DBA Lawyers

NEWS May 2010

Summary of the Cooper and Henry Reviews

The Cooper Review and the government's response to the Henry Review have recently been released. This issue of DBA News discusses the key aspects of each.

Cooper Review

Borrowing is here to stay (at least for two years)

The review proposes a 'wait and see' approach in respect of SMSF borrowings. It recommends reviewing these arrangements in two years' time to ensure that borrowing has not become a 'significant focus' of SMSFs. So, for the immediately future at least, SMSF borrowings are here to stay.

SMSFs to be subject to the SCT

The Superannuation Complaints Tribunal is a tribunal that acts like a cheaper, quicker and friendlier version of a court. However, those with a dispute involving SMSFs are currently excluded from bringing actions in the SCT. The review has recommended that the SCT be able to hear such disputes over SMSF death benefits. If implemented, this should provide a far quicker and cheaper dispute resolving forum.

No more in-house assets

An in-house asset is a loan to or an investment in a related party of a fund. Currently, SMSF trustees may have up to 5% of total fund assets invested in in-house assets. The review recommends axing this exception so that no SMSF assets whatsoever may be invested in in-house assets. SMSF trustees that already have investments in in-house assets will have 10 years to dispose of those assets.

The review is not proposing to unwind the previous 1999 grandfathering arrangements or alter any other existing in-house asset exemptions. This means SMSF trustees with pre-1999 unit trusts will be able to retain their investments indefinitely.

Independent valuations for related party transactions

The ATO has always encouraged people to obtain a current independent valuation from a registered valuer when dealing with related parties, however, this has not been legally mandated. Under the review's proposals, where the asset does not have an 'underlying market' such a valuation would be mandatory. Naturally, the most significant key asset class that does not have an 'underlying market' is real estate.

Assets to be valued at net market value

Because SMSFs are classified as non-reporting entities, strictly speaking they are not required to value their assets at their net market value as at the reporting date. The Commissioner has always encouraged SMSF trustees to nevertheless use net market value.

However, many SMSF financial statements have shown SMSF assets at their purchase price. This is especially the case with real estate investments, where net market value as at the reporting date is difficult to obtain.

A recommendation of the review is to abolish this practice and legislation would be passed to require SMSF trustees to value their assets at net market value. The ATO would publish valuation guidelines to ensure consistent and standardised valuation practices.

No more collectables and personal use assets

Many SMSF auditors have lost sleep over SMSF clients who have invested in paintings, jewellery, antiques, stamp collections, wine, cars, golf club memberships, race horses and boats. Although under current legislation these 'exotic' investments can be allowable, they raise queries about whether the SMSF really is being maintained for proper purposes.

The review proposes a simple solution: ban all investments in collectables and personal use assets. SMSF trustees would be prohibited from making any new acquisitions of these assets and those who currently hold such assets would have until 30 June 2020 to dispose of them.

Government's Response to Henry Review

The government has released its tax policy statement in light of the Henry Review's report. The government's policy statement describes several significant changes to superannuation.

No reduction of superannuation's current tax concessions

Firstly, the statement is notable for what is does not contain. None of superannuation's tax concessions

will be reduced or in any way adversely affected. This is a welcome relief. There was much talk that contributions would attract a higher tax rate however that has now been shown to be mere speculation.

Contribution caps for those with low balances

In the statement, the government has recognised that those nearing retirement might be in need of topping up their superannuation. Accordingly, from July 2012, the concessional contributions cap will be increase to $50,000 pa (rather than the current $25,000 pa) for those who:

- have attained age 50; and
- have total superannuation worth less than $500,000.

For those aged 50 or over this effectively allows them to salary sacrifice up to $50,000 pa rather than $25,000 pa before attracting any excess contributions tax. There are no plans to change the non-concessional contributions cap or the excess contributions tax regime.

Low income earners government contribution

From July 2012, the government will make superannuation contributions in respect of those earning less than $37,000. This contribution will be capped at $500. This will effectively refund the tax on superannuation guarantee contributions paid by superannuation fund trustees in respect of such earners, ie, $37,000 x 9% = $3,330 x 15% = $500.

This addresses the concern that for those on a personal margin tax rate of 15% or less, there is little benefit in superannuation contributions.

Raising the superannuation guarantee age limit from 70 to 75

For the purposes of the superannuation guarantee, employees aged 70 or more are considered 'exempt' and employers are not required to make contributions on their behalf. This statement proposes changing that. From July 2013 employers will have to make superannuation contributions in respect of those aged 70 to 75.

This change provides incentive for mature workers to remain in the workforce.

Increasing the superannuation guarantee rate to 12%

There have long been calls to increase the superannuation guarantee rate from its current 9 per cent. The father of compulsory superannuation, Paul Keating, has been a vocal supporter of having it at 15 per cent. Interestingly, however the Henry Review did not make any recommendation regarding an increase to the rate. Nevertheless, the government's policy statement plans to increase the rate to 12 per cent over a seven year period starting from July 2013. The delay before the increases take effect is designed to allow businesses to plan ahead and to factor these increase in their staff salary reviews.

The increases will be as follows:

Financial year	Rate (%)
2013–14	9.25
2014–15	9.5
2015–16	10
2016–17	10.5
2017–18	11
2018–19	11.5
2019–20	12

The review made a number of recommendations which the government is not currently proposing to adopt. The recommendations that have important planning implications will be covered at our upcoming quarterly SMSF seminars in May.

Quarterly SMSF seminars in May

DBA's quarterly SMSF seminars in May will cover the developments from the Cooper and Henry Reviews and much more, including:

- **SMSF succession planning**
- **SMSFs and unit trusts**

For more information regarding these seminars, visit http://www.dbabutler.com.au/index.php?p=DNW or call Marie on 03 9092 9400.

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