in your income tax return.
2. Deductions can be claimed for expenses that directly relate to providing ride-share services. This applies even if you operate your ride-share activities on a casual basis to supplement income from another job or other business activities.
3. Ride-share services are deemed to be taxi travel for GST purposes, so you will have to register for GST regardless of how much is earned from ride-share. Commercial enterprises are generally only required to register for GST after a $75,000 annual turnover threshold is met. An enterprise in the form of a taxi service is an exception to this general rule in that GST registration is required irrespective of turnover.

Taking up ride-sharing also means you will be required to get an Australian business number. Registering for GST can be done at the same time as getting an ABN, and we can help you with both of these.

Ride sourcing and GST

As an Uber driver (let's use that term for convenience, but there are other ride-sharing facilitators) you will be required to calculate GST on the full fare, not the net amount you receive after deducting any fees or commissions that Uber is entitled to.

If a passenger pays $55 for a fare:

- the GST payable is $5
- Uber pays you $44 after taking their commission ($11)
- the $11 paid to Uber is a tax deduction you can claim.

Being registered for GST means you can claim GST credits on business purchases, but the percentage that is business use (and not private use, when you are just driving yourself around) must be worked out, and you will be required to only claim this amount.

For example, if you use your car 10% for ride sourcing and 90% for private purposes, and:

- you buy a new car to use for ride-sourcing activities for $33,000 (including $3,000 GST) – you can claim a GST input tax credit relevant to the business portion of the GST cost ($300)
- you pay $110 for fuel (including $10 GST) – you can claim a GST input tax credit relevant to the business portion of the GST cost ($1)
- you pay $220 to have the car serviced (including $20 GST) – you can claim a GST input tax credit relevant to the business portion of the GST cost ($2).

There are other business purchases you may be able to claim a portion of GST credits for, but of course records need to be kept. Activity statements will need to be lodged, but again we can help with this.

The easiest way for an Uber driver to keep track of deductions is by using the ATO app. You can take a photo of receipts and log it in the app, then later on send a report to our office. You could also use the ATO app's "Add trip" function as your logbook to keep records. You can use your GPS or odometer to calculate the distance travelled while you're driving passengers to their destinations to accurately record such trips.

Income deductions allowed or not

For income tax deductions, there is the cents per kilometre or logbook methods (we can go over what these mean for you if you're not familiar), and also note that you can change these methods year to year depending on which is more favourable.

For Uber deductions, the business use proportion is key. Possible deduction inclusions are:

- commissions, licensing or service fees paid to Uber or the other ride-share facilitators

Considering ride-sharing for income? Tips and traps *cont from page 3*

- costs associated with business use of car (petrol, servicing, depreciation, etc.)
- tolls
- parking
- vehicle registration
- mobile phone bills
- safety equipment (such as high visibility vests)
- insurance
- any fees you pay this office
- bank fees (if you maintain a separate account for ride-share work)

There are however a few non-deductible expenses you need to be aware of. These include:

- costs incurred before becoming a ride-share driver, or before the application process starts (such as attending information nights) are not deductible
- costs of a normal drivers licence
- fines (parking, speeding, etc)
- clothing other than safety clothing, and
- meals, drinks, etc purchased while on shift.

Issuing invoices

If one of your passengers requests a tax invoice (that is, an invoice that includes the amount of GST) for a fare over $82.50 including GST, you are required by law to provide one. Note that the receipts that Uber sends to a passenger's mobile phone are not valid tax invoices; they are just receipts.

Uber or whichever facilitator you are going through may issue tax invoices on your behalf, which solves the problem (although it's a good idea to be familiar with the process before a passenger asks for an invoice).

But if they can't do this on your behalf, you can use your own tax invoice book with your ABN and other required details on it. Talk to us about the sort of details every tax invoice is required to display. ■

What the proposed housing-based super contribution initiatives offer *cont from page 2*

a relief for many who may be considering downsizing through this process.

The 10-year ownership test

What if the property was owned in the name of one spouse rather than both? In this circumstance, the spouse who is not on the title would still be able to claim the ownership period with their spouse.

Similarly, an individual person may gain title in respect of a dwelling following the breakdown of a relationship. In such cases, the person who ends up with title can count the period of ownership with their former spouse towards the 10-year ownership test.

The amount may relate to proceeds from the sale of a business (including a farm) where the owner also lives on site and it is the owner's main residence. There is no need for the proceeds of the sale to be apportioned so that only the capital proceeds relating to the sale of the owner's main residence are able to be used to make a downsizer contribution.

No "work test" or age limit

Another advantage of the proposal is that it will not be subject to the work test or an age limit. If this were not the case, it would severely undermine the advantage of the proposal. Normally contributions in this age group are required to be made from a person gainfully employed for at least 40 hours within a 30-day period during the year. Furthermore, the restriction on those over 75 making a contribution are removed if the contribution is made through this process.

Contributions count towards pension test

One factor that may restrict the benefit of this proposal, and thus play on the minds of older Australians on whether to sell their homes, is that the contributions will still count towards total pension assets tests. This means that older Australians will be moving funds out of an exempt asset (their home) into a non-exempt asset.

Currently, you can have up to $350,000 in non-exempt assets and still be eligible for the full pension. If you sell the house and contribute up to $300,000 into your superannuation, then this will increase your non-exempt assets by $300,000, and this is likely to cause a reduction in your government pension payment.

Conclusion

It will be interesting to see what, if any, affect the proposals have on the supply of housing and easing pressure on housing affordability. As always it may be better to talk to us before using one of these proposed reforms. ■

High income earners: Beware Division 293!

If your remuneration, including reportable fringe benefits and salary sacrificed superannuation contributions is in excess of $250,000 pa, you may have an additional tax liability over and above the normal income tax payable on such earnings. Now that would be a fairly substantial salary package, so it may seem like a good problem to have, but no-one likes an unexpected demand from the taxman.

It all started about five years ago when the government introduced a rule called Division 293 to the tax system. Division 293 is intended to even out the effect that the concessional tax treatment of superannuation has for higher income earners compared to middle and lower income earners. This results from before-tax (known as concessional) super contributions being taxed at 15% within a fund, and the higher relative difference in marginal rates for high income earners compared to the average.

"If you are a high income earner, your marginal tax rate is higher than an average income earner," the ATO says. "When you make concessional contributions to your fund, you receive a larger tax concession. Division 293 imposes an additional tax of 15% to bring the concession back to an amount in line with the average."

Division 293 may be better explained by using the worked example that the ATO has provided.

> *"In the 2015-16 financial year Mark earns $320,000 and his employer contributes $20,000 to his superannuation fund. Mark's fund pays tax of $3,000 on his contribution (15% × $20,000).*

If Mark's employer had not contributed to super, Mark would have earned $340,000 and the additional $20,000 would have been taxed at his marginal rate of 49%. Mark would have paid $9,800 tax on the additional $20,000. The tax concession Mark would receive on his contributions is $6,800.

> *"By paying Division 293 tax of $3,000 (15% × $20,000) Mark still receives a concession but it is reduced. The total amount of tax paid on the contribution is $6,000 (30% × $20,000, made up of 15% taxed in the fund and 15% Division 293 tax). The tax concession is now $3,800."*

When Division 293 was introduced in the 2013-14 year (the legislation was called "Sustaining the superannuation contribution concession"), the threshold at which it applied was set at $300,000 annual income for each individual. However in contrast to some other income thresholds and limits, which can tend to go up, this has now reduced to $250,000 (from July 1, 2017).

That's quite a drop in the threshold, and since it applies to the current financial year it is opportune to alert taxpayers to be circumspect as regards this aspect of taxation law.

So if you or yours are at or near the new threshold, be aware that this division could be another consideration in your possible tax liabilities. The ATO uses information from income tax returns and contributions reported by your super fund to work out if Division 293 applies, and if so, how much tax is owed. And remember, as income levels can move year to year, there is potentially an annual possibility of Division 293 tax being imposed.

When the ATO works out concessional contributions to super for Division 293 purposes, it does not include any amounts above the excess contributions cap as these are taxed at the marginal rate, so the taxpayer concerned will not be getting any concessional tax treatment.

In the calculation of Division 293 tax, unlike the tax on excess contributions to super, there is no discretion for the ATO to reallocate contributions to another income year. The theory here is that if contributions could be reallocated (to avoid being taxed), they would remain concessional and would need to be included back into calculations for Division 293. ■

An assessment for Division 293 tax can also come about if you receive an eligible termination payment or make a significant capital gain.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Immediate deductions for start-up costs

Historically taxpayers may have been able to claim a deduction for the costs associated with setting up a business or raising finance, including the costs incurred in:

- establishing a company or other business structure
- converting a business structure to a different structure
- raising equity for the business
- defending it against a takeover
- unsuccessfully attempting a takeover
- stopping carrying on business (including liquidating a company).

For these capital expenses, you have generally been able to claim a deduction over a five-year period on a straight line basis (that is 20% in the year you incur them and in each of the following four years). To have availed yourself of this deduction, the relevant costs must not be deductible under any other part of the tax law nor form part of the cost of a capital gains tax or depreciating asset.

Before July 1, 2015, relevant business capital expenditure, including start-up expenses, was deductible under the auspices of this five year deduction entitlement housed under a section of the capital allowances rules. However after that date, certain start-up expenses for businesses, including costs associated with raising capital, that would otherwise have been deductible over five years, can be immediately deductible. These include professional expenses associated with starting a new business, such as professional, legal and accounting advice.

REQUIREMENTS FOR DEDUCTION

Specifically, under these rules, expenditure that would be deductible over five years is fully deductible in the income year in which the expenditure is incurred if the expenditure:

- relates to a business that is proposed to be carried on, and
- is either:
  - incurred in obtaining advice or services relating to the proposed structure or the proposed operation of the business (see below), or
  - is a payment to an Australian government agency of a fee, tax or charge incurred in relation to setting up the business or establishing its operating structure (see below), and
- the entity that incurred the expenditure is either:
  - a small business entity (SBE) for that income year, or
  - does not carry on a business and does not control and is not controlled by an entity carrying on a business in the relevant income year that is not an SBE in that income year.

TYPES OF START-UP COSTS FOR WHICH AN IMMEDIATE DEDUCTION IS ALLOWED

The typical start-up costs for which a deduction would be available are laid out in the table on the following page, along with two examples.

Immediate deductions for start-up costs *cont*

Example 1: Start-up expenses that can be immediately deducted

Winston Co is a company that is an SBE and is in the process of setting up a florist business, to be operated by a separate entity. Winston Co is uncertain as to the best location for the proposed business. Winston Co obtains advice from a consultant in order to assist in determining a suitable location. The cost of obtaining this advice can be fully deducted in the income year in which it is incurred.

Example 2: Capital expenditure that cannot be immediately deducted

Percy already carries on an established small landscaping business. As part of plans to expand and improve his business Percy obtains financial advice about financing the expansion. As Percy's business is already established, a deduction cannot be immediately claimed for the costs incurred. ■

TYPICAL START-UP COSTS FOR WHICH A DEDUCTION MAY OR MAY NOT BE AVAILABLE

Category	Examples
Advice or services relating to the proposed structure or the proposed operation of the business	**DEDUCTIBLE** ■ Legal or accounting advice on best business structure to set-up ■ Services in setting up such legal arrangements or business systems for such structures ■ Professional advice on the viability of a proposed business (eg feasibility of a location (see example below) or due diligence of an existing business being purchased) ■ Cost associated with raising capital (whether debt or equity) for the operation of the proposed business – including crowd sourced equity funding **NON-DEDUCTIBLE** ■ Costs in relation to an existing structure (see example below) ■ The cost of acquiring assets that may be used by the business – when establishing a structure ■ Direct costs of the capital such as interest, dividends or capital repayments – when raising capital ■ Other expenses in relation to the proposed business (such as the cost of travelling to a particular location as part of assessing locations for a business).
Payment to an Australian government agency* of a fee, tax or charge incurred in relation to setting up the business or establishing its operating structure	**DEDUCTIBLE** ■ Regulatory costs in setting up a business – such as ASIC fees for setting up a company ■ Costs associated with transferring assets to the entity which is intended to carry on the proposed business, such as stamp duty **NON-DEDUCTIBLE** ■ Expenditure relating to taxes of a general application such as income tax.

*Australian government agency means the Commonwealth, a state or territory or an authority thereof (local governments are excluded, such as councils).

Small business car parking FBT exemption

A business becomes liable for car parking fringe benefits tax where it provides parking for more than four hours on its premises to its employees, and is situated within one kilometre of a commercial car park where the minimum all day cost is more than the current parking fringe benefit threshold ($8.66 a day for the 2017-18 FBT year).

Note that this one kilometre is a radius, and “by the shortest practicable route, from a car entrance to those premises”. Also this can be travelled by any means, as long as this produces “the shortest practicable route”.

But if you have a small business, car parking benefits provided to staff can be exempt from FBT. This can be a valuable exemption for smaller businesses. Note however that all of the following conditions must be satisfied:

- the parking is not provided in a commercial car park
- the providing entity is not a government body, a listed public company, or a subsidiary of a listed public company
- its gross total income for the last income year before the relevant FBT year was less than $10 million, or it was a small business for the last income year before the relevant FBT year.

Some businesses located in large shopping centres have tried to help employees by subsidising the cost of parking fees which kick-in after a certain time elapses (such as where the first three hours are free but a fee applies after that). The danger here is that by doing this they may render themselves liable for FBT through the car parking benefit provisions, as even shopping centre car parks that charge such a fee are considered to be commercial car parks.

Also note that the ATO considers that a car parking facility run by a local council will generally be considered to be “commercial” where the fees are set on the basis of expenses incurred in operating that facility. Where the fees have been set at a rate to recoup capital expenditure and/or to at least cover the day-to-day running costs of the facility, or to recover a reasonable part of these costs, then the car parking facility will be considered to be commercial. ■