TRUSTEE INSIGHTS

# Your SMSF year-end checklist

With less than one month left in the current financial year, time is running out to make sure that your SMSF's affairs are in order. Here's a checklist of 15 items for you to consider prior to 30 June 2016.

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SuperConcepts

# Your SMSF year-end checklist

## 1 | Maximise concessional contributions up to the caps

With the Federal Budget proposing a cut in the concessional contribution cap to $25,000 from 1 July 2017, 2015/16 could be the second last income year to utilise a higher standard concessional contribution cap. The standard concessional contribution cap for 2015/16 is $30,000, however, if you were at least age 49 on 30 June 2015, you have a higher transitional 2015/16 concessional cap of $35,000. Remember that concessional contributions include:

- Employer superannuation contribution (the compulsory 9.5%) ;
- Any amount contributed via salary sacrifice; and
- Any personal superannuation contribution which you claim as a personal income tax deduction (usually for those who are self-employed).

For those who qualify for the higher $35,000 concessional cap, if the proposed reduction to the concessional cap becomes law, then you will also be subject to the lower $25,000 concessional cap from 1 July 2017. There will be no higher cap for older members. So 2015/16 and 2016/17 are the income years to maximise your higher transitional cap, with an additional combined $20,000 in concessional contributions over the proposed reduced $25,000 cap for this and the next income year.

## 2 | Claiming personal superannuation contributions as an income tax deduction - make sure you qualify

If you are planning to claim a personal superannuation contribution as an income tax deduction, make sure that you are eligible for a deduction. If you have some employment related income, for example salary and wages, you will need to satisfy what is referred to as the '10% rule' to be eligible to claim a personal superannuation contribution as an income tax deduction (the removal of the '10% rule' was announced as a proposed change to have effect from 1 July 2017, but still applies for 2015/16 and 2016/17 income years). If you are not sure if you are eligible to claim a personal superannuation contribution as an income tax deduction, contact your personal Tax Agent or Client Services Manager for your SMSF to discuss.

Further, when you make a personal superannuation contribution and intend to claim the contribution as an income tax deduction, you must provide to the superannuation fund, including your own SMSF, a notice of deductibility and the superannuation fund is required to provide you with an acknowledgement of receiving that notice. The notice and acknowledgement are very important as they substantiate the claim for the deduction and would be required to be produced in the event of a review by the ATO, particularly of a member's personal tax return. This notice and acknowledgment will be produced as part of your SMSF's annual report pack.

However, if a pension has been commenced during the income year or a lump sum benefit paid and includes personal contributions that will be claimed as an income tax deduction in the member's personal tax return, the notice of deductibility must be provided prior to the pension being commenced or the lump sum benefit paid, otherwise the notice can be deemed invalid and the deduction denied. This will require the notice to be produced as part of the pension commencement or benefit payment documents, rather than leaving it to be produced as part of the annual report pack.

## 3 | Uncertainty around non-concessional contributions

Prior to the Budget, the annual non-concessional contributions cap was $180,000 for 2015/16. And, if you were under age 65 at any time during the 2015/16 income year, you could utilise what is commonly referred to as the 'bring forward rule', which allowed eligible persons to bring forward the next 2 years of their non-concessional cap (provided it had not been previously triggered in the 2013/14 or 2014/15 income years). This effectively allowed a maximum contribution of $540,000 of non-concessional contributions in the one income year.

A standard year-end check item would be to utilise the annual non-concessional cap and if you had attained age 65 during the 2015/16 income year, that it would be the last opportunity to trigger the 'bring forward rule'. However, with the Budget proposal of a $500,000 lifetime non-concessional contributions cap, effective from Budget night, which will include all non-concessional contributions made since 1 July 2007, if you wish to make non-concessional contributions after Budget night you will need to take into consideration all of your non-concessional contributions made since 1 July 2007 and what effect exceeding the proposed $500,000 lifetime limit, post Budget night, will have, should the proposal become law.

Under the Budget proposal, where a person has exceeded $500,000 in non-concessional contributions from 1 July 2007 up to 7.30pm (AEST) Budget night, these will not be treated as excessive and can remain within the superannuation fund, however, any post Budget night excessive non-concessional contributions will need to be removed or be subject to penalty tax.

**NOTE:** It is our understanding that the CGT lifetime cap for qualifying small business owners and the Personal Injury election for structured settlements will continue to operate separately from the proposed $500,000 lifetime non-concessional contribution cap.

## 4 | Make sure the super fund can accept a contribution

Your age will also determine the circumstances that a superannuation fund can accept a contribution either from you or on your behalf. There are no restrictions on acceptance of contributions if you are under 65 at the time of the contribution is made, other than the contribution caps. However, between ages 65 and 74, a fund can only accept a contribution if the member meets what is commonly referred to as the 'work test'. This test requires the member to have 40 hours paid employment or be self-employed, over any 30-day consecutive period during the financial year in which the contribution is made. It is accepted that the "work test' should be satisfied prior to the contribution being accepted by the fund. Once you have turned 75, or more precisely, 28 days after the end of the month you turn 75, your fund can only accept employer-mandated contributions, for example, the compulsory employer 9.5% contribution.

**NOTE:** The 2016 Federal Budget proposes to remove the 'work test', from 1 July 2017, for those aged 65 to 74. However, even if passed, the 'work test' will still apply for the 2015/16 and 2016/17 income years.

## 5 | Don't leave contributions to the last minute

While 30 June 2016 is a Thursday, it is best that you make contributions well before then to make sure they will be treated as contributions received in the 2015/16 income year. This is particularly so when it comes to electronic transfer of superannuation contributions. The ATO's view is that where a contribution is made by way of electronic transfer, it is considered as being received by the superannuation fund only when the monies are credited to the superannuation fund's bank account. Where you have salary sacrifice arrangements in place and are using all of your concessional contribution cap, you should confirm with your employer as to when the electronic payment of the contribution will be made to ascertain whether or not it will hit your SMSF's bank account by 30 June 2016 and consequently be treated as a 2015/16 contribution and count towards your 2015/16 concessional contribution cap. If the contribution is not credited to the SMSF's bank account until after 30 June 2016, it will count towards your 2016/17 concessional cap, which may require an unwanted adjustment to your 2016/17 salary sacrifice arrangements. Care should be taken with any contribution made by way of electronic transfer on 30 June 2016 as they are most likely not going to show as a deposit in the SMSF's bank account until at least 1 July 2016, which is too late for the 2015/16 income year.

The old fashioned contribution by way of cheque method may provide a solution for the last minute contribution, as the ATO states that where a contribution is made by way of cheque, the contribution regarded as made when the cheque is received by the fund, that is, in the hands of the trustee(s), so long as the cheque is promptly presented and honoured. So, for example, you provide a contribution by way of cheque to your SMSF on 30 June 2016 and it is promptly deposited to the SMSF's bank account on 1 July 2016. This will be recorded as a contribution received by your SMSF in the 2015/16 income year, despite not showing on your SMSF's bank statement until after 30 June 2016.

Now let's consider that instead of a cheque, the contribution was made by way of EFT from your personal bank account on 30 June 2016 and showed as received in your SMSF's bank account on 1 July, 2016. The ATO would view the contribution to be made in the 2016/17 income year and it would not be regarded as a contribution for the 2015/16 income year.

As you can see, the method used to make a contribution close to 30 June, can have an effect on which income year the contribution is recorded as received by the SMSF. However, to remove doubt, it is best practise to be able to show the contribution as a deposit in the fund's bank account no later than 30 June 2016.

## 6 | Spouse contributions – can you access the $540 tax offset?

If your spouse's income is below the threshold (see table below) and they are less than 70 years of age, then you may be eligible for a tax offset of up to $540 for a contribution that you make for them. For each $1 of spouse contribution you make, up to the maximum spouse contribution of $3,000, a tax offset of 18% is available ($3,000 x 18% = $540).

Your spouse's income (which includes assessable income, reportable fringe benefits and reportable employer super contributions) is tested as follows:

| Spouse's income | Tax Offset |
|---|---|
| **Less than $10,800** | **Eligible for full offset ($540)** |
| **$10,800 to $13,799** | **Partial tax offset** |
| **$13,800 pa or more** | **No tax offset** |

Above a spousal income of $10,800, the maximum spouse contribution is reduced on a dollar for dollar basis, so that it is fully phased out when spousal income exceeds $13,800.

If your spouse is aged 65 to 69, they must meet the 'work test' (previously discussed at item 4). Once your spouse turns 70, a spouse contribution cannot be accepted by the fund. Whilst these rules apply to the receiving spouse, there are no work, age or income conditions applying to the contributing spouse.

**NOTE:** The 2016 Federal Budget proposes to remove the 'work test', from 1 July 2017, for those aged 65 to 74 and consequently a spouse contribution will be able to be made for a non-working spouse up to age 74 (from 1 July 2017).

## 7 | Co-contribution from the government of $500 for low-income earners

There aren't too many handouts from the government – and despite being downsized over the years to only $500, the co-contribution remains one of them.

The co-contribution is a contribution by the government to a taxpayer's super fund (including an SMSF) when the taxpayer makes a personal super contribution, that they do not claim as an income tax deduction.

To access the co-contribution:

- The taxpayer's income must be less than $50,454. The full co-contribution is available if the taxpayer's income is below $35,454. Between $35,454 and $50,454 the maximum co-contribution is reduced by 3.333 cents for every $1 in excess;
- At least 10% of the taxpayer's income must come from employment related activities or carrying on a business (i.e. self-employed);
- The taxpayer makes a personal (non-deductible) super contribution – the government matches this on a $1 for every $2 made, up to a maximum personal super contribution of $1,000; and
- The taxpayer must be under 71 years of age at the end of the financial year.

The maximum co-contribution is $500, which is made when a taxpayer earns less than $35,454 and makes a personal super contribution of $1,000. Income includes assessable income, reportable fringe benefits and reportable employer super contributions (most commonly, salary sacrifice amount).

## 8 | Taking a pension – have you taken enough?

There aren't If you are receiving an account-based pension (including a transition to retirement pension), make sure you take at least the minimum payment amount by 30 June 2016. There can be significant taxation costs if you don't – potentially, the earnings on all the assets supporting that pension will be taxed at the full fund tax rate of 15% , rather than being completely exempt.

The minimum payment is a percentage of your pension's account balance as at 1 July (i.e. 1/7/2015), and is fixed for the year, regardless of any changes in the account balance. If you commenced a pension during the year, it is a percentage of the account balance at the commencement, and pro-rated based on the number of days remaining in the financial year (except if your pension commenced on or after 1 June, then the minimum is set at zero).

Minimum payments are based on age at the start of the year (or age when commencing a pension during the year), and for 2015/16 are below.

| Age | Minimum pension % |
|---|---|
| Under age 65 | 4% |
| 65-74 | 5% |
| 75-79 | 6% |
| 80-84 | 7% |
| 85-89 | 9% |
| 90-94 | 11% |
| 95+ | 14% |

So, a person who is aged 76 at 1 July 2015 and receiving a pension from their SMSF has a minimum pension payment percentage of 6%. If their pension balance at 1 July 2015 was $425,000, their minimum pension for 2015/16 would be $25,500.

Also, where the pension is a Transition to Retirement Pension, ensure that you do not exceed the 10% maximum limit. Unlike the minimum pension, where a Transition to Retirement Pension starts part way through the income year, the 10% maximum pension payment is not required to be pro-rated. For example, a person, aged 58, commences a Transition to Retirement Pension on 5 June 2016 with $400,000 will have a minimum required pension for 2015/16 of nil (as the pension commenced on or after 1 June in the income year), however, the maximum pension allowed will be $40,000, with no requirement to pro-rata.

It is also worthy to note that this 10% maximum limit for a Transition to Retirement Pension must take into account any PAYG Withholding in relation to a pension paid to a person under age 60.

Exceeding this 10% maximum limit for a Transition to Retirement Pension may result in the ATO taxing all the payments received by the member from the pension, at their personal marginal tax rate, regardless of tax components, age and with no 15% tax offset.

## 9 | Make the pension payment by 30 June 2016

It is vitally important to ensure that pension payments meant for 2015/16 will actually count in the 2015/16 income year. Making a pension payment at the end of 2015/16 via electronic transfer can easily result in that pension payment not going through until after 30 June 2016 and consequently counting in 2016/17. The ATO has on several occasions outlined their view of the timing of pension payments, similar to their view on the timing of contributions, as outlined above. Make sure that where your SMSF is paying a pension, you attend to the required minimum pension payment well before 30 June 2016.

## 10 | Pension payment must be cash

It is the view of the ATO and APRA that a pension payment must be a cash payment and cannot be made in kind (also known as an 'in-specie' payment). This has, in the past, ruled out making in-specie pension payments. However, previous ATO determinations have confirmed that a partial commutation of a pension (where the member requests a lump sum benefit payment from their pension) counts towards satisfying the minimum pension payment requirement. This means that an in-specie or in kind payment from a member's pension account can be effected by way of a partial commutation of the pension. Note, if the member is under age 60, the fund will require the cash to satisfy any PAYG Withholding requirements, see next.

## 11 | Don't forget PAYG Withholding for benefit payments to members under age 60

If your SMSF is paying a pension, including a Transition to Retirement Pension, to a member under age 60, it is required to abide by the PAYG Withholding requirements, similar to the requirement for wages paid by an employer. Any PAYG Withholding remitted to the ATO as part of the June 2016 Activity Statement will count as a payment in the 2015/16 income year and towards the 2015/16 minimum pension payment and, for a Transition to Retirement Pension, the 10% maximum pension allowed. Your SMSF will also be required to issue the relevant PAYG Summary Statement to the member by the relevant due date.

Where your SMSF has made a lump sum benefit payment to a member under age 60, such payments are also subject to the PAYG Withholding rules.

## 12 | Market valuation of assets

Although this is a simple process for assets that have a quoted market price, like listed stocks and managed funds, if your SMSF has assets that are not on-market, such as real estate and collectables, it's a good idea to line up the relevant assessors, where needed, early. External valuations may not be required every year, however, the superannuation law requires you, as trustee of your SMSF, to determine market value for each year's annual financial statements.

## 13 | Review the fund for any amounts owing by members or related parties

Now is a good time to review your SMSF and address any contraventions that may have occurred during the year. SMSFs lending money or providing financial assistance to members and relatives, and breaches of the in-house asset rules, are common problem areas and high on the ATO's audit list.

Under the new SMSF Penalty Regime such contraventions can lead to penalties as high as $10,800 per trustee, so if there are any issues, best to have them tidied up before year end.

## 14 | Pre 1 July 2011 Collectables & Personal Use Assets

On 1 July 2011 new rules came into force for SMSFs that acquired 'Collectables and Personal Use Assets', generally, these types of assets are things like artworks, jewellery, vehicles, boats and wine. For SMSFs that held these assets as at 30 June 2011 they were given until 1 July 2016 (transitional period) to comply with these new rules. With the end of the transitional period less than 1 month away, SMSFs with pre 1 July 2011 'Collectables and Personal Use Assets' must ensure that they take action to ensure compliance by no later than 30 June 2016.

## 15 | Non-commercial related party loans under an LRBA

If your SMSF has borrowed from a related party to acquire an asset under a Limited Recourse Borrowing Arrangement (LRBA), you must review the terms of that related party loan for commerciality. The ATO published a Practical Compliance Guideline on how to ensure such loans are regarded as commercial so that the income from the LRBA is not treated as Non-Arm's Length income (NALI). Where an SMSF has income that is classified as NALI, that income is taxed at 47%, rather than 15%.

Originally, the ATO required related party loans that did not have terms that were on an arm's length basis, to be placed on commercial terms, or the related party loan be extinguished, by no later than 30 June 2016 and for the loan repayments during 2015/16 to be on a principal and interest basis, in line with those commercial terms. However, the ATO has now extended the 30 June 2016 deadline to 31 January 2017. This provides some breathing space for affected SMSFs and also allows time to ascertain the effect of the Federal Budget proposed $500,000 lifetime non-concessional cap on any strategy to rectify a non-commercial related party loan. However, loan repayments for the 2015/16 income year, will still need to be determined on a commercial basis and made on a principal and interest basis.

If your SMSF has a related party loan under an LRBA, contact your Client Services Manager for assistance with compliance with these requirements.

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