

Superannuation Planning

All taxpayers should be aware of the changing superannuation rules taking effect from 1 July 2007. To recap, under the proposed new simplified superannuation legislation which is now law, the annual non-concessional (after tax) contributions will be capped at \$150,000 per year (or \$450,000 every three years) and employer contributions will be capped at \$50,000 per year.

Transitional measures will allow members to contribute up to \$1 million in non-concessional contributions to their superannuation fund between 10 May 2006 and 30 June 2007. Contributions in excess of this cap will be taxed at 46.5% and will be levied on the individual.

Furthermore, the proposed cap on non-concessional contributions excludes contributions arising from the disposal of small business assets that qualify for the CGT small business retirement exemption or the 15-year exemption. Contributions made under such exemptions will be subject to a lifetime "CGT cap amount" of \$1 million.

There is also a transitional period for concessional contributions from the 2008 income year to the 2012 income year. This transitional limit will be \$100,000 per year for those aged 50 years of age and over in the income year.

The transitional measures also seek to ensure that those people who may have become subject to the work test or have become ineligible to contribute to superannuation, can still take advantage of the higher contribution limits between 10 May 2006 and 30 June 2007. Persons aged 64 between 10 May 2006 and 5 September 2006 will be able to make non-concessional contributions up to 30 June 2007 without having to satisfy the work test. Persons aged 74 between those dates are able to make non-concessional contributions up to 30 June 2007 had they satisfied the work test for the relevant financial year.

Individuals who were aged at least 65 but less than 74 between 10 May 2006 and 5 September 2006 will continue to have to satisfy the work test to contribute to superannuation.

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Changes to the Small Business Concessions

The *Tax Laws Amendment (2006 Measures No. 7) Bill 2006* was introduced into Parliament on 7 December 2006 to give effect to the changes announced in last years' Federal Budget. The Bill contains various amendments to the small business concessions. The main changes are as follows.

Significant individual test

This amendment affects taxpayers who carry on a small business through a company or a trust and do not have an individual with a 50 per cent ownership interest. An individual is a 'significant individual' in a company or trust if the individual has a 'small business participation percentage' in the company or trust of at least 20 per cent. This participation interest can be a direct or indirect interest. This change will allow up to eight taxpayers to access the concessions. Currently only two taxpayers are able to access the concessions. Most significantly, companies that are owned by a discretionary trust can now access the concessions.

Maximum net asset value test

The proposed test takes into account a negative net asset value of a connected entity in looking at the net assets of an entity.

Active asset test

The proposed active asset test still requires the asset to be active for the lesser of 7½ years or half of the period of ownership, however, it no longer requires the asset to be an active asset just before the CGT event.

15-year exemption

The 15-year exemption no longer requires a controlling individual of a company or trust for the entire period of ownership. Rather, a significant individual is required for any period or periods totalling 15 years during the period of ownership.

Retirement exemption

The retirement exemption will now be deemed to be either an eligible termination payment, or a payment in respect of employment. The exemption will also apply to gifts of property, eliminating the application of the market value substitution rule.

Small business roll-over

A taxpayer is no longer required to roll-over all of a capital gain, but can now choose to roll-over all or a part of a capital gain. Replacement assets can be newly acquired assets or improvements to assets that the taxpayer already owns, and a taxpayer can choose to roll-over capital gains from such assets before they acquire a new asset, or make improvements to existing assets.

It should be noted that the new tests will apply to CGT events happening after 1 July 2006.



Making Tax Compliance Easier for Small Business

The Treasurer and Minister for Small Business and Tourism have released exposure draft legislation containing proposals to reduce compliance burdens for small businesses. These proposals will standardise the eligibility thresholds for small business tax concessions from 1 July 2007.

Separate eligibility tests currently exist for GST, the Simplified Tax System (“STS”), Capital Gains Tax (“CGT”), Fringe Benefits Tax (“FBT”) and Pay-As-You-Go (“PAYG”) small business concessions.

Under the proposals, any business with an annual turnover of less than \$2 million will be able to access these concessions, subject to any additional criteria set out in the particular concessions.

The changes were first announced in November last year as part of the Government’s Federal Budget commitment to reduce red-tape for small business.

Sale of Land Part of Going Concern

The AAT has held that a purchaser who entered into two contracts, one for the purchase of a business, the other for the sale of the land, was not entitled to claim input tax credits in respect of the land purchase as it was part of the sale of a going concern.

The taxpayer claimed it was entitled to input tax credits in respect of the purchase of the land as the supply included GST and was not GST-free. It said the going concern provisions only applied to the business sale contract, however the Commissioner argued that the whole supply was GST-free as the going concern condition in the sale contract related to the totality of the sale, notwithstanding the land sale contemplated that GST was payable.

The AAT held that the going concern consisted of both sale contracts because the business could not be conducted without land to conduct it.



Tax Office to Increase Monitoring of Self-Managed Super Funds

The ATO has announced it will be increasing its scrutiny of self-managed superannuation funds in the 2006/07 financial year, and has received an additional \$112 million in funding from the Federal Government in order to do so.

The ATO has stated its intention to carry out 9,300 audits in 2006-07, as opposed to the 4,600 audits it has carried out over the past two financial years.

While it is unlikely that the ATO will come down hard on trustees who have made minor or inadvertent breaches, trustees who have made serious breaches of the administration laws can face personal fines of up to \$220,000 and five-years jail.

Targeted superannuation funds will include those funds which:

- Are more than 5 years old;
- Have an asset value of less than \$50,000;
- Claim excessive management and investment expenses; and
- Those with offshore investments.

Related party transactions, where a fund lends money to or acquires money from fund members, will also come under increased scrutiny.

Changes to Non-Forestry Managed Investment Schemes

On 21 December 2006 the Minister for Revenue and Assistant Treasurer, Peter Dutton along with the Minister for Fisheries, Forestry and Conservation announced new arrangements for the taxation of investments in forestry Managed Investment Schemes (“MIS”). Primarily, investors in forestry MIS’s would still be entitled to upfront deductibility provided at least 70% of the expenditure was related to developing forestry.

The announcement was the result of ongoing discussions between the Government, the ATO and the forestry and non-forestry agribusiness MIS industry as to the future tax treatment of investments in such MIS.

On the 6 February 2007, the government announced that the abovementioned tax treatment allowing upfront deductibility would not extend to non-forestry MIS. The announcement also stated the Tax Office had changed its interpretation of such schemes. The Tax Office advised the Government that it is preparing a draft Taxation Ruling which will set out its reconsidered position that investors in non-forestry MIS will no longer be deemed to be ‘carrying on a business’ and their investment will be capital in nature. The ruling was originally planned to apply to arrangements entered into after 30 June 2007. However, following consultation with the industry and Treasury, the Tax Office have announced a 12 month transitional period to allow their reconsidered view to be tested in the courts.



Investments in MIS that are covered by existing Product Rulings that allow for immediate deductibility for the investors initial contribution, and for the contributions in the following years, will be protected.

The ATO has also stated that as investors in forestry MIS will be entitled to upfront statutory deduction for all expenditure, provided that at least 70 per cent of the expenditure is directly related to developing forestry, it will no longer be necessary for investors in forestry to demonstrate that they are carrying on a business in order to claim the statutory deduction.

Since the announcement, the Federal Government has released draft legislation in relation to the proposed statutory deduction and has been considering transitional arrangements to the abovementioned changes for the non-forestry MIS. During this time, the ATO may seek to run a test case in the Federal Court to decide whether non-forestry MIS investors are actually 'carrying on a business' and entitled to upfront tax deductions.

Agribusiness MIS have been encouraged to provide the Tax Office with full details of their forward commitments so informed decisions can be made.

Enquiries

If you would like further information regarding any of the tax topics discussed in this newsletter, please contact:

KD Johns & Co
15 Ord Street
WEST PERTH WA 6005
Ph: (08) 9483 1800
Fax: (08) 9483 1888
Email: enquiries@kdjohns.com.au

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