

2009-10 Budget Update

The Budget provided much welcome relief for many suspecting the superannuation rules were once again going to be substantially modified. While the impact is less than many feared, several key changes impacting the superannuation industry are outlined below.

Concessional contributions

The Government has announced that concessional contribution caps will be lowered from 1 July 2009 to \$25,000 p.a. (indexed) for persons under 50 years and \$50,000 p.a. (no indexation) for those aged 50 and over. (The transitional cap for those over 50 years will continue to revert to the regular lower cap after 1 July 2012.)

Those who have not already maximised their concessional contributions for 2008-09 only have until 30 June 2009 to do so.

The new caps clearly reduce the scope for building up a decent retirement nest egg. In particular, those who salary sacrifice should re-examine their arrangements and might need to adjust them as many may result in excess contributions tax unless they take corrective action in 2009-10.

Since employers are still entitled to a full deduction for all employer contributions, in practice it will be employees' responsibility to ensure their remuneration arrangements do not lead to excess contributions and penalty taxes.

Watch out for excess contributions

DBA has advised on many cases where people have innocently exceeded their contribution caps. Indeed, the ATO has recently written to around 24,000 people who could have excess contribution issues. We therefore stress that more pro-active monitoring of contributions going forward is required.

Advisers also need to be more careful about what amounts can be contributed and not simply advise that the maximum amount applies without reviewing each client's prior contributions history, checking the fund's bank statements and also checking which expenses have been paid on behalf of an SMSF.

The ATO state that expense payments on behalf of an SMSF constitute contributions in Taxpayer Alert 2008/12.

DBA's SMSF FY 2010 checklist includes, amongst other things, practical tools to assist in monitoring contributions and can help minimise the risk of

running into an excess contributions tax assessment problem.

Eligible persons and the 10% rule

Those making self-employed or 'eligible person' contributions under the 10% rule must have regard to the revised deduction test in 2009-10. From 1 July 2009 amounts salary sacrificed (for superannuation contributions as well as fringe benefits) count as 'income' derived from employment for the purposes of the 10% rule.

The reduced contribution caps and the revised 10% rule is therefore likely to catch numerous people off guard in 2009-10. Failure to meet the 10% rule will mean the contribution is non-deductible and will be counted as a non-concessional contribution ('NCC').

Are non-concessional contributions affected?

NCCs will be set at 6 times the concessional contributions cap, which means that the cap remains at \$150,000 p.a. for 2009-10.

This means that the planned NCC increase to \$165,000 p.a. from 1 July 2009 will no longer occur.

The three year 'bring-forward' arrangement

The good news is that despite pre-Budget rumours to the contrary, the 3 year 'bring forward' rule for NCCs remains in place for those under 65 years, at least for the time being. However, the total 3 year cap will remain at \$450,000 in 2009-10 and not \$495,000, as was previously set to occur.

Thus, those who had planned to defer a 'bring forward' strategy in anticipation of the higher \$495,000 cap might now wish to make their NCCs before 30 June 2009. Naturally, careful prior analysis should be undertaken to overcome any excess contributions tax.

There are currently two Government reviews underway (the Henry Review and Nick Sherry's Review) that may have further changes in the pipeline, the details of which will not become clearer until later this year. Some may therefore wish to initiate their NCC bring forward rule sooner to utilise this while it's still available.

Further pension relief in 2009-10

The halving of the minimum annual pension payments (discussed in our March 2009 'pension special' newsletter) will be extended to the 2009-10 financial year.

This applies to Account-Based, Allocated and Market-Linked Pensions.

This relief should also extend to Transition to Retirement Income Streams ('TRIS'), consistent with the changes that occurred in 2008-09. Further details will be available following the release of regulations.

Note, the relief does not apply to defined benefit pensions ('DBP') such as the lifetime, flexi and fixed term pensions. People having difficulty making the minimum DBP payments (especially those with large losses and illiquid assets) should seek expert advice, especially if they are receiving Centrelink benefits.

DBA is also still assisting members with DBPs to move across to the newer-style pensions. Those with DBPs should review their position as there could now be greater administrative and other benefits in transitioning to a new style of pension.

Temporary reduction in co-contributions

The Government will temporarily reduce the matching rate for Government super co-contributions:

- Until 30 June 2012: up to 100% matching (maximum \$1,000 co-contribution)
- FY 2012-13 and 2013-14: up to 125% (maximum \$1,250 co-contribution)
- From 1 July 2014: up to 150% matching (maximum \$1,500 co-contribution)

Eligibility for co-contributions will continue to taper off above set income thresholds. However, there has been no announcement about any means testing based on a couple's combined income. People have until 30 June 2009 to take advantage of the 150% matching contribution, which is too good to overlook.

Future changes to super?

The rumour mill was working on overdrive in the lead up to the 12 May Budget. Some notable rumours that have not yet materialised include the following:

- the tax treatment of super benefits, especially for those over 60 years;
- the tax treatment of contributions and providing greater incentive to those on lower tax rates;
- the axing of the TRIS; and
- changes to a fund's pension (tax) exemption.

Further changes may follow the outcome of the two Government reviews discussed above. The ATO are also expected to release an update on the super borrowing rules in the near future. (No changes to borrowing were announced in the Budget.)

We will also examine the full impact of the recent Budget – with practical strategies and case studies – at our upcoming May workshop. For more information and to register, please visit our website: <http://www.dbabutler.com.au/index.php?p=DNW>.

NEW FY 2010 SMSF Checklist

DBA is pleased to launch its end of financial year SMSF Checklist – to assist advisers and trustees in their SMSF planning. The checklist outlines items that every SMSF should consider, covering a wide range of planning issues such as contributions, pensions, overseas issues, death benefit nominations, issues related to the fund's investments, annual administration requirements and more. The Checklist addresses issues relevant for each financial year having regard to current thresholds, deadlines and other topical issues for SMSF trustees. The FY 2010 SMSF Checklist is just \$150 incl. GST and can be ordered by returning the completed order form, below.

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