



Welcome

In this issue we look at the budget changes affecting contribution limits and minimum pensions, the Commonwealth Seniors Healthcare Card and the Government co-contribution. Also the new provisions allowing the acquisition of property assets by their SMSF and much more!

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Robert Taber
PARTNER



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May 2009 Budget – super relatively unchanged... for now!



The announcements made in the May 2009 budget were not as comprehensive as many of the rumours would have you believe. However the government did introduce a number of important changes to superannuation, particularly with regards to minimum pensions, the Commonwealth Seniors Healthcare card and the government co-contribution. Furthermore, there were significant changes to contribution caps and the treatment of certain employer contributions which are discussed further on in this issue.

Reduction to Minimum Pensions Extended for 2009/10

The 50% reduction to the required minimum pension that was introduced in the 2008/09 financial year has been extended for the 2009/10 financial year. This reduction in the minimum payment applies to Account Based Pensions, Allocated Pensions, and Market Linked Pensions (including any Transition to Retirement Pensions).

The changes to the minimum annual drawdown amounts for the 2008/09 and 2009/10 financial years are shown in the table below.

Age of Member	Previous Minimum %	Reduced Minimum %
Under 65	4%	2%
65 – 74	5%	2.5%
75 – 79	6%	3%
80 – 84	7%	3.5%
85 – 89	9%	4.5%
90 – 94	11%	5.5%
95 & over	14%	7%

Therefore, a 65 year old pensioner with \$600,000 in superannuation is only required to draw \$15,000 (2.5%) rather than the original \$30,000 (5%). The relief reduces the risk of retirees having to sell investment assets, most likely at a loss, in order to fund pension payments.

Changes to income for the purpose of the Commonwealth Seniors Healthcare Card

The budget also confirmed that the government would no longer go ahead with the proposal to take gross tax-free pension income into consideration when determining a tax payer's eligibility for the Commonwealth Seniors Healthcare Card. This means many self-funded retirees will still be eligible for the concessions. However, it should be noted that salary sacrificed contributions will now be included, as discussed in further detail on page five.

Temporary Reduction in the Government Co-Contribution

Furthermore, the Government Co-Contribution will be temporarily reduced up until 30 June 2014, before returning to the original rates for the 2014/15 financial year.

Effective From	Co-Contribution Rates*
1 July 2008 – 30 June 2009	\$1.50 for every \$1 up to a max of \$1,500
1 July 2009 – 30 June 2012	\$1 for every \$1 up to a max of \$1,000
1 July 2012 – 30 June 2014	\$1.25 for every \$1 up to a max of \$1,250
1 July 2014 onwards	\$1.50 for every \$1 up to a max of \$1,500

*The actual co-contribution paid is based on your level of assessable income.



But contributions need monitoring!

Another significant change to superannuation, brought into effect by the May 2009 budget, was the reduction in the maximum allowable concessional contributions that could be made into an individuals superannuation account.

Although the contribution cap for non-concessional contributions has remained the same at \$150,000 per annum, the concessional contribution cap has been halved, coming into effect on 1 July 2009.

For individuals under the age of 50, the concessional contribution cap is now \$25,000 (reduced from \$50,000) per annum. This will also be the same for individuals over age 50, from 1 July 2012.

Transitional arrangements still apply for individuals over the age of 50, allowing them to contribute up to \$50,000 (reduced from \$100,000) per annum for the next four years. From 1 July 2012 however, the over 50's will also be subject to the \$25,000 limit.

The table below provides a summary of the changes to the concessional contribution caps.

Effective From	Under 50's	Over 50's
1 July 2007 – 30 June 2009	\$ 50,000 per annum	\$ 100,000 per annum
1 July 2009 – 30 June 2012	\$ 25,000 per annum	\$ 50,000 per annum
1 July 2012 onwards	\$ 25,000 per annum	

As previously mentioned, the non-concessional contribution cap remains unchanged at \$150,000 per annum. The bring-forward provision, allowing those individuals under the age of 65, to contribute up to \$450,000 over any three year period, also remains unaffected.

Therefore, members looking to increase their superannuation balances will need to rely more heavily on the non-concessional contribution caps and treat a greater amount of contributions as non-concessional (tax free), rather than concessional.

Any contributions over these limits will incur significant tax penalties; Excess non-concessional contributions are taxed at 46.5% while excess concessional contributions tax is payable at a rate of 31.5%, on top of the 15% contributions tax already paid by the fund.

Furthermore, excess concessional contributions are then counted towards your non-concessional contributions limit. Therefore, if your contributions are in excess of both the concessional and non-concessional limits, the excess is taxed at a maximum of 93%.

For example, Bill (aged 65 and working full time) made a \$150,000 non-concessional contribution and a \$100,000 concessional contribution into superannuation for the 2009/10 financial year. Therefore, Bill has exceed his concessional contribution cap by \$50,000. These contributions will then be counted towards Bill's non-concessional contributions, pushing him over the non-concessional cap by \$50,000.

The excess contributions tax is calculated as follows:

Excess concessional contributions tax: \$50,000 @ 31.5%	\$ 15,750
Excess non-concessional contributions tax: \$50,000 x 46.5%	\$ 23,250
Super Fund contributions tax: \$50,000 x 15%	\$ 7,500
Total Tax on \$50,000 contribution = \$50,000 x 93%	\$ 46,500

Members who are currently salary sacrificing need to revisit their sacrifice amounts from 1 July 2009 in order to ensure they are not breaching the current limits.

Is the Transition To Retirement pension strategy still effective?



The TTR strategy works by salary sacrificing a greater amount of pre-tax income into superannuation, and then supplementing this income with pension payments. The ultimate outcome is that employment income, which is taxed at marginal tax rates, is replaced with pension income, which receives a 15% rebate (or taxed at 0% if the pensioner is over 60). Therefore, significant tax savings plus a boost to your final superannuation benefit can be achieved, while still maintaining the same level of income.

Effectively, the change to the concessional caps has reduced the amount of salary sacrifice (concessional contributions) that can be made into superannuation. Albeit the overall tax savings may be reduced, the strategy is still extremely important and will still be beneficial to members.

Take these examples:

One member (age 63) has a balance of \$800,000 in superannuation and earns \$150,000 per annum. On top of this \$150,000, the member will receive \$32,000 in pension payments (based on a minimum pension percentage of 4%).

Amount of Concessional Contributions Made			
	\$0	\$100,000	\$50,000
Income Tax	\$ 44,450	\$ 18,610	\$ 37,610
Earnings Tax (15%)*	\$ 6,000	—	—
Contributions Tax (15%)	—	\$ 15,000	\$ 7,500
Total Tax	\$ 50,450	\$ 33,610	\$ 45,110
Total Tax Saving		\$ 16,840	\$ 5,340

**Based on annual earnings of 5%.*

Another member (age 60) has a superannuation balance of \$400,000, earns \$150,000 per annum and receives a \$16,000 pension (again, 4% of his super balance).

Amount of Concessional Contributions Made			
	\$0	\$100,000	\$50,000
Income Tax	\$ 44,450	\$ 13,650	\$ 31,530
Earnings Tax (15%)	\$ 3,000	—	—
Contributions Tax (15%)	—	\$ 15,000	\$ 7,500
Total Tax	\$ 47,450	\$ 28,650	\$ 39,030
Total Tax Saving		\$ 18,800	\$ 8,420

**Based on annual earnings of 5%.*

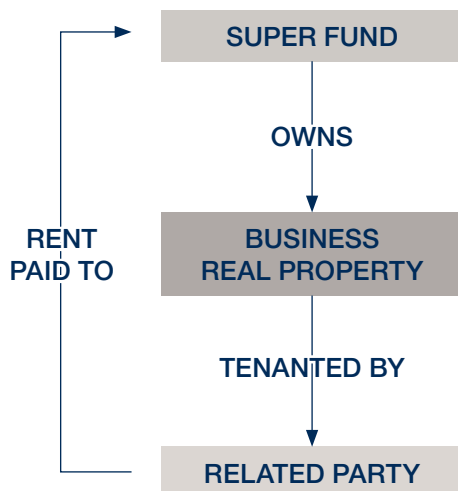
The TTR strategy still provides the two members with an overall tax saving, despite the 50% reduction in concessional contribution limits.

As a result of the reduction in concessional contribution caps, many individuals will be questioning whether the Transition to Retirement (TTR) pension strategy is still an effective strategy post 1 July 2009.



SMSFs and related party property acquisitions

With the current economic downturn some members are looking at different asset classes such as property. Here we explore some of the rules and regulations around purchasing or contributing assets from related parties into the SMSF.



There are many benefits in acquiring an asset through your SMSF. Primarily, once in the fund, any income or earnings (including capital gains) are taxed at a maximum of 15%. Furthermore, once the fund converts to pension phase, these earnings and income are taxed at 0%. This can result in significant tax savings for members.

Under the Superannuation legislation, SMSFs are generally prohibited from acquiring an asset from a related party. A related party includes any member of the SMSF, any relatives of members, any relatives of spouses of members, and an entity controlled by one of more of the previously mentioned individuals.

However, there are a small number of exemptions that allow certain assets to be transferred from, or contributed by (subject to the contribution limits) a related party, to the SMSF. The most commonly utilised exceptions include listed securities, units in widely held unit trusts and business real property.

Business real property is defined as real property used wholly and exclusively in one or more businesses. Examples include a medical practice, storage facility, factories and warehouses.

In order to acquire business real property, the trustees of an SMSF must ensure the acquisition is in accordance with the sole purpose test. Furthermore, the acquisition must be in line with the SMSF trust deed and investment strategy, in order to avoid heavy penalties and ramifications.

It is also important to highlight the fact that the acquisition must be conducted at market value.

There are several ways business real

property can be transferred into an SMSF. The most common being a simple cash purchase, or, by in-specie contribution. However it is important to note that where the property is contributed in-specie, contribution caps still need to be adhered to. Therefore, a cash purchase can be more beneficial as it still allows the members to make additional cash contributions in the future.

Another exemption applicable to business real property, not usually allowable for other assets, is the ability to lease the property to a related party. Therefore, it is not uncommon for an SMSF to lease the property back to the related party it acquired the property from. This has several advantages, such as allowing a constant stream of income (in the form of rent) to enter the fund, without being counted towards contribution caps. Furthermore, as the property is used for business, the rent is likely to be tax deductible for the tenanted related party. The income stream provided by the rent can also be accommodating for the SMSF in servicing its loan obligations, if the SMSF has legitimately borrowed to purchase the property.

When the property is leased to a related party. It is extremely important that the lease agreement is established on a commercial basis (i.e. rent is charged at market value) and that the terms of the agreement are strictly enforced by the Trustees. Failure to do so could result in the SMSF becoming non-complying, and subject to hefty penalties.

Reportable Employer Super Contributions



Reportable employer super contributions include employer contributions to a super fund for an employee where the amount would have otherwise been income e.g. salary sacrifice contributions.

Compulsory contributions (e.g. the 9% superannuation guarantee) or contributions which were not influenced by the employee (e.g. contributions above the 9% which are a condition of an industrial award) are not treated as RESC.

Reportable employer super contributions are not taxable, however the contributions will be included in the income tests for the following benefits and obligations:

- Calculation of the Medicare levy surcharge threshold (not the Medicare levy surcharge itself)
- Calculation of certain tax offsets including, the senior Australians, pensioner and mature age worker tax offsets as well as all dependant tax offsets
- Calculation of Higher Education Loan Programme (HELP) and Student Financial Supplement Scheme (SFSS) repayments
- **Eligibility for a deduction for personal superannuation contributions**
- **Eligibility for the Government Superannuation Co-Contribution**

For example

To illustrate – John had 100% of his employment income salary sacrificed into his SMSF (totalling \$10,000). John also received a trust distribution of \$70,000 for the year of which he used \$20,000 to make a personal contribution into his super fund.

Prior to 1 July 2009, John's total income would have only consisted of the \$70,000 trust distribution and as such, John would have been eligible for a tax deduction for the personal superannuation contribution (as John has no reportable employment income).

However from 1 July 2009, John's total income (for the purpose of the 10% test) will include both the \$70,000 trust distribution plus the \$10,000 of salary sacrificed employment income. As such, John is no longer eligible for the personal super tax deduction as his employment income is greater than 10% of his total income.

From 1 July 2009 a taxpayer's total income will also include their reportable employer superannuation contributions 'RESC' in addition to their assessable income and reportable fringe benefits.



Exotic assets

An increasing number of Self Managed Superannuation Funds are beginning to invest in a wide array of assets, moving further away from the more common superannuation investments such as shares, managed funds and fixed interest.

These assets range from property, artwork and collectibles, to jewellery, gold bullions and antiques.

Although not prohibited, it is important to note that there are very strict guidelines surrounding these types of investments, which must be adhered to in order to avoid the heavy penalties that can result from a breach.

When investing in exotic assets, it is important that the Trustees of an SMSF carefully consider the following issues:

- What is the purpose of the investment?
It must be evident that the investment was made, not for the enjoyment of members, but solely for the investments' potential return (in order to provide retirement benefits to members).
- Does the fund's Investment Strategy allow the Investment?
- How will the asset be held/ used?

Members are unable to receive any personal enjoyment from the assets of their SMSF or they may face the significant risk of breaching the sole purpose or in-house asset tests.

Any breach of the rules could ultimately lead to the SMSF being deemed non-complying and tax levied at almost 50% of the total balance of the fund for the year of the breach.

Changes in Gainful Employment after Age 60

If you're aged 60 or over and have had a change in gainful employment, you have satisfied a standard condition of release. This entitles you to unrestricted access to the superannuation benefits you have accumulated to that point in time. Therefore, it is very important to advise your accountant of any changes to your employment status.

For example, Jeff, aged 61, is currently working for two employers. One on a part-time basis, and the other on a casual basis. He also has \$600,000 in superannuation. If Jeff were to cease his casual employment, he has had a change in gainful employment and therefore satisfies a standard condition of release. Jeff may now access his \$600,000 as a lump sum, pension, or both. Furthermore, the benefit would be 100% tax free as Jeff is over age 60.

Please note however, any contributions made after the date of the change in employment would still be preserved, meaning they could only be accessed as a Transition to Retirement Pension until an additional standard condition of release is satisfied.

Understanding Employment Termination Payments



What are Employment Termination Payments?

Employment Termination Payments (ETPs) are lump sum payments made to an individual as a result of the cessation of their employment. This definition includes payments made in consequence of redundancy as well as in consequence of dismissal, resignation, retirement and death. However, to satisfy the definition of an ETP, the payment must be made within 12 months of the termination occurring.

Taxation of termination payments

Termination payments made as a consequence of bona fide redundancy or an approved early retirement scheme are taxed differently to other ETPs.

Bona fide redundancy and approved early retirement scheme payments are made up of a tax-free limit which is based on the years of service completed by the employee.

The maximum tax-free limit is a fixed dollar amount plus an extra amount for each full year of service completed by the employee. For the 2009/10 financial year the fixed amount is \$7,732 plus \$3,867 for each year of completed service. Therefore, an employee with 10 years of completed service would have a tax free limit of \$46,402 ($\$7,732 + [10 \times \$3,867]$).

The balance of the redundancy/early retirement payment, or payments made as a result of standard retirement, resignation, dismissal or death will be taxed as an Employment Termination Payment, as per the following table.

Component	Tax Treatment (inc. Medicare Levy)
Tax-free component (Relating to invalidity or pre-July 1983 amounts.)	Tax-free
Taxable component (If under preservation age during the whole of the income year the payment is received.)	First \$150,000 – 31.5% Balance – 46.5%
Taxable component (If at or above preservation age during income year payment is received.)	First \$150,000 – 16.5% Balance – 46.5%

Transitional Provisions

Transitional provisions exist for Employment Termination Payments made as a result of agreements entered into prior to 10 May 2006. In addition to concessional tax treatment, the provisions allow these ETPs to be rolled into a superannuation fund, where it will only be subject to tax upon withdrawal, which in some cases can be 0% i.e. if you are over age 60 at the time of the withdrawal.

As of 1 July 2007, changes were made to the treatment of Employment Termination Payments (ETP). These changes removed the 'retirement characteristic' of the ETP, meaning that the payment could no longer be rolled into the beneficiaries superannuation fund.

Diary Dates

August

11 April – June 2009
(fourth quarter 08/09)
Pay As You Go
(PAYG) Instalment
Due

October

21 2009 Annual PAYG
Instalment Due

31 2008/09 Annual
return + payment of
2008/09 tax liability
due for SMSFs with
one or more prior
year income tax
returns outstanding

November

11 July – September
2009 (first quarter
09/10) PAYG
Instalment Due

Increase in the age pension age



Starting 1 July 2017, there will be a gradual increase in the age at which individuals can access the government Age Pension.

The current age pension age is 65 years for males and 63 years 6 months for females. This will become 65 years for both males and females from 1 July 2013. The age pension age will then gradually increase in six month increments, every two years, from 1 July 2017, up to age 67, as illustrated in the table below.

Date of Effect	Age Pension Age
Currently (1 July 2009-30 June 2013)	Males – 65 Females – 63 years & 6 months
1 July 2013	65 years for both males & females
1 July 2017	65 years & 6 months
1 July 2019	66 years
1 July 2021	66 years & 6 months
1 July 2023	67 years

A move towards online trust deeds

With the myriad of changes to the superannuation laws over the last few years, many trust deeds will need be amended. Cutcher and Neale, keeping in line with our “Less Paper” office policy, will be introducing an online trust deed package for our clients. The package will allow automatic upgrades of the deed on an annual basis – making sure that any changes to legislation are reflected in the current deed.

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- Newcastle
- Sydney

1800 988 522

cnmail@cutcher.com.au

www.cutcher.com.au



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