



## Super contributions and the small business CGT concessions

Small business owners looking to sell their business and contribute the proceeds to superannuation using the small business CGT concessions need to consider the changes to the contributions caps from 1 July 2017.

Broadly, the small business CGT retirement concession allows for a capital gain realised on the sale of an eligible small business asset to be contributed to superannuation up to a \$500,000 lifetime limit (when certain conditions are met). If the asset has been held for more than 15 years, a full CGT exemption may apply under the 15-year exemption instead. Under these concessions, certain contributions can be made up to the CGT cap amount (\$1.415 million for the 2016/17 income year) which is excluded from a taxpayer's non-concessional contributions cap.

While the Government's latest super reforms haven't changed the rules for the small business CGT concessions, contributions up to the CGT cap will still count as part of a member's 'total superannuation balance' from 1 July 2017, and could as a result affect a person's ability to make non-concessional contributions. More particularly, if the member's total superannuation balance is \$1.6 million or more (just before the start of an income year), then the member will effectively not be able to make any further non-concessional contributions in the income year (i.e., their non-concessional contributions cap for the year will be \$0).

Such CGT cap contributions could also impact on a person's ability to make additional catch-up concessional contributions from 1 July 2018 for those with total balances under \$500,000. CGT cap contributions could also have an impact on the total amount in an SMSF that adds towards the

member's \$1.6 million transfer balance cap on the commencement of a pension (i.e., as from 1 July 2017, there will be a cap of \$1.6 million, indexed, on the total amount that can be transferred into the tax-free retirement phase for account-based pensions).

Therefore, the timing of when CGT cap contributions should be made can be critical, especially where a small business owner is also considering making other contributions (e.g., non-concessional contributions) to their fund. Small business owners should in these circumstances get advice from an SMSF specialist on the interaction of the small business CGT concessions and the super reforms from 1 July 2017.

## Changes to non-concessional contributions caps

It is important to be aware of the recent legislative changes that apply in relation to non-concessional (after-tax) contributions that can be made to a superannuation fund (including an SMSF).

First of all, as from 1 July 2017, the annual non-concessional contribution (NCC) cap is reduced from \$180,000 to \$100,000 per year (and from that date, total NCCs that can be made under the three year 'bring forward' arrangement for members aged under 65 years is reduced from \$540,000 to \$300,000).

It is also important to note that a new 'transfer balance cap' requirement applies as from 1 July 2017. More particularly, if a member has a 'total superannuation balance' greater than or equal to the transfer balance cap (\$1.6 million for the 2017/18



financial year) at the end of 30 June of the previous financial year, then any NCCs that the member makes in the current year will be excess NCCs.

A member's 'total superannuation balance' is basically made up of all their superannuation and retirement savings accounts, **reduced** by the sum of any structured settlement amounts (such as court-ordered personal injury payments) that have been contributed to a superannuation fund.

Therefore, as from 1 July 2017, if a member has a total superannuation balance equal to or greater than the transfer balance cap, they will effectively not be able to make any further NCCs in the financial year. If their total superannuation balance is less than the transfer balance cap, they will be able to make NCCs, but their total superannuation balance will determine what amount of NCCs they can make.

The table below summarises how the transfer balance cap impacts on the bring-forward arrangement (where the 'bring-forward' period is the **2017/18 financial year**):

Total super-annuation balance on 30 June 2017	NCC cap for the first year	Bring-forward period
Less than \$1.4 million	\$300,000	3 years
\$1.4 million to less than \$1.5 million	\$200,000	2 years
\$1.5 million to less than \$1.6 million	\$100,000	No bring-forward period, general NCC cap applies
\$1.6 million	Nil	Not applicable

## Superannuation rates and thresholds for 2017/18

The release of the average weekly ordinary time earnings (AWOTE) data for the December 2016 quarter has enabled the calculation of certain superannuation rates and thresholds for 2017/18, as set out below. **However, all figures should be confirmed against the Tax Office Website document, Key superannuation rates and thresholds.**

The **CGT cap amount** for non-concessional contributions is **\$1.445m for 2017/18** (up from \$1.415m for 2016/17).

### Super Guarantee – maximum contribution base

While the minimum level of employer superannuation guarantee support has been frozen at 9.5% from 2014/15 until 2020/21, the '**maximum contribution base**' has been increased to **\$52,760 per quarter for 2017/18** (up from \$51,620 for 2016/17). An employer is not required to provide the minimum superannuation guarantee support for that part of an employee's ordinary time earnings (OTE) above the quarterly maximum contribution base (\$52,760 for 2017/18). This quarterly maximum contribution base represents a per annum equivalent of \$211,040 for 2017/18.

### Government co-contribution

The Government co-contribution '**lower income threshold**' is \$36,813 for 2017/18 (up from \$36,021 for 2016/17); '**higher income threshold**' is **\$51,813** (up from \$51,021).

### Superannuation benefits 2017/18

The following thresholds have been increased for 2017/18:

- ◆ Superannuation lump sum low rate cap - \$200,000 (up from \$195,000).
- ◆ Untaxed plan cap - \$1.445m (up from \$1.415m).
- ◆ ETP (Employer termination payment) cap amount is \$200,000 (up from \$195,000).
- ◆ Genuine redundancy and early retirement payments - tax-free amounts: base amount - \$10,155 (up from \$9,936); service amount - \$5,078 (up from \$4,969) for each whole year of service.

The **general contribution caps** are not subject to indexation for 2017/18 as they were reset for this period by the superannuation reform legislation.

The general **concessional contributions cap** has been reset at \$25,000 for 2017/18 for all taxpayers, regardless of age. For 2016/17, the concessional cap is \$30,000 (or \$35,000 for those aged 49 or over on 30 June 2016).

The **non-concessional contributions cap** is \$100,000 for 2017/18 (or \$300,000 under the bring-forward rule over 3 years, subject to transitional rules). For 2016/17, the non-concessional cap is \$180,000 (or \$540,000 over 3 years).

## What happens when a member of an SMSF loses capacity?

It is always possible that a member of an SMSF may lose mental capacity, e.g., as a result of suffering a stroke, or acquiring a brain injury in a car accident.

The trustee/member rules for SMSFs generally require a member of an SMSF to also be a trustee (or director of the corporate trustee) of that SMSF. Trustees (and directors of a corporate trustee) of SMSFs need to have mental capacity – if they do not, they are considered at law to be under a legal disability.

Therefore, issues obviously arise in the event that a member of an SMSF loses mental capacity.

In this regard, S.17A(3)(b)(i) of the Superannuation Industry (Supervision) Act 1993 (SIS Act) provides as follows:

*“A superannuation fund does not fail to satisfy the conditions [required to be an SMSF] by reason only that:*

*(b) the legal personal representative of a member of the fund is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during any period when:*

*(i) the member of the fund is under a legal disability;.....”*

“Legal personal representative” (LPR) is defined in S.10 of the SIS Act to include “the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person”.

It is important to note the following:

- ◆ A member would need to grant an enduring power of attorney (refer above) while the member still has mental capacity; and
- ◆ the LPR of a bankrupt member **cannot** be a trustee/director in the place of that member – refer to S.17A(10) of the SIS Act.

Having regard to the above, it may be appropriate for the benefits of a member who has lost mental capacity to be rolled over to another (non-SMSF) superannuation fund.

Detailed legal and superannuation advice should be sought in relation to the above and other issues (including who may be the ‘trustee of the estate’ of a member – refer above) in the event that a member of an SMSF loses capacity.

