

Super legislation passed

The legislation introducing most of the proposed changes to superannuation has been passed. There are several features worth considering below.

Existing pension – tax-free

Prior to clarification in recent legislation, it appeared that a pension commenced prior to 1 July 2007 ('existing pension') would have missed out on locking in the pre-July 1983 component as part of the tax-free component. In particular, there was also a suggestion in September 2006 that an allocated pensioner could elect to convert an allocated pension to an account-based pension on 1 July 2007.

There is now no longer an urgency to undertake a roll back (ie, 'turn off' a pension by way of a commutation and internal roll-over) for existing pensions to lock in the pre-1983 component as the tax-free component.

Many remain under a false impression and may be undertaking unnecessary restructuring and giving rise to extra paperwork and costs.

Existing pensions will be able to benefit from the pre-1983 component forming part of the tax-free component without any need to restructure. Thus, an existing pensioner with a 50% pre-1983 service period will not lose out on this valuable benefit.

The benefit of the pre-1983 component for existing pensions will arise when a 'triggering event' occurs. This is generally the pensioner's 60th birthday or upon earlier commutation or death. The pre-1983 component of the benefit will therefore need to be calculated at the time of the triggering event. It is not calculated as at 30 June 2007 (unless the person has already attained 60 years), as is the case for accumulation accounts.

Planning both before and from 1 July 2007 therefore needs to be carefully considered. Planning opportunities may be available for existing pensions as, eg, some may wish to roll-back into accumulation mode while others may wish to lock-in the pre-1983 component sooner rather than later.

Other issues to consider if you wish to convert a pension back to accumulation mode are as follows:

- Is the pension an allocated pension that commenced before 1 October 2003? Note that the full minimum amount of such

pensions should generally be paid before commutation as the pro-rata rule only expressly applies to allocated pensions commenced on or after this date.

- Is the pension reversionary to an adult child? Under the new (draft) pension regulations, generally pensions cannot be reverted to a child aged 25 years or over regardless of whether the child is a dependant. Particular care needs to be taken before making changes to defined benefit pensions ('DBPs') that are reversionary to adult children as any change to the pension rules can have significant implications.
- Does the trust deed of the fund allow internal roll-overs? Many non-DBA deeds only allow roll-overs to *other* funds.

It is now crucial for all pension documents to be reviewed as many may be deemed to be in breach of the proposed pension regulations unless they are appropriately varied. In numerous recent cases, we have also found pension documents to be insufficient or unclear as to reversionaries and in many other respects.

Turn on the TAP?

The 20 September 2007 deadline for commencing a market-linked pension (also known as a term allocated pension ('TAP')) is fast approaching.

TAPs attract favourable social security treatment as they benefit from the 50% assets test exemption. Although social security may not be a priority for clients today, naturally, it is always prudent to keep options open for the future, eg, what will be the client's status in 5, 10 and 15 years' time?

For example, in one case a \$500,000 TAP (as compared to an allocated or account-based pension) could give rise to nearly a \$10,000 p.a. increase in a person's social security pension. However, a TAP is less flexible than an allocated or account-based pension.

Convert a DBP into a TAP?

There are many people with a defined benefit pension ('DBP'), eg, a lifetime or fixed term pension, who are now considering whether they should convert their pension to a TAP.

There are a numerous critical issues to consider in making this difficult decision. There may be certain advantages and disadvantages, eg, it may result in greater simplicity but may result in the loss of 100% social security exempt status. Please contact us for legal advice as this is a complex issue.

Contribution split – surprise?

A word of caution for those wishing to split undeducted contributions (soon to be known as 'non-concessional contributions').

Under the new legislation, when contributions are split, the contribution split ('CS') amount will form part of the taxable component. This will occur even for non-concessional contributions.

This is an unexpected change from the current rules that may catch many out by surprise.

Consider, eg, a husband who recently made an undeducted contribution to his own superannuation account. He might then arrange to have that contribution split to his wife's account before 1 July 2007.

Under current law, the CS amount that the wife's superannuation account receives is treated as an undeducted contribution.

What about contributions made in this financial year?

The treatment of CSs depends upon when the CS is made, not upon when the actual contribution was made.

Accordingly, to effect a CS of undeducted contributions made in FY 2007 without having it treated as a taxable component, a CS would need to be effected and finalised prior to 1 July 2007.

Typically, however, the paperwork for a CS is done well after the close of the financial year. For example, a CS application made during FY 2007 could be effected between 1 July 2007 and 30 June 2008. In other words, the actual split occurs well after year end.

However, it may be possible to effect a CS in a fund prior to the end of a financial year if a member rolls-over his or her entire fund benefit prior to the close of that financial year. There are obviously other factors to consider before doing this.

For example, if a member's entire benefit is to be rolled-over to another fund during the financial year, a member may lodge a CS application to split the contributions that are rolled-over (ie, they do not have to wait until the end of the financial year).

A CS made after 30 June 2007 could therefore prove costly when it converts a tax-free amount into a taxable amount (even for someone over 60 years as on death, eg, their adult children may pay tax).

Need to establish a new pension?



I want to order pro-forma SMSF pension documentation prior to 20 September 2007 at \$440 each incl. GST:

New Account-Based Income Stream New Allocated Pension New Market Linked Pension

Signature _____ Name of person ordering _____

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