

## Tech Time

### smartsuper's monthly technical guide

#### Key superannuation rates and thresholds for 2010/11

The Australian Taxation Office (ATO) has released several key superannuation rates and thresholds for the 2010/11 financial year.

- The concessional contribution cap will remain at \$25,000.
- The transitional concessional contribution cap which applies to those aged 50 years or older will remain at \$50,000. Note: the Government has announced that the \$50,000 cap will remain indefinitely for those aged 50 years or older with balances of less than \$500,000.
- The non-concessional contribution cap will remain at \$150,000 per annum and \$450,000 over a three year period.
- The capital gains tax cap will increase to \$1,155,000 up from \$1.1 million in 2009/10. Note: This is the applicable lifetime cap for contributions such as those associated with the 15 year exemption and the retirement exemption afforded under the Small Business Concessions.
- The low rate cap will increase to \$160,000 up from \$150,000 in 2009/10. Note: This is the cap that applies for the low rate threshold for superannuation lump sum benefits.
- The employment termination payment cap will increase to \$160,000 up from \$150,000 in 2009/10.

The following limits are not yet available for 2010/11. It is expected that these will be available some time later in May 2010.

- The tax-free portion of a bona fide redundancy and approved early retirement scheme payment limits.
- The maximum superannuation contribution base for superannuation guarantee.
- The co-contribution income thresholds.

#### Taxpayer alert concerning SMSFs and excess contributions tax

The ATO has released a taxpayer alert (TA 2010/2) which targets those self managed super funds (SMSFs) whose trust deeds include clauses that seek to avoid excess contributions tax.

##### Overview of arrangement

The taxpayer alert applies to arrangements where the trust deed of an SMSF is amended to insert specific clauses, or a new SMSF is established with such clauses included in its deed, in the belief that the presence of such clauses prevents a member from ever being subject to the excess contributions tax.

The problem arises where a member makes contributions to a SMSF, which in total exceed the member's contributions caps and the contributions are intermingled with the assets of the SMSF.

The trustee relies on clauses of the SMSF trust deed which are intended to prevent the trustee from accepting contributions above the member's contributions caps. If the trustee receives contributions which result in the member exceeding his/her contribution caps, the excess amount is said to be held in a trust separate from the SMSF.

The trustee is then obliged to repay the excess amount, along with any earnings, to the relevant member. The member asserts that the amounts held in the separate trusts cannot be counted as contributions for the purpose of excess contributions tax. As a result, the trustee may have returned the amount to the member in reliance upon such clauses.

##### ATO View

The ATO considers these amounts to be superannuation contributions and these arrangements ineffective. The inclusion of such clauses does not allow the fund to avoid excess contributions tax.

The ATO has also stated that any entity involved in these arrangements may be considered a promoter of a tax exploitation scheme and penalties may apply to both the trustee and the promoters.

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## Commission reform

On Monday 26 April 2010 the Government released 'The Future of Financial Advice', a package of reforms identifying significant changes to the law around commission payments.

### Start date

The new laws are to start on 1 July 2012 and apply 'prospectively.' The payments that are being banned will not be allowed on new money and new accounts after that date.

### Products covered

These rules will apply to 'all financial products' except risk insurance (including group insurance). Further consideration will be given to the treatment of risk insurance.

Investments, superannuation and margin loans are explicitly mentioned.

### Rules applying to platforms and fund managers

Platforms and fund managers will not be able to pay either upfront or ongoing commission. Product fees and advice fees will need to be kept separate.

Adviser fees can still be deducted from investments provided the client agrees. That is, platforms and fund managers can still process 'adviser service fees' and will need to have the facility to turn these fees off when notified to do so.

### Rules applying to advisers

Advisers will have a statutory fiduciary duty to act in the best interest of their clients.

Advisers can charge fees based on funds under advice, but not including borrowed amounts. Apart from that, advisers can charge fees to clients in any form they want provided it is 'product neutral' and agreed with the client. Fees will have to be clearly disclosed to the client.

Where there are ongoing fees, there will need to be an annual 'renewal notice' sent to the client. If the client does not opt to renew, then the ongoing fee cannot continue to be charged.

Advisers can arrange for platforms and fund managers to deduct fees from the client's investments but they cannot choose one product provider over another on the basis that one is prepared to process these payments and the other is not.

### Accountants and SMSFs

Accountants can currently advise clients to establish self managed super funds without having an Australian financial services licence (AFSL). This exemption will be removed from the Corporations Act. Accountants will need an AFSL to have this conversation with a client. The Government will consider streamlining the regime for accountants to get an AFSL.

### Other proposed reforms

- Strengthening the powers of the Australian Securities and Investment Commission to act against unscrupulous operators.
- Expanding the availability of low-cost 'simple advice' within a superannuation context ('intra-fund advice') and reviewing whether simple advice can be provided outside intra-fund advice.
- An expert advisory panel to review professional standards for advisers is to be established.
- The need for a statutory compensation scheme will be investigated.
- The dividing line between 'retail' investors and 'wholesale' investors is to be reviewed.

The Government will consult stakeholders on the implementation of these reforms and we will keep you informed of further developments. For more information, including a detailed summary of the proposals, read the Minister's media release.

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**smartsuper**  
superfund administrators

#### 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)