Holden & Bolster

Client Information Newsletter - Tax & Super

May 2022

Why super can help save for your retirement

Superannuation is an investment vehicle specifically designed to help you save for retirement - this is one of the key reasons why you should take an interest in your superannuation. Whether you're employed, self-employed or even nearing retirement, it's never too late to build up your superannuation to boost your retirement savings.

About this newsletter

Welcome to Holden & Bolster's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Concessional tax environment

Superannuation provides tax concessions on superannuation contributions and earnings. Generally speaking, any contribution that your employer makes (up to certain contribution caps) and any investment earnings on your superannuation balance are taxed at a maximum of 15%.

This rate in most cases will be lower than an individual's personal marginal tax rate. This can mean more of your money goes towards your retirement than if you were to invest outside of superannuation.

Continued ⇨

Why super can help save for your retirement (continued)

Compounding interest can boost your savings

Making small financial sacrifices and contributing to superannuation over the years is key to long-term wealth. This long-term growth is due to the power of compound interest.

Superannuation uses compounding interest to grow your balance which will help you in retirement. If you're an employee, your employer will pay 10% of your salary/wages into superannuation in 2021/22 (increasing to 10.5% in 2022/23) that will use compounding interest to grow until you reach retirement.

To boost the amount you'll have saved at retirement, you may want to consider making additional contributions through salary sacrificing or making personal after-tax contributions to superannuation.

One of the reasons for making additional contributions to your superannuation is the potential for investment growth, combined with the power of compounding returns. It is surprising how putting away small, yet regular amounts can increase your overall balance substantially over time.

For example, consider a $50,000 superannuation balance earning 6% interest annually. Assuming no regular contributions are made, after 15 years the $50,000 superannuation balance will have reached $122,705. This means the initial superannuation balance has more than doubled through the power of compounding interest. If we now assume a $100 per month after-tax contribution is made to superannuation, the same $50,000 superannuation balance will increase to $151,787 in 15 years' time. That's an extra $29,082 due to extra contributions, investment growth and compounding interest.

Locked away until retirement

One of the main features of superannuation is that you typically can't access your money until you reach age 65 or when you retire after reaching your preservation age (between 55 and 60 depending on your date of birth). You may however be able to access your superannuation earlier in limited circumstances, such as should you become permanently disabled or suffer severe financial hardship.

Considering superannuation is not generally available during your working life, it means it will be preserved and remain invested in the background and will generate a valuable source of funds for you to live on in retirement.

Provides an income for your retirement

As you approach retirement, you may want to wind down your working hours/days and use your superannuation to supplement your income through a 'transition to retirement' (TTR) pension.

Once you reach age 65 or advise your superannuation fund that you've retired permanently, your TTR pension will automatically convert to an account-based pension (ABP).

An ABP is a regular income stream bought with money from your superannuation fund and allows you to enjoy a regular income in retirement. Furthermore, since your money remains within the superannuation system, your ABP continues to be invested and benefits from ongoing tax concessions. For example, investment earnings of an ABP are tax free and once you turn 60, your ABP payments will also be tax free.

Alternatively, if you don't want to commence an ABP using your superannuation, you can also choose to take any accumulated superannuation benefits you have as a lump sum payment/s.

Final thoughts

Superannuation is your money, so it pays to take an active interest in your superannuation during your working years. Remember, by making regular superannuation contributions over the course of your working life and ensuring your money is invested properly will lead to greater savings that can help fund the lifestyle you want in retirement. ■

Further developments on trust distributions

For the many business owners who operate their affairs through discretionary trusts, there have been further developments on the ATO's planned crackdown on certain distributions.

BACKSTORY

To recap, the ATO in February updated its guidance around trust distributions made to adult children, corporate beneficiaries and entities that are carrying losses. Depending on the structure of these arrangements, there is a potential that the ATO make take an unfavourable view on what were previously understood to be legitimate distribution arrangements.

The ATO is chiefly targeting arrangements under section 100A of the Tax Act, specifically where trust distributions are made to a low-rate tax beneficiary but the real benefit of the distribution is transferred or paid to another beneficiary usually with a higher tax rate. In this regard, the ATO's new Taxpayer Alert (TA 2022/1) illustrates how section 100A can apply to the quite common scenario where a parent benefits from a trust distribution to their adult children.

Released at the same time, the ATO's new draft ruling states that for the new guidance to potentially apply, one or more of the parties to the agreement must have entered into it for **a** purpose (not necessarily a sole, dominant purpose) of securing a tax benefit. This sets the bar quite low and may capture a number of arrangements previously thought to be within the law.

NEW ANNOUNCEMENT

No doubt reluctant to upset small business voters during an election campaign, the government has recently tried to take the heat out of this issue by having the ATO 'clarify' that its new guidance material will not apply retrospectively and that "ordinary advice services" for a fee will not be subject to the promoter penalty rules. If necessary, the government has indicated it will change the law "should any adverse retrospective impacts arise".

While this is very welcome news, it only focuses on the application date of the guidance material. It changes nothing going forward, including issues around adult beneficiaries and the limited scope (in the ATO's view) of the "ordinary family dealing" exception."

PAST DISTRIBUTIONS

Given the government's announcement, there is now no need to revisit pre-1 July 2022 distributions to confirm that section 100A does not apply. For its part, Labor's Stephen Jones has been reported as supporting the government's approach on retrospectivity.

GOING FORWARD

A conservative approach would be to adopt the "beneficiaries must benefit" approach that underpins the guidance material, as much as that might be a worry for controlling individuals who have in the past benefited from tax optimisation without actually giving their adult children beneficiaries access to their present entitlements. This means the days of controlling individuals taking loans from the trust as they go along and squaring them off through the trust accounts after year-end might soon be over.

Alternatively, one could continue to deal with 2021/22 trust distributions in exactly the same way as in the past. The law has not been changed and the draft ruling is at odds with a recent Federal Court decision. Such an approach would reflect the view that the Commissioner is wrong in his narrow interpretation of what constitutes ordinary family dealings. That could be a brave strategy, however, as we do not know when or how the draft guidance material will be finalised, while the above Federal Court appeal decision is unlikely to be handed down this side of 30 June 2022.

If you have any concerns about your trust distributions and exposed risk to section 100A (including upcoming distributions for 2021/22) you should contact your accountant for a discussion based on your personal circumstances. ■

What you should know about six member SMSFs

Since the SMSF member limits recently increased from four to six, larger families may be considering having one large superannuation fund for all family members.

Interestingly, recent ATO statistics tell us that the SMSF population comprises of 24% single-member funds and 69% two-member funds and the balance are three-member funds (3%) and four-member funds (4%). These statistics indicate that more than 93% of SMSFs have two members or less, so it is unlikely the increase in SMSF membership will affect many SMSFs.

However for some larger families, it does have the potential to make a difference, giving them additional flexibility and choice.

Although it may seem like the classic case of 'the more the merrier', there are many considerations for those thinking of bringing family members into their SMSF. Consider the following key pros and cons of having more members in an SMSF.

THE PROS

- Larger families are able to share a single superannuation fund.
- Reduced operating/running costs as costs are spread across more members.
- Ability to have different investment strategies for different members – this can benefit members with different risk profiles, investment goals and retirement timeframes.
- Larger pool of assets to invest and diversify – an SMSF with more members can enable more purchasing power and a broader range of investments, leading to greater investment diversification.
- Help with liquidity – introducing new members can inject funds and meet any liquidity issues of the SMSF, such as meeting minimum pension requirements and financing limited recourse borrowing arrangement repayments.
- Access to retail insurance policies – rather than having default insurance cover in an industry/retail superannuation fund where the default levels may not be enough and the cover may be basic (ie, the insurance definitions are less comprehensive, the insurance cover has product limitations, etc), SMSF members could obtain a retail insurance policy in their SMSF from any insurer in the market. Retail policies can provide better quality cover and are tailored policies with better policy features and can also provide flexibility with estate planning strategies that can be utilised in the fund.
- More likely to qualify as an 'Australian superannuation fund' when one or more members travel overseas for an extended period of time.

THE CONS

- The SMSF trust deed may not allow for the increase in members and amendments may be required to increase the fund's membership level.
- Not possible for larger families that have five or more children (and both their parents) in one SMSF – this means larger families will need to have one SMSF or have two or more SMSFs where the parents may be in one fund and the children in another.

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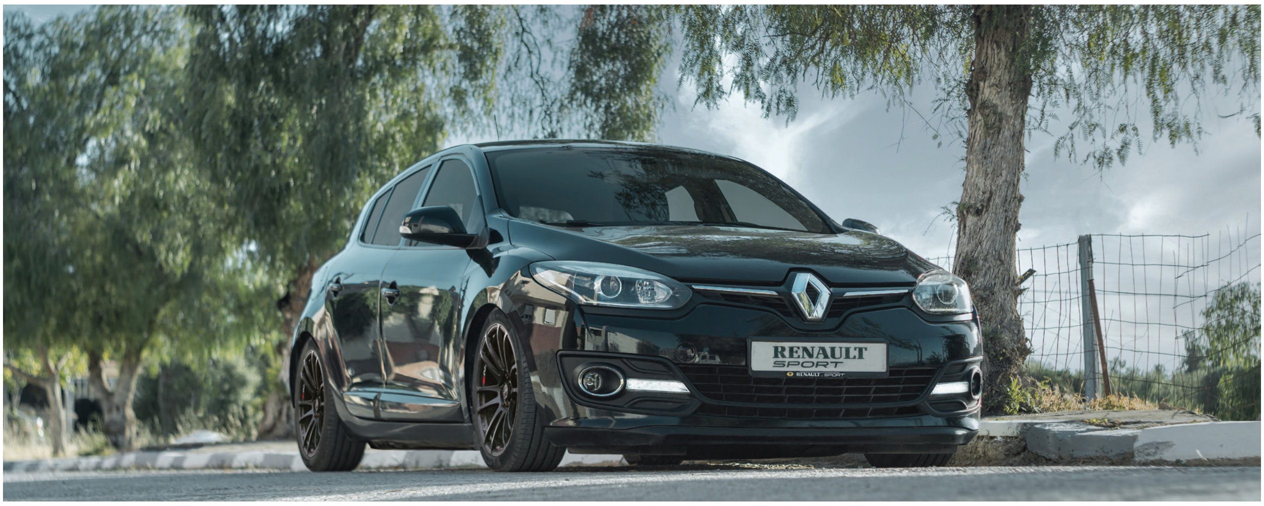


Financing motor vehicles

A common question facing businesses is how to finance and account for the acquisition of a motor vehicle. There are numerous ways that can be used, with each having unique taxation treatment.

1. OUTRIGHT PURCHASE

The advantage of purchasing a vehicle outright, as opposed to financing the acquisition of the vehicle, is that there will be no ongoing costs of finance. This may not be such a big issue in these times of relatively low interest rates. It wasn't that long ago, however, that interest rates were not so low, which would have substantially increased the monthly payment and added significant cost to the overall purchase price. That said, the outright purchase of a vehicle can impact greatly on the cash resources of an entity when those funds may be better utilised elsewhere in the business. It is far easier to obtain finance for the acquisition of a vehicle than it is for the acquisition of trading stock. Care should therefore be taken not to cripple the entity's cash flow if considering an outright purchase.

From an income tax standpoint, any deduction for depreciation can usually be claimed upfront under temporary full expensing, however claims may be limited by the car limit (which is currently $60,233).

2. LEASE

Rather than choosing to acquire the car outright, the business may elect to finance the acquisition of the vehicle. The central issue that surrounds any form of financing, and how it is to be accounted for, is whether the person providing the asset under the finance arrangement is the legal owner of that asset. This issue goes to the heart of how the finance transaction is to be treated and is often the subject of ATO scrutiny.

It is important not to claim deductions for what appear to be lease payments when in fact the finance arrangement is a hire purchase or similar type of transaction. The only way to identify the difference is to read the terms and conditions of the finance agreement. The arrangement will be of a nature of a lease when:

- There is no option to purchase the vehicle written into the agreement, and
- The residual value reflects a bona fide estimate of the vehicle's market value at termination.

If these two conditions are not met, the finance agreement will generally be a hire purchase or other instalment type agreement. In effect, a leasing document identifies the owner of the vehicle as being the lessor with the lessee merely renting the vehicle from them for regular fixed instalments. Under a leasing arrangement, the lease payments are deductible to the extent the vehicle is used for income producing purposes.

Continued on the following page

Financing motor vehicles (continued)

3. HIRE PURCHASE

Essentially, a hire purchase arrangement is an agreement to purchase goods by instalments. The term hire purchase is defined in section 995-1 of the *Income Tax Assessment Act 1997* as:

> *"a contract for the hire of goods where:*
>
> *i) the hirer has the right or obligation to buy the goods; and*
>
> *ii) the charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods; and*
>
> *iii) title in the goods does not pass to the hirer until the option to purchase is exercised; or*
>
> *iv) where title in the goods does no*t pass until the final instalment is paid."

Unlike a lease where there is no obligation to acquire the goods at the end of the instalment period, a hire purchase arrangement provides for this obligation and as such the goods will be eventually owned by the hirer.

An income tax deduction may will generally be allowable in respect of the depreciation or decline in value of the motor vehicle acquired. Again, depreciation may be limited by the car limit – see earlier.

4. CHATTEL MORTGAGE

A chattel mortgage as a form of finance treats the purchaser of the goods as the owner of the goods as if they had acquired them outright but have borrowed in order to do so. They are effectively treated as owning the goods from the outset of the arrangement, but the financier has a mortgage over it until the car loan is paid including any balloon payment. This is unlike a hire purchase which views the purchaser as the eventual owner only on payment of the final instalment.

An income tax deduction may be allowable in respect of the depreciation or decline in value of the motor vehicle acquired. Again, depreciation may be limited by the car limit.

Under this form of finance, you may also be able to claim the interest payments as a tax deduction.

Talk to your tax and financial advisors about the best option for your business. ■

Six member SMSFs (continued)

- Disputes may arise amongst SMSF members – we know disputes occur in two to four member SMSFs, so the likelihood of further disputes could increase as the number of fund members grows, especially when relationships break down or when a member loses capacity, becomes ill or passes away.
- Different risk profiles and investment strategies can add complexity and administration issues – eg, the parents may want conservative investments while the children may want to take more risk, eg, invest in cryptocurrency.
- Difficulty with decision-making ability – having more members means the strategic high-level decisions and general day-to-day operations of the fund may be harder to resolve amongst the trustees.
- Estate planning may need to change – your estate plan may be affected by the changes to your SMSF which means there may be a need to update or make changes to your estate planning documents including your Will, Enduring Power of Attorney, etc.
- Insurance costs may be higher in an SMSF – as group insurance is bought in bulk by larger superannuation funds, the premiums can be cheaper in industry/retail superannuation funds.

FINAL THOUGHTS

If you're thinking about taking advantage of the recent law change by increasing the membership of your SMSF to six members, you're most likely going to need a corporate trustee structure for your fund. This is because the Trustee Acts of most Australian States and Territories still only allow a maximum of four individual trustees for SMSFs. This means you will need to have a corporate trustee (rather than individual trustees) in order to satisfy the trustee limit contained in the relevant legislation in your local State or Territory jurisdiction.

As you can see, there are several considerations for those thinking about having a larger family SMSF. So if you're considering commencing a fund with more members or if you are considering restructuring your existing fund(s) to take advantage of the increase in member numbers, then you should seek legal and financial advice to ensure the decision you make is the right one for you, fellow members and your SMSF. ■

Personal Property Securities Register

Are you aware of the personal property securities register?

What is it?

The personal property securities register (more commonly known as the PPSR) is an official government register. It's effectively a public noticeboard of *security interests* in *personal property* (see below) that is managed by the Registrar of Personal Property Securities.

Security interests

Security interests are most commonly created when a secured party (such as a lender) takes an interest in personal property of a grantor (such as a borrower) as security for a loan or other obligation. The security interest means the secured party can take the personal property (known as the collateral) if the secured obligation is not met, such as defaulting on a loan.

Personal property

Personal property to which the PPSR applies is property other than land, buildings and fixtures to the land. It includes goods, motor vehicles, planes, boats, intellectual property such as copyright/patents/designs, shares, bank accounts and debts.

The debts or other obligations that are secured by personal property are shown on the register (if registered). The PPSR is accessible by the public 24/7. The PPSR came into existence on 30 January 2012 and replaced many state-based registers, such as REVS and other vehicle registers and the ASIC Register of Company Charges, to form one national register.

Put simply, the register assists both those with a security interest over property, and also consumers/businesses purchasing property as follows:

Registering

When someone registers a security interest on the PPSR, they are letting the world at large know that they claim to have a security interest over certain personal property. Registering on the PPSR is a way to notify others if personal property such as cars, goods or company assets have security interests over them. Registering your security interest correctly on the PPSR can protect you and give you extra rights in the property it's registered over. This is especially important if the person who gave you the interest goes insolvent. A registration also offers other protections such as ranking you at a higher priority over other security interests.

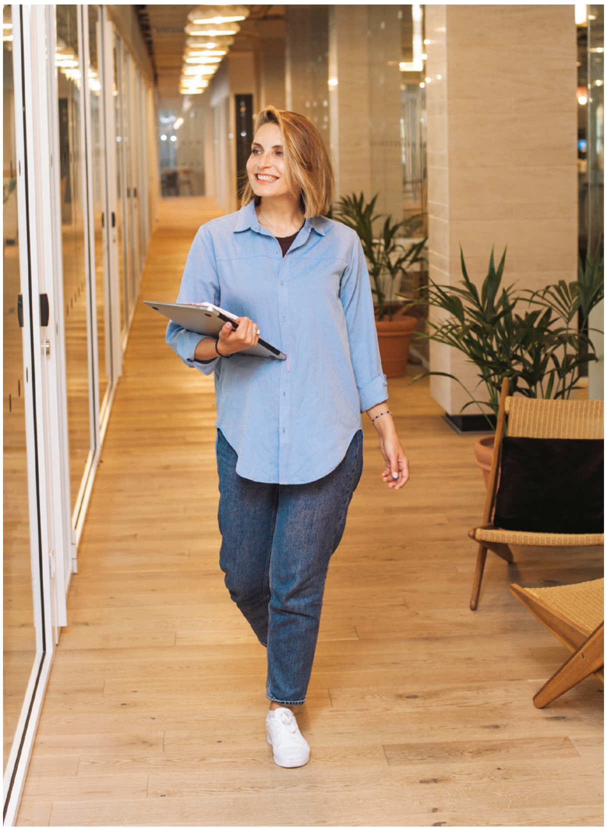
Searching

Consumers including businesses can search the PPSR to see if someone has registered a security interest over personal property (which they may want to do before buying property or lending money to someone). When you search you will receive a certificate that you can retain as proof of whether or not a security interest was registered at the time of your search. If you don't do a search and then proceed to purchase property that has an existing security interest registered over it, you place yourself at risk of the goods being repossessed even though you have paid for them. Millions of searches and registrations take place on the PPSR every year. ■

To access the PPSR visit www.ppsr.gov.au

HR Manuals

Quite a number of employers now have in place a human resources (HR) manual.



HR manuals document the workplace policies and procedures that will be applied to all employees inside and to a lesser extent outside the workplace. Manuals may broach the following non-exhaustive list of issues:

- Complaint processes
- Dress standards
- Leave (particularly around issues such as required notice, when medical certificates need to be produced, times when annual leave may be compulsory such as quiet periods over Christmas etc.)
- Email, internet, and social media usage
- Work from home arrangements
- Start and finish times
- Recruitment and promotion
- Staff functions
- Drugs and alcohol
- Reimbursement of expenses
- Work-related travel
- Privacy.

Although some employers may question the need for an HR manual if contracts of employment are already in place, manuals complement these contracts. Contracts of employment set out the terms and conditions of a particular employee's employment – including their salary and responsibilities etc. – which are conditions that generally do not regularly change and are specific to the worker. Policies and procedures on the other hand complement employment contracts and apply to the wider workplace. These may change as the business evolves and expands. Typically, employment contracts contain a clause where the employee acknowledges they have read and understood the workplace's policies and procedures as set out in the HR manual.

The advantages of an HR manual include:

- help ensure consistency of treatment in relation to employees. This in turn can reduce tension in the workplace.
- orientate new workers around how the workplace functions. HR manuals are particularly useful in the induction process to ensure new workers are on the same page as the employer and their colleagues from day one.
- better equip employers to defend claims of breach of employer obligations. If the rules and policies are observed by an employer and the employee is aware of them, for example in relation to disciplinary action, then the employer may be less exposed legally.
- provide workers with knowledge about what is expected of them, particularly around behaviour and performance standards.

Importantly, HR manuals must be consistent with the wider workplace laws. These include those in relation to Fair Work, discrimination, bullying and harassment, OH&S, and privacy.

It's best practice, when drafting HR manuals, to bring employees along with you. You may wish to consult with key employees when drafting the manual, and give them an opportunity to review the first drafts of your manual and provide feedback with a view to making reasonable alterations. Staff training may be provided when the manual is released, a copy made available to all employees, and notification provided when any significant changes are made.

Manuals can be drafted internally, or with the assistance specialist HR firms or advisers. ■