

## Super Budget Issues

The last edition of DBA News covered the proposed changes to superannuation as announced in the 2006 Federal Budget. These proposals have created some uncertainty. We outline some of the planning opportunities that advisers should keep in mind in the lead-up to and beyond 1 July 2007.

### Employer eligible termination payments

From 1 July 2007, the tax and superannuation treatment of employer eligible termination payments ('ETP') will change. Employees will no longer be able to elect to have an employer ETP rolled-over to a superannuation fund. Rather, the ETP must be paid directly to the employee. The taxable component of the ETP, ie, the post-June 1983 component, will be taxable at 15% for amounts up to \$140,000 for employees aged 55 and over (30% if under 55). Amounts in excess of this will be taxable at the highest marginal tax rate of 45%. The ETP will not count towards the employee's RBL.

While these changes, on the face of it, may appear beneficial for employees, they severely impact on employees receiving large employer ETPs on retirement. Clients planning to retire and receive employer ETPs post-30 June 2007 may wish to consider 'bringing forward' their retirement.

### Contributions

The Budget changes are designed to simplify and make superannuation more attractive to people in light of the government's policy for self-funded retirement. The ability to cash benefits tax-free on reaching 60 years of age has encouraged people to review their superannuation savings. In particular, there are many people who have no or negligible superannuation savings nearing retirement, and are keen to accumulate a reasonable retirement savings nest egg.

However, with the proposed abolition of RBLs, the government has sought to otherwise restrict the amount of benefits a person can take concessionally from superannuation by limiting the amount they can put into superannuation in the first place.

The limits on contributions therefore make planning imperative for clients wishing to maximise their superannuation savings where they are close to retirement. The following table summarises the options open to a person nearing retirement age wishing to bolster their superannuation savings. Note, the level of taxable contributions is based on the deduction available to employers (in relation to employees up to 70 years) prior to 1 July 2007 and the level of contributions concessionally taxed from 1 July 2007 to persons aged 75 years or younger. The proposed cap on undeducted contributions, if adopted, will apply from 9 May 2006:

Year	Taxable Contributions	Undeducted Contributions
2005/2006	Age based limits apply	\$150,000 p.a.
2006/2007	Age based limits apply	\$150,000 p.a.
2007/2008	\$50,000 p.a. (or \$100,000 p.a. as applicable)	\$150,000 p.a.
2008/2009 – 2010-2011	\$50,000 p.a. (or \$100,000 p.a. as applicable)	\$150,000 p.a.
2011/2012	\$50,000 p.a. (or \$100,000 p.a. as applicable)	\$150,000 p.a.
2012/2013	\$50,000	\$150,000 p.a.

Prior to 1 July 2007, there may also be the ability to 'double dip'. Firstly, this is where a person is employed and receives superannuation support from one or more unrelated employers. Secondly, the person may also be eligible to make deductible contributions.

From 1 July 2007, concessional tax treatment on taxable contributions will be restricted to contributions of \$50,000 (or \$100,000 where the transitional relief applies) or less. Salary sacrifice contributions will count towards this cap, as will taxable contributions split with a spouse under the recently introduced contributions splitting provisions. In addition, the threshold on contributions will apply per person and not per employer as is currently the case.

While the proposals severely restrict the making of contributions to superannuation, from 1 July 2007, contributions of up to \$250,000 each year can be made. With careful planning, contributions in excess of this can be made prior to this time.

### **Rolling-back pensions**

As a result of the proposed changes, there is now some uncertainty faced by clients who have commenced a defined benefit pension or a market linked pension. Broadly, these pensions may be commuted and rolled-back into the fund within the first six months of commencing same, provided certain requirements are satisfied (including that the trust deed for the fund has the power to do internal roll-overs – although we find that many non-DBA deeds do not allow internal roll-overs).

For clients trying to make this decision, it is important to keep in mind that the proposals are just that: they are proposals, and are not law. Before the final detail is released, the announced changes may undergo substantial amendment and could take some time before they are in legislative form. The risk for clients who chose to roll-back their pensions now is that they could be ‘caught out’ come 1 July 2007 if the Budget changes are not enacted in their proposed form. The decision to roll-back, however, should also be considered in light of the specific circumstances in each case and is not a general rule. In any case, relief may nevertheless be available for clients who have commenced pensions prior to 1 July 2007 to convert to the new style of proposed pension after 30 June 2007.

Clients taking allocated pensions who do not require the income (subject to satisfying the gainful employment test of 240 hours in the prior financial year for clients 65 years and older) may also consider rolling-back their pensions prior to 1 July 2007 to commence a tax-free income stream at a later date when they are 60 years or older.

### **Estate planning & binding death benefit nominations**

Estate planning and binding death benefit nominations (‘BDBN’) will need to be reviewed in light of the proposed changes (and in particular, in light of the proposed inability to revert pensions to adult children on death). In some cases, a client’s BDBN may have lapsed where the trust deed provides that a BDBN only has a life of three years. Furthermore, child allocated pension strategies will need to be reviewed.

### **Should trust deeds be upgraded prior to 1 July 2007?**

The answer to whether or not a trust deed should be upgraded now or in 2007 will depend on the quality of the deed, its currency and whether clients seek to maximise their planning opportunities, eg, on death or divorce, and not be caught out in the event of an ATO audit.

Where clients wish to undertake contributions splitting, do internal roll-overs of pensions, commence market linked pensions (where, eg, they have met a compulsory cashing requirement), commence a transition to retirement pension (eg, to bolster superannuation savings by salary sacrificing and taking a pension to supplement their income) or simply do a BDBN, it is likely that they will need to upgrade their deed (as to whether a DBA deed needs upgrading, please refer to our FAQ section on our website at <http://www.dbabutler.com/index.php?p=fdd> for further information).

Deeds pre-dating 2002 will most likely need to be upgraded in order to comply with current superannuation requirements. However for deeds post-2002 (subject to the quality of the deed), an upgrade should generally be considered on a case-by-case basis. Our experience has shown that it is best practice for advisers to have their deeds updated every four years to ensure that the advice they give and recommendations they make are in accordance with and permitted under the trust deed. DBA offers a deed review service and would be happy to review any deeds where it is unclear whether they comply with current rules or provide sufficient flexibility for proposed transactions.

DBA is regularly involved in costly legal disputes involving poor quality or outdated deeds, which could have been avoided if a current, good quality deed had been in place.

For further information please contact:

**DBA BUTLER PTY LTD, Lawyers**, 23 Union Street, South Melbourne Vic 3205  
Ph 03 9682 0903 Fax 03 9682 0907 [dba@dbabutler.com.au](mailto:dba@dbabutler.com.au) [www.dbabutler.com.au](http://www.dbabutler.com.au)

DBA News contains general information only and is no substitute for expert advice. Further, DBA is not licensed under the *Corporations Act 2001* (Cth) to give financial product advice. We therefore disclaim all liability howsoever arising from reliance on any information herein unless you are a client of DBA that has specifically requested our advice.

✓ Superannuation ✓ Tax ✓ Succession Planning