



## Pre 30 June Strategies • Case Law Update Investments in Collectables & Personal Use Assets Federal Budget Update • Financial Markets Update

**T**his edition of TP Supernews looks at items for consideration as 30 June approaches, a recent case involving early release of benefits, the recent proposed changes affecting ownership of artworks and collectables within a Self Managed Super Fund (SMSF), Federal Budget announcements relating to superannuation, and an update on the current positions of financial markets globally.

### Pre 30 June Strategies

- **Make a non-concessional (after tax) contribution to superannuation up to the allowable cap before the end of the financial year as unused cap amounts are not carried over future financial years:** The yearly cap is \$150,000 or you can bring forward two years worth of contributions and make a \$450,000 contribution as long

as you were under 65 on July 1 of the financial year in question. Ensure that you have satisfied the work test if you are over age 65 at the time you make the contribution. The work test requires you to be gainfully employed for at least 40 hours over 30 consecutive days in the financial year in which the contribution is made.

- **Make a tax deductible contribution to superannuation:** Personal contributions made by individuals who satisfy the 10% rule are eligible to be claimed as a tax deduction. The maximum deduction that can be claimed is \$25,000 if the taxpayer is under 50 or \$50,000 if the taxpayer is 50 or older. The 10% rule requires that less than 10% of the total of the individual's assessable income, reportable fringe benefits and reportable employer superannuation contributions for the financial year comes from employment related activities.
- **Take advantage of the Government co-contribution:** Maximise your entitlement to the co-contribution by making a

non-concessional (after tax) super contribution before the end of the financial year. Eligible personal contributions are matched dollar for dollar by the Government up to a maximum Government co-contribution of \$1000. For financial year ended 2011, the maximum Government co-contribution is payable for individuals on incomes at or below \$31,920 and reduces by 3.33 cents or each dollar by which the individual's total income\* for the year exceeds \$31,920, cutting out completely once an individual's total income reaches or exceeds \$61,920. To be eligible for the Government co-contribution, 10% or more of a taxpayer's total income for the financial year must be attributable to either or both of employment related activities or the carrying on of a business.

\*Total income is the sum of your assessable income, your reportable fringe benefits and your reportable employer super contributions less business deductions.

- **Take advantage of the tax offset for spouse contributions:** Taxpayers are entitled to a maximum \$540 tax offset for superannuation contributions

made on behalf of a low income or nonworking spouse. The maximum rebate is based on 18% of a maximum \$3000 non-concessional contribution. The maximum rebate is reduced by \$1 for each \$1 that the total of the spouse's assessable income, reportable fringe benefits and reportable employer superannuation contributions exceeds \$10,800, cutting out completely at \$13,800.

- **Meet minimum pension payments before 30 June 2011:** Pension payments must be paid in cash (not via in-specie asset transfer).

## Illegal Early Release of Benefits – Olesen v MacLeod 2011

The Federal Court has imposed a \$12,500 civil penalty on a trustee of a SMSF for the illegal early release of superannuation benefits.

Due to personal circumstances, the taxpayer withdrew a range of amounts from their SMSF. In all there were 41

the withdrawals were done deliberately and deprived the SMSF of its total assets. This case serves as a reminder to trustees to consistently maintain their SMSFs in compliance with their governing rules and the legislation.

## Investments in Collectables & Personal Use Assets

As part of the Cooper review, it was proposed that SMSFs should not be allowed to invest in collectables or personal use assets. These assets include

- artwork (paintings, sculptures, drawings, engravings, photographs or reproductions of any of these items)
- jewellery;
- antiques;
- artefacts;
- coins or medallions;
- postage stamps or first day covers;
- rare folios, manuscripts or books;
- memorabilia;
- wine;

- It will not be possible to lease any artwork or collectable owned by a super fund to a related party of the fund; that is fund members and their relatives and employers that contribute to the fund.
- SMSF artworks and collectables cannot be stored at the private residence of any related party.
- A self-managed super fund trustee must document why they stored the investment at a particular location. This documentation must be kept on file for at least 10 years.
- The investments must be insured. This insurance must be in the name of the super fund and must be in place within seven days after the fund purchased the asset.
- When a super fund sells any piece of artwork or collectable to a related party, the super fund must get an independent valuation of the item and the agreed sale price cannot be more or less than that valuation.

Under the draft rules these penalties are "strict liabilities". This means if the

# "It will not be possible to lease any artwork or collectable owned by a super fund to a related party of the fund"

illegal early release payments totalling \$64,000. The withdrawals were to cover school fees, legal fees relating to a separate matter and general financial pressures experienced by the member. The auditor of the fund reported the contraventions to the ATO in November 2007, yet the member continued to make unauthorised withdrawals. The court held that the trustees had contravened the Superannuation Industry (Superannuation) Act 1993.

The court emphasised the seriousness of the respondent's conduct because

- cars;
- recreational boats;
- memberships of sporting or social clubs.

Last month the Government released a draft version of the regulations it intends to put in place effective 1 July 2011. Whilst they have not completely banned SMSFs from owning the above assets, it certainly has become much harder to do so. Listed below is a summary of the proposed changes:

breach can be proved then a court can immediately impose a penalty up to the above amounts and there is no need to examine why the trustee breached the rules. Penalty amounts will range between \$1,100 and \$33,000.

The regulations apply to all new artwork and collectable investments made after 1 July 2011. For such investments held by a super fund before July the new rules will have a 5 year grandfathering period whereby trustee have until 30 June 2016 to abide by the proposed changes.

## 2011 Federal Budget

### Refund of excess concessional contributions

The Government will provide eligible individuals with the option to have excess concessional contributions taken out of their superannuation fund and assessed as income at their marginal rate of tax, rather than incurring excess contributions tax. The measure will apply where an individual has made excess concessional contributions of up to \$10,000 (not indexed) in a particular year and is only available for breaches in respect of the 2011-12 or later income years, and only for the first year, commencing from 2011-12, in which a breach occurs.

This reform may benefit taxpayers with a marginal rate below the top marginal rate of 46.5% who inadvertently breach the concessional contributions cap by \$10,000 or less for the first time.

The reform will also provide some one-off relief in situations where excess concessional contributions (up to \$10,000) would otherwise flow through and also result in a breach of the non-concessional contributions cap and trigger a tax rate up to 93%.

### Reduction in the minimum pension payments for 2011-12

The Government will phase out the minimum pension drawdown relief that has been provided over the last three income years. Minimum payment amounts for account-based, allocated and market linked (term allocated) pensions will be reduced by 25% for 2011-12 and will return to normal in 2012-13.

## MINIMUM ANNUAL PENSION PAYMENT

Age	2010/11	Proposed 2011/12	Proposed 2012/13
Under 65	2%	3%	4%
65-74	2.5%	3.75%	5%
75-79	3%	4.5%	6%
80-84	3.5%	5.25%	7%
85-89	4.5%	6.75%	9%
90-94	5.5%	8.25%	11%
95+	7%	10.5%	14%

### Operation of the higher contribution caps for over 50's

The Government will set the proposed higher concessional contributions cap at \$25,000 above the general concessional cap for eligible individuals aged 50 and over with total superannuation balances of less than \$500,000. The proposal to allow individuals aged 50 and over with total superannuation balances below \$500,000 to continue making up to \$50,000 per year in concessional contributions from 1 July 2012 was previously announced as part of the Government's response to the Henry Tax Report on 2 May 2010. The Government has confirmed that the higher cap will enable eligible persons over 50 to be able to contribute \$25,000 more per year than other workers subject to the general concessional contributions cap of \$25,000.

### Other notable superannuation measures announced

- SMSF trustee-director a parent or guardian of minor:** The Government will amend the superannuation legislation so that where the trustee of a self-managed superannuation fund is a body corporate, a parent or guardian may be director of the body corporate in place of a member that is a minor. No commencement date was specified.
- Superannuation co-contribution indexation freeze extended:** The Government will continue the freeze on the income thresholds for an additional year to 2012-13. Under the co-contribution scheme, the Government provides a matching co-contribution for contributions made into superannuation out of after-tax income. The matching Government co-contribution is up to \$1,000 for people with incomes of up to \$31,920 in 2010-11 (with the amount available phasing down for incomes up to \$61,920). This measure will continue to freeze these thresholds at \$31,920 and \$61,920, respectively;
- The introduction of administrative penalties that the ATO can apply in cases of non compliance by SMSF trustees;
- Increase to the SMSF levy from \$150 to \$180 with effect from the 2010-11 income year.
- Assets held within a superannuation fund can no longer be classified as trading stock. This takes effect immediately. This is to ensure all assets are subject to CGT. This only applies to SMSFs who have sufficient trading turnover to be classified as a

'trader' and does not affect the tax free status concessions currently provided to pension funds. Most clients of TP Super Solutions are not affected by this change.

- Requiring SMSFs to value their assets at net market value and the ATO to publish valuation guidelines.

## Outlook and Market Update – May 2011

By Andrew Crews

### Looking ahead

Political tensions in the Middle East and North Africa continued in May and these were further compounded by a number of other concerns, including softer economic data in the US and Germany, the threat of further interest rate hikes in China, ongoing sovereign debt woes in Europe. As a result, investors' outlook has shifted from one of outright confidence in a sustained global recovery to one of cautious optimism. With regards to the latter, Greek authorities have so far failed to reach a consensus on austerity measures and many investors are now beginning to question whether the country can even avoid defaulting at all. On the positive side, though, there is increasing evidence that the Japanese economy is recovering faster than initially thought, with retail sales and other key data strengthening in the wake of the recent earthquake.

Despite a second consecutive monthly decline in the local share market in May, the Australian economy remains relatively well-placed compared to the likes of the US and Europe and should continue to benefit from strong Chinese demand for our raw materials.

Further, unemployment remains relatively low, business confidence is still high and leading indicators suggest further positive growth ahead. Of course, any additional monetary tightening in China – our largest trading partner – will obviously have an adverse effect on the Australian economy.

In terms of interest rates, the RBA clearly retains its hawkish view on domestic monetary policy, but given the recent economic uncertainty both here and overseas we believe rates will remain on hold for a few more months yet.

### Market update at a glance

So far this year the local market has gained 0.9%. This compares with +7.0% in the US, +2.5% in Europe, +1.5% in the UK and -5.2% in Japan.

- Global share markets fall back;
- Oil prices lose almost 10%;
- The Reserve Bank leaves interest rates unchanged at 4.75%;
- The Australian share market posts a second consecutive monthly loss;
- The Australian dollar weakens despite hitting a new post-float high against the US Dollar.

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