

## 2011–12 Budget Update

The 2011–12 budget includes more good news for the superannuation industry. Most importantly there is no real bad news. The key proposals are outlined below, however their full details will only be clear when the proposals are finally passed as law.

### Excess contributions tax ('ECT')

The budget has introduced relief for eligible individuals who have made excess concessional contributions up to \$10,000. A choice will be introduced to allow individuals, who have contravened their cap for the first time, to pay tax at their marginal tax rate on up to \$10,000 of excess concessional contributions. This relief is prospective and will apply from 1 July 2011 onwards.

#### Example

Consider an individual who earns \$60,000 in FY2012 and has excess concessional contributions made to their SMSF of \$9,990. \$9,990 could be withdrawn and taxed at the individual's marginal tax rate of 30%, rather than attracting a total of 46.5% (ie, 15% of 'contributions tax' and 31.5% of excess concessional contributions tax).

The ATO have released statistics that show that 84% of ECT assessments are for concessional contributions. The average ECT assessment for concessional contributions was \$7,486 in FY2008 and \$2,215 in FY2009.

As such, this relief is aimed at covering the majority of taxpayers caught by ECT. However, there are still unresolved issues to do with ECT. The average ECT assessment for non-concessional contributions in FY2008 was \$50,655, which is not covered by the relief.

There are also still problems with the compounding tax rates, which make some excess non-concessional contributions taxed at 93%. DBA Lawyers are also aware of certain taxpayers, caught by quirks in the excess contributions rules, who had to pay effective tax rates of up to 70,000% on contributions.

### Super rebate

Where a taxpayer has a taxable income of less than \$37,000, they will be entitled to a rebate of up to \$500. Essentially, this rebate will offset the

'contributions tax' for those eligible taxpayers being paid the superannuation guarantee payment of 9%.

The Government announced this during last year's budget (2010-11), which is proposed to have effect from FY2013.

#### Example

Consider an individual who has a taxable income of \$37,000. Their superannuation contributions (calculated at 9%) would be \$3,330. Similarly, a rebate of \$500, grossed up to cover 'contributions tax' of 15%, will cover a contribution of \$3,333 (ie, \$500/15%).

Advisers should be aware of this concession. It also opens up a number of further strategies for taxpayers eligible for the rebate.

For example, the relief from contributions tax frees up money which could be used, for instance, towards insurance premiums.

### Trading stock

The CGT regime is the primary taxing code for superannuation funds. There are a number of exceptions to this rule, a prominent one being trading stock. Trading stock is now to be treated as being on capital account.

The Government announced that the trading stock CGT exemption will be removed with effect from 7.30pm on 10 May 2011. This impacts significantly on those funds that have been treating shares as trading stock.

Subject to transitional rules, SMSF investments like shares can now only be regarded as long term investment. Losses on shares can now only be offset against capital gains. Previously, the losses could be offset against assessable income of the SMSF, including contributions that are included in assessable income.

SMSFs should also consider the tax treatment in converting trading stock to capital account. The shares should be treated as if they were sold for their cost. The SMSF is deemed to have bought them back for the same amount. A tax professional should be engaged to assist with such calculations.

The timing of the change is important. Any gains or losses on shares before the budget announcement should be treated in accordance with the trading

stock rules. However, gains or losses after the budget should be treated on capital account.

### **Director penalty notices**

Broadly, where a company fails to remit PAYG instalments, those persons who were directors of the company will be personally liable for a penalty equal to the unpaid amounts. A director penalty notice will be issued by the ATO, which gives 14 days notice to a director that recovery action will commence (and that the director should take action). A director can avoid personal liability if the amounts owing are remitted, a repayment plan has been arranged with the ATO or the company has gone into administration or liquidation.

This year's budget extends this regime beyond PAYG instalments to superannuation guarantee ('SG') amounts. Directors will be made personally liable in a similar fashion to PAYG instalments, with effect from 1 July 2011.

This places a greater onus on directors to actually make SG payments. Advisors should make SMEs aware immediately. Particularly, businesses should give consideration to who are their employees, and which contractors are covered by SG, to avoid being caught out.

### **Minimum pension payments update**

For FY2009, 2010 and 2011, the minimum pension payment (for account-based pensions and transition to retirement income streams) has been reduced by 50%. This is to offset the burden of SMSFs paying pension payments where their investments have been affected by the 2008 global financial crisis and volatility of financial markets since that time.

The Government announced that minimum pension payments will be reduced by 25% for FY2012 and that there would be no reduction in FY2013.

### **Increased contribution cap**

Members aged over 50 years who have total superannuation balances of less than \$500,000, will be entitled to an increase in their concessional contributions cap of \$25,000, due to apply from 1 July 2012.

### **Freeze on superannuation co-contribution indexation**

The Government will continue to freeze the indexation on the minimum threshold at which the Government's co-contribution begins to phase down.

As such, the Government will continue to provide a co-contribution for superannuation fund members whose income is between \$31,920 and \$61,920 for FY2012 and FY2013. The Government will match an after-tax contribution of up to \$1,000 made by a member whose income is less than \$31,920. The co-contribution will decrease for members whose income is between \$31,920 to \$61,920.

### **Superannuation guarantee payments to increase over time**

The budget confirmed that superannuation guarantee payments will increase, commencing in FY2014. It will rise over a number of years to 12% in FY2020.

Further, the Government has previously announced that the superannuation guarantee age will be increased from 70 to 75 from FY2014.

## **DBA Network — Quarterly SMSF Seminars**

DBA Network's next round of Quarterly SMSF Seminars are fast approaching. The May/June round will be presented at seven locations around Australia.

This round of seminars will cover the latest strategies for SMSF investments (including borrowing, property development and overseas SMSF members) pension strategies and a general SMSF update. Particularly, the budget will be covered in detail in the update.

For further information, or to register, please visit [www.dbanetwork.com.au](http://www.dbanetwork.com.au)

For further Information please contact:

**DBA LAWYERS PTY LTD** (ACN 120 513 037) Level 1, 290 Coventry Street, South Melbourne Vic 3205

Ph 03 9092 9400 Fax 03 9092 9440 [dba@dbalawyers.com.au](mailto:dba@dbalawyers.com.au) [www.dbalawyers.com.au](http://www.dbalawyers.com.au)

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