

## Tech Time



### smartsuper's monthly technical guide

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#### Superannuation and relationship breakdowns – draft legislation released

The Government has released draft legislation to allow the trustee of a regulated superannuation fund to acquire an asset in-specie from a related party of the fund, following the relationship breakdown of a member of the fund, without breaching the acquisition rules that may otherwise apply under Section 66 of the Superannuation Industry (Supervision) Act 1993.



**Tech tip:** The passage of this legislation will provide for increased flexibility in separating the assets of a SMSF following a relationship breakdown.

#### Tax deductibility of total and permanent disability insurance premiums by super funds – draft legislation released

Late last year the Government announced an amendment to the tax law to provide transitional relief to complying superannuation funds for the deduction of Total and Permanent Disability insurance premiums for the income years 2004/05 until 2010/11. Since this announcement the Government has released draft legislation to enact the change and has invited interested parties to comment on the draft legislation and associated materials.

#### Changes to foreign investment rules for Australian residential property

The Government recently announced a tightening of investment rules relating to residential real estate effective 24 April 2010. The tightening reverts to rules that were in place in 2008 which restrict foreign investors to only purchasing new housing stock, and temporary residents to only purchasing existing housing for use while they are living in Australia.

More specifically, all temporary residents seeking to purchase an existing property in Australia will now be brought within the Foreign Investment Review Board notification screening and approval process, which applies to foreign non-residents.

In addition, temporary residents who are approved will now be required to sell the property (where established) they have purchased upon departing Australia. They will also be required, where undeveloped land has been purchased, to commence construction on that land within 24 months.

It is expected that legislation, when passed, will apply retrospectively from 24 April 2010.

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## Tax guidance on contribution rules

The ATO has released Tax Ruling 2010/1 to clarify a number of points about making contributions to super. Some of the key points covered include the following.

### ► What is a contribution?

A contribution is an amount that increases the capital of a super fund with the purpose of benefiting one or more members of the fund. However, not every increase in the capital of a fund is considered a contribution. An example is the proceeds of an insurance policy.

Making a material improvement to an existing asset of a fund may be considered a contribution. However, providing services to the fund for which you are qualified, at no cost is not a contribution. If a fund is billed for services and the bill is forgiven, that is a contribution (as a liability is relieved).

### ► Clarification around deductibility

In relation to the deductibility of personal super contributions, the ruling has identified that the '10% rule', which allows individuals to claim a deduction where they have less than 10% of their assessable income, reportable fringe benefits and reportable superannuation benefits attributable to employment with an employer, is taken to be automatically passed where a person has not engaged in any employment activity in that tax year.

An example is where an individual is no longer employed, but is still receiving worker's compensation and for this purpose they are not taken to be employed.

#### Example

Brian was employed by Blackwood Pty Ltd and was injured at work in November 2008. From November 2008 to 30 June 2010, Brian received worker's compensation payments.

Brian resigned from Blackwood Pty Ltd on 10 July 2009. On 17 July 2009 Brian received \$21,000 from Blackwood Pty Ltd for unused long service leave and annual leave. Brian decided to make a personal superannuation contribution of \$21,000 to a complying superannuation fund in the 2009/10 tax year.

As Brian was still employed by Blackwood Pty Ltd in the 2009/10 income year he is considered to be engaged in an employment activity in that tax year. He is required to meet the '10% rule' to claim a deduction for personal superannuation contributions made in the 2009/10 tax year.

The income attributable to Brian's employment activities in the 2009/10 tax year includes the worker's compensation payments, the unused long service leave and annual leave payments from Blackwood Pty Ltd which are assessable in the 2009/10 tax year.



**Tech tip:** A non-resident with Australian sourced income that is not attributable to employment activities may be able to claim a deduction for personal super contributions made to an Australian superannuation provider against their Australian sourced income.

Australian residents employed overseas will have their overseas income considered as employment income (for the 10% rule) unless the income is exempt. However for a non-resident, income attributable to employment outside Australia is non-assessable and not counted as employment income under the 10% rule (as has been the case since 1 July 2007).

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## Medicare Clearing House - update

The Medicare Clearing House Legislation (Tax Laws Amendment (2010 Measures No. 1) Bill 2010) was recently passed, providing an easier way for employers to meet their superannuation obligations through an automated process. The legislation allows the service to be provided free to eligible small businesses (those with under 20 employees) to discharge their superannuation obligations.

To use this facility, employers will have to register online with Medicare and provide their Australian business number, business name and contact details. They will then be able to make contributions by selecting the employees and entering the contribution amounts.

Once the employer has paid Medicare the correct amount, the money will be forwarded to the designated funds. Provided the contributed amount matches the invoiced amount, the employer contributions will be distributed to the destination funds within 24 hours of receipt by Medicare.



**Tech tip:** Small businesses that choose to use the clearing house service will meet their Superannuation Guarantee obligations when payment of the correct amount is made to Medicare.

It is expected that Medicare will be on target to allow employers to register with the clearing house by the end of May 2010 and to make contributions from 1 July 2010.



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## Transition to retirement proposed rules

A transition to retirement strategy, particularly when combined with a salary sacrifice strategy, is an effective way to help your clients reach their retirement goals. However, there was concern that the forthcoming end to the transitional contribution caps for those aged over 50 on 30 June 2012, would halve the amount that could be tax-effectively contributed.

As part of the Federal Budget 2010/11, the Government has announced that the \$50,000 per annum concessional contribution will remain permanently for individuals aged 50 years and over who have superannuation balances less than \$500,000.

While we have not yet received all the details of the proposal to support the practical application for this measure, we are expecting to find out more once legislation is released. Some of the questions include:

- Are pension balances included?
- How will multiple superannuation accounts be accounted for?
- When will the \$500,000 assessment be made - at the beginning or the end of the financial year?

### What are the benefits?

The dollar benefit will depend on the client's circumstances, but will generally be greater for those on higher marginal tax rates. For example, an individual aged 60 on the highest marginal tax rate (46.5% including Medicare Levy) could benefit up to an additional \$7,875 per annum from 1 July 2012 where they have a superannuation balance less than \$500,000.



**Tech tip:** For clients approaching \$500,000, or with larger balances than their spouse, it may be worth considering splitting their concessional contributions with their spouse. This may provide them with the opportunity to qualify for the higher contribution limits for longer.

Remember that there are a number of qualifying criteria:

- up to 85% of concessional contributions may be split
- applications can be made for contributions made in the previous financial year or current financial year where contributions are to be rolled over
- the receiving spouse must be under age 65, and where between preservation age and age 65, must not be retired.

To calculate the optimum amount your client should be salary sacrificing in conjunction with their transition to retirement pension, access our online transition to retirement calculator via our secure site.



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**smartsuper**  
superfund administrators

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#### smartsuper pty limited

abn 47 003 822 339 afs licence 247120

level 15, 123 pitt street, sydney, nsw 2000

PO box 529, north sydney nsw 2059

phone: 1300 138 348 fax: 1300 138 349

[www.smartsuper.com.au](http://www.smartsuper.com.au)