Super Tax News

2017 Federal Budget Special Edition

Overview

The purpose of this communication is to provide you with a summary of the significant superannuation tax news and announcements made in the 2017 Federal Budget.

Please contact us if you would like to discuss or have any questions in respect of the items included in this edition of *Super Tax News*.

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1. Extending Tax Relief for Superannuation Fund Mergers

Overview

The government has extended the capital gains tax rollover relief for super fund mergers, which was due to expire on 1 July 2017 to 1 July 2020.

Since 2008, the tax relief has been available for superannuation funds to transfer the unrealised tax positions and revenue losses from a closing fund into a continuing fund. The relief provides that the government continues to collect the tax in respect of these relevant assets in the ordinary course of disposal. Without this relief, these unrealised tax positions would otherwise be crystallised at the date of merger. The associated time value of money cost results in an effective cost to the members of the closing fund. The trustee of the closing fund will need to weigh this against the benefits of the merger in determining what is in the best interests of the members.

KPMG comments

This extension will be welcomed by the superannuation industry as it will allow funds to continue to consider mergers in the context of increasing scale and efficiencies to increase value for members, without the potential consequence of a negative tax impact.

The Government has framed the extension in the context of the timeline for the completion of the Productivity Commission's review into the efficiency and competitiveness of the industry.

Whilst this context has merit, funds, just like the broader commercial world, will continue to seek opportunities for increasing efficiency and mergers will continue to be considered in this context.

Given this, the industry will continue to press the Government to legislate for permanent relief, akin to similar relief for corporate mergers, so that tax considerations do not represent impediments to achieving the most efficient industry possible.

References

Budget 2017-18: Paper No.2

2. Housing Affordability – Contributing the Proceeds of Downsizing to Superannuation

Overview

As part of the Housing Affordability measures introduced in the Budget, the Government is proposing to allow people aged 65 and over to make non-concessional contributions up to $300,000 per individual from the proceeds of disposing of their principal place of residence. Where the criteria is met, both members of a couple can take advantage of the measures resulting in up to $600,000 of non-concessional contributions in the new downsizing cap.

For access to the new downsizing cap, the measures require that the principal place of residence was held for at least the past 10 years and will apply to disposals from 1 July 2018.

The contributions under this proposal will not be subject to the existing non-concessional contributions caps and will also be exempt from the existing age test and work test (i.e. no contributions for those aged 75 and over work test for 65 to 74 year olds) and the $1.6 million balance test for making non-concessional contributions.

This measure is estimated to have a cost to revenue of $30 million over the forward estimates.

KPMG comments

It is likely that this measure will be attractive to individuals who would like to build their superannuation, and may have considered selling the family home and downsizing in order to do so, but where due to the existing work test rules and contribution caps, they are presently impeded from contributing any resultant moneys into superannuation. It is unlikely that individuals will take up this measure if there are any broader Centrelink implications (i.e. reduction in age pension) that would result. For individuals where there are no such implications, and who are within the $1.6 million cap so that their superannuation can be entirely taxed at the 0% rate, the measure essentially results in transferring moneys from one tax preferred asset (i.e., accretion in value in the family home) to another (tax free earnings in the superannuation funds). Unlike the family home, however, the moneys in the superannuation fund are available to supplement the individual's income in retirement.

When the legislation is drafted to give effect to this measure, we would recommend it is drafted in such a way to include family homes which are also pre-CGT assets.

References

Budget 2017-18 Fact Sheet: Reducing Barriers to Downsizing

3. Housing Affordability – First Home Super Saver Scheme (FHSSS)

Overview

From 1 July 2017, first home buyers can voluntarily make concessional contributions of up to $15,000 per year and limited to $30,000 in total into their superannuation account to purchase their first home.

Access to the FHSSS will include voluntary contributions however are limited to the amounts in excess of the normal compulsory superannuation guarantee contributions (i.e. total concessional contributions cannot exceed the $25,000 cap). Voluntary member contributions can include:

- Salary sacrifice contributions;
- Personal deductible contributions; or
- Personal non-deductible after-tax contributions.

Contributions made under the FHSSS and any associated earnings will be concessionally taxed at 15 percent.

The contributions will be able for withdrawal for a first home deposit from 1 July 2018 onwards however these withdrawals of concessional contributions will be subject to tax at the member's marginal rate less a 30 percent offset.

The FHSSS will be administered by the Australian Taxation Office (ATO), who will determine the eligibility of the member seeking a release of funds and deciding the amount of the contributions which can be released. Accordingly, the ATO will instruct superannuation funds the manner in which to make these payments.

The FHSSS is estimated to have a cost to revenue of $250 million over forward estimates.

KPMG comments

The combination of the 15 percent tax on the contributions (as per other concessional contributions to superannuation) and the tax on the withdrawal at marginal rates minus 30 percent, results in the benefit to an individual for each $1,000 contributed being similar across most income ranges. This benefit is approximately $150 to $160 for each $1,000 contributed. For example, for a person on $80,000 salary, each $1,000 of salary results in $675 after-tax (excluding Medicare levy). Each $1,000 salary sacrificed and then withdrawn as a first home deposit results in $829 (i.e., $154 more). In addition, the earnings in the fund may exceed bank deposit rates and are themselves taxed at lower rates than most individuals' marginal rates.

Although the ATO will administer the FHSSS, it is likely that there will be some additional systems issues for funds to implement and the potential for additional costs to the funds. In addition, similar to excess contributions tax, Division 293 tax, and other instances where funds interact with the ATO, the steps required may not lend themselves to automated solutions, and thus may require a level of manual input and cost.

References

Budget 2017-18 Fact Sheet: First Home Super Saver Scheme

4. Housing affordability – Managed Investment Trusts

Overview

From 1 July 2017, the Budget has introduced new rules which will enable Managed Investment Trusts (MITs) to purchase, construct or redevelop property to hold for 'affordable housing'.

The Government has defined that property will qualify as 'affordable housing' where the rent imposed if at a below market rate and is also made available for eligible tenants on low to moderate income.

Resident investors in these MITs will continue to be taxed at their marginal rates on investment earnings, however capital gains will be eligible for an increased capital gains tax (CGT) discount of 60 percent (applicable where the property is supplied for affordable housing for a period in aggregate of three years from 1 January 2018).

For MITs with non-resident investors, where the investor is from a country that Australia has an exchange of information agreement with, generally a final withholding tax of 15 percent tax rate on investment earnings including rent and capital gains will apply.

The MIT must ensure that at least 80 percent of the income of the MIT is derived from affordable housing in an income year. Where this threshold is not achieved, non-resident investors will be subject to a 30 percent final withholding rate on all investment returns (measured annually).

The MIT must also ensure that the affordable housing is available for rent for at least 10 years otherwise a 30 percent final withholding tax rate will apply to the proceeds of any capital gains.

KPMG comments

The tax concessions associated with these new measures are primarily focussed on non-resident unit holders and resident individual unit holders.

Superannuation funds are not entitled to claim an additional CGT discount. The main benefit to superannuation funds that invest in these MITs would appear to be that the resultant gains on disposals in the trusts will qualify for CGT treatment (and thus be eligible for the one-third CGT discount when forming part of distributions to funds). Under present legislation, it is likely that many of these gains would be taxed as ordinary income within the trusts at 30 percent and be ineligible for CGT treatment.

References

Budget 2017-18 Fact Sheet: Boosting affordable housing for Australians through investment tax incentives

5. Integrity Measures – Self Managed Superannuation Funds

Overview

In respect of self-managed superannuation funds (SMSFs), the Budget has included two integrity measures which aim to further develop the superannuation reforms included in the 2016 Budget.

Limited recourse borrowing agreement arrangement (LRBA)

The Budget has introduced that effective from 1 July 2017, LRBAs will be included into the total superannuation balance and transfer cap balance.

The introduction of this measure is to counteract the potential circumvention of the $1.6 million transfer balance cap rules by effectively transferring growth in assets from the accumulation phase to the retirement phase that is not captured in the transfer balance cap.

The outstanding balance of the LRBA is to be included in the total superannuation balance of the member and repayments of principal and interest will constitute a credit to the members transfer balance account.

Non-arm's length arrangements

From 1 July 2018, the non-arm's length provisions for super funds will be amended to reduce the opportunities available for members to use related party transactions on non-commercial terms.

KPMG comments

Neither of these measures has been estimated by the Government to result in significant revenue.

In this context, it would appear that both measures are designed to proactively address emerging strategies within the SMSF sector that may have had the effect of circumventing or reducing the impact of some of the Government's superannuation tax reforms that will apply from 1 July 2017.

References

Budget 2017-18: Paper No. 2

6. Recap on previously enacted changes – From 1 July 2017

Overview

Following on from the 2016 Budget announcements, a number of superannuation reforms are set to become effective from 1 July 2017. As such we provide a summary of these upcoming measures and guidance for both members and funds on how to approach these fast approach changes.

Changes from 1 July 2017	Guidance for members	Guidance for Funds
Growing your super		
• Annual concessional contribution cap reduced to $25,000	• Members with the wherewithal to do so should aim to use the higher concessional caps of $30,000 or $35,000 (if over age 50) before 1 July 2017, as the cap reduces to $25,000 thereafter.	• The changes that apply from 1 July 2017 are extensive and in some cases complex. Externally administered funds may be relying on their administrators to implement all necessary system changes, but may wish to test or otherwise obtain assurance that these changes will function appropriately in their specific circumstances. Internally administered funds will likely have needed to undertake a detailed and multi-disciplined project to implement the changes. These funds may wish to obtain independent advice on the nature of the changes in some cases, and/or independent review of the manner in which the changes have been implemented.
• Annual non-concessional cap reduced to $100,000. Three year bring forward of the cap for members under 65 with balances below $1.6 million	• Similarly, members with the wherewithal to do so should consider whether to use the higher non-concessional cap of $540,000 before 1 July 2017. This will be particularly the case for those members with balances above $1.6 million, as no non-concessional contributions will be able to be made after this date.	
• Deductible contributions allowed for individuals under 65, and those aged 65 to 74 who meet the work test • Low income superannuation tax offset - broadly equivalent in effect to the Low Income Superannuation Contribution • Division 293 - Threshold for additional 15 percent tax on concessional contributions reduced to $250,000		

Changes from 1 July 2017	Guidance for members	Guidance for Funds
Accessing your super		
• $1.6 million maximum balance for a member when they transition from accumulation to pension phase	• Members presently in pension phase with balances greater than $1.6 million will need to consider whether to retain all of the excess within the superannuation system (with earnings taxed at 15 percent) or to withdraw all or part of this excess (with earnings then taxed at marginal rates).	• As with the changes for TRISs above, CGT relief is available in respect of the transfer of members' money back to accumulation phase. Funds will need to consider the extent to which they will apply the CGT relief.
• Defined benefit income streams with commutation restrictions - removal of concessional tax status for income in excess of $100,000		• Funds need to consider whether their defined benefit scheme fits within the Exposure Draft legislation recently released in relation to the meeting of capped defined benefit schemes.
• Anti-detriment provisions abolished for members that pass away from 1 July 2017 (all death benefits from 1 July 2019)		
• Removal of barriers to the innovation in retirements income stream products		
Approaching retirement		
• Transition to Retirements Income Streams (TRIS) - earnings taxed at 15 percent	• Members will need to decide prior to 1 July 2017 whether or not to commute this balance back to accumulation phase. Members that have met anther condition of release should discuss with their fund changing their TRIS to a RIS	• As part of the measures, CGT relief is available in respect of the transfer of assets back to accumulation phase (for segregated funds) or in respect of the change in a fund's exempt current pension percentage (for unsegregated funds). The application of the relief does not necessarily produce a benefit to funds or funds' members in all circumstances. Funds will need to consider the extent to which they will apply this CGT relief. This decision is not required to be finalised until the fund lodges its 2017 income tax return, but funds may be required to liaise with their custodians and tax advisers in respect of the practical application of the relief well in advance of making any decision (in some cases prior to 30 June 2017).

Contact us

Melbourne

Income Tax

Dana Fleming
Sector Lead
T: +61 3 9288 5871
E: dfleming@kpmg.com.au

Connie Van Werkum
Partner
T: +61 3 9288 6516
E: cvanwerkum@kpmg.com.au

Neil Lamb
Partner
T: +61 3 9838 4088
E: nlamb@kpmg.com.au

Ross Stephens
Director
T: +61 3 9288 6619
E: rdstephens@kpmg.com.au

Abbey Pearce
Director
T: +61 3 9838 4896
E: abbeypearce@kpmg.com.au

Indirect Tax

Nick Kallinikios
Partner
T: +61 3 9288 6714
E: nkallinikios@kpmg.com.au

Anthony Versace
Partner
T: +61 3 9288 5934
E: aversace@kpmg.com.au

Sydney

Income Tax

Damian Ryan
Partner
T: +61 2 9335 7998
E: dryan@kpmg.com.au

Natalie Raju
Partner
T: +61 2 9335 7929
E: nraju1@kpmg.com.au

Bernard Finnegan
Director
T: +61 2 9335 7016
E: bfinnegan@kpmg.com.au

Peter Oliver
Partner
T: +61 2 9455 9520
E: peteroliver@kpmg.com.au

Indirect Tax

George Spathis
Partner
T: +61 2 9455 9262
E: gspathis@kpmg.com.au

Alternatively, visit our website at
kpmg.com.au

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