SMSF Owners' Alliance
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SMSFOA Members' Newsletter

 # 6/2016

Dear Members

In this newsletter:

- **Super tax changes still hot election issue**
- **Adverse impacts on super**
- **Will the pollies and public servants cop it too?**

Super tax changes still hot election issue

Week three of the election campaign and the Government's superannuation changes are still in the spotlight with questions raised in just about every interview given by the PM and senior Ministers.

Social media and media blogs are running hot. Leading commentators have also weighed in.

You can find some of this commentary in the Speaker's Corner of our website – the latest article being from The Australian's Glenda Korporaal who writes about the end of the super system as we know it. See: https://smsfoa.org.au/images/Speakers_Corner/160518_Glenda_Korporaal_End_of_a_superannuation_era_no_matter_who_wins.pdf

While the Labor Party is bashing the Government over retrospectivity, it is overlooking the fact that its own policy to introduce a new tax on retirement earnings over $75,000 is also retrospective in effect. If a government puts a tax on income from savings that was not taxed when the savings were made, that's retrospective.

That's exactly what the Treasurer said just three months ago in a quote worth repeating:

*"One of our key drivers when contemplating potential superannuation reforms is **stability and certainty, especially in the retirement phase.** That is good for people who are looking 30 years down the track and saying is superannuation a good idea for me? If they are going to change the rules at the other end when you are going to be living off it then it is understandable that they might get spooked out of that as an appropriate channel for their investment. That is why I fear that the approach of taxing in that retirement phase penalises Australians who have put money into superannuation under the current rules – **under the deal that they thought was there**. It may not be*

technical retrospectivity but it certainly feels that way. ***It is effective retrospectivity****, the tax technicians and superannuation tax technicians may say differently."* – Scott Morrison – 18 February 2016 (our emphasis).

These concerns cannot be brushed aside by saying only 4% of superannuation account holders will be affected. It will affect many more people in the future, those in middle age approaching retirement and younger people who wonder whether it's worth foregoing spending now to find 45 years down the track that the rules have been changed, perhaps many times, along the way.

Meanwhile, the minor parties in the Senate, Bob Day's Family First Party and David Leyonhjelm's Liberal Democrats are welcoming support from Coalition voters who say they will switch their vote. We've made contact with the Family First and Liberal Democrat campaigns.

Some adverse impacts

Thanks to all members who have written to us with questions and examples of how the super tax changes will adversely affect you.
Points such as:

Non concessional contributions made by people over 60 who are still working

Before the 3 July Budget, a person over 60, still working and meeting the work test, could re-contribute their mandatory minimum withdrawal to their superannuation account as a non-concessional contribution. This option to maintain the value of their retirement savings, while still working, will be withdrawn fully or partly, with retrospective effect, if they have already made non-concessional contributions.

Sale of assets to contribute to superannuation savings

People may have planned to sell their house or business to invest the proceeds in their superannuation fund via non-concessional contributions to generate a tax-free income in retirement. Now they will be limited to $500,000 down to zero if they have already made non-concessional contributions. This new restraint will particularly affect small business owners who have built up their business over many years intending to sell just before retirement and shift the proceeds into their superannuation account.

Committed purchasers of assets may be caught out

Consider the case of a trustee who, before the 2016 Budget, paid a deposit to purchase investment property in their pension fund, intending to complete the purchase with funds already in their account augmented by borrowed funds. If they had already exceeded the $500,000 life-time cap, or used up some of it, they would be unable to transfer the borrowed funds into their fund, unable to complete the sale and risk losing their deposit.

Unexpected exposure to capital gains tax

People may have sold assets subject to capital gains tax, e.g. shares, prior to the Budget which they intended to transfer to their superannuation account as non-concessional contributions. If they are now unable to do so because they had already exceeded the $500,000 limit (or part of it) they will be subject to capital gains tax. This imposes a tax cost of which they were not aware at the time of the sale. Had they known about it, they might not have proceeded with the sale.

Downsizers disadvantaged

Retired people who have downsized their home, or plan to do so, may not be able to put the proceeds into superannuation if they have already partly or fully used up the $500,000 life-time limit. They will have to put the money from their house sale into other assets subject to earnings and capital gains taxes.

We are compiling a detailed list of unintended consequences and implementation issues for discussion with the Government before the election.

Allies

During and after the election campaign, SMSF Owners is working with other like-minded groups in drawing attention to the problems inherent in the Government's super tax changes. Our allies are the Australian Shareholders' Association, the Australian Investors Association and the Small Independent Superannuation Funds Association. Our engagement with these groups, with many more members, magnifies our voice.

The Australian Investors Association has prepared a good summary of the Budget changes which you can see here: http://investors.asn.au/assets/Submissions/2016-Budget-Super-Changes-Briefing.pdf

Have your say

We've opened a Member Forum on our website where you can express your views about the superannuation tax policies of all political parties.

The Forum is here: https://smsfoa.org.au/component/kunena/the-2016-election-superannuation-election-debate/12-the-2016-superannuation-tax-election-debate.html
Anyone viewing our site can see the Forum but only members can post comments.
To post a comment, you'll need to log-in as a member, using your username and password. This will take you to your account page. From there, click on Forum in the top banner and then click on The 2016 Superannuation Tax Election Debate topic heading and enter your comment.
Alternatively, you can do it the easy way and send your comment to info@smsfoa.org.au and we'll post it for you.

Equal treatment?

Many politicians, senior public servants, academics, the judiciary and employees of government-owned enterprises enjoy generous 'defined benefit' superannuation schemes that are funded by taxpayers.

So will they be subject to the new super rules set out in the Budget?

The Budget Papers say "commensurate treatment" for members of defined benefit schemes will be achieved through changes to the taxation of defined benefit pensions over $100,000 from 1 July 2017.

However, there is a mismatch between the tax-free pension amount of $100,000 for members of defined benefit schemes, mainly public employees, and the $80,000 tax free pension the Government assumes will be possible to achieve on a capped superannuation pension account of $1.6 million.

First, the differences between defined benefit schemes and ordinary superannuation funds, including SMSFs, are significant.

Defined benefit schemes are guaranteed by government for life, indexed to inflation, immune from market risk and deliver a known and dependable pension.

Ordinary superannuation funds are not guaranteed, not indexed to inflation, open to market risk and have a variable return which can be negative in periods of economic downturn.

For ordinary superannuation fund members, the closest thing to a secure return is an annuity, however this is guaranteed only by the company that provides it. You can buy insurance, but it's expensive. On current pricing, an annuity costing $1.6 million would deliver a pension income of about $60,000, significantly less than the Government's estimate of $80,000 and much less than the defined benefit scheme limit of $100,000.

Second, it is unclear whether the terms of what the Budget refers to as "constitutionally protected" superannuation schemes can be changed. These are generally State Government schemes.

The most protected species are judges who enjoy very generous pension schemes and don't put any of their own salary into superannuation. The Judges' Pensions Scheme is funded from consolidated revenue, i.e. taxpayers. On retirement, they get a Government guaranteed, inflation indexed pension of 60% of their salary for the rest of their lives with their pension reverting to their surviving spouse and eligible children when they die. All funded by taxpayers.

Keep in mind that the Future Fund, currently with $117 billion in assets, was founded by Treasurer Costello with the prime purpose of underwriting the unfunded superannuation entitlements of Commonwealth public servants. Keep in mind too that since 2008, not one cent has gone into the Future Fund which was set up by Treasurer Peter Costello to be funded by budget surpluses and the proceeds of the sale of Commonwealth assets, e.g. Telstra. There've simply been no budget surpluses to transfer to the Future Fund.

Keep up the good work

Many of our members have been contacting their Federal MP/Senator to voice their concerns about the Government's superannuation policy changes with messages like these (always best in your own words and drawn from your own experience):

- The new tax on retirement savings over $1.6 million is clearly retrospective in effect because it applies a new tax on the earnings on savings that were not taxed when those savings were made. These 'saved assets' were not previously subject to an earnings tax. Now they will be.

- The new tax changes the goalposts for retirees and those approaching retirement. It affects plans they have already made regarding their pension income in retirement and the quality of life they can afford.
- These unexpected changes are a breach of trust and erode confidence in superannuation as a predictable, long term investment. There is nothing to stop future governments from changing them again to your detriment.
- The new $500,000 rolling cap on non-concessional contributions is also retrospective. It is back-dated to 2007 so if you've already put in up to $500,000 of your own after-tax money, you won't be able to put in any more (up to the cap). This again disrupts retirement plans, including those of many small business people who are banking on the sale of their business to fund their retirement.
- The Budget papers say that if you've already made non-concessional contributions above $500,000 you don't have to unwind them. But if you make any further contributions that exceed the limit you'll face a penalty tax of 47%.

To find your Member/Senator's contact details, please go to this address:
http://www.aph.gov.au/Senators_and_Members/Guidelines_for_Contacting_Senators_and_Members

Or just Google your Member's/Senator's name and this will take you to their own websites where you can leave a message. Politicians tend to be more responsive if their own electors write to them.

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