

Superannuation Seminar

August 2011

Presented by Roger Timms, Head of Tax & Superannuation

TABLE OF CONTENTS

1	Introduction	2
2	Types of superannuation funds	3
2.1	Complying superannuation funds	3
2.2	Non-complying superannuation funds	4
2.3	Self managed superannuation funds	4
2.4	Foreign superannuation funds	5
3	Types of contributions	7
3.1	Concessional contributions	7
3.1.1	Mandated employer contributions	9
3.1.2	Work test	9
3.2	Non-concessional contributions	10
3.3	The nature of a contribution	13
3.3.1	Forms of contributions	13
	Purpose	13
	Increase in capital	14
	Value shifting example	16
	Timing of contributions	16
4	Taxation of contributions	19
4.1	Contributions – income tax consequences for superannuation funds	19
4.1.1	Assessable contributions	19
4.1.2	No-TFN contributions income	21
4.2	Contributions – income tax consequences for employer contributors	22
4.2.1	Deductibility of contributions	22
	Controlling Interest Deductions (s290-90)	24
4.2.2	The meaning of employee	24
4.2.3	Payment of fund expenses	25
4.2.4	Returns of contributions	27
4.2.5	Superannuation clearing house facility for small businesses	28
4.2.6	Reportable employer superannuation contributions	28
	Recent legislative amendments	30
4.3	Contributions – income tax consequences for personal contributors	35
4.3.1	Deductibility of personal contributions	35
4.3.2	The 10% rule	36
4.3.3	Small business CGT retirement exemption component	38
4.3.4	Excess contributions	38
	Excess concessional contributions	38
	Excess non-concessional contributions	39
	Commissioner discretion to disregard or reallocate excess contributions	40
	Excess contributions tax - recent legislative developments	43
4.4	Tax offset for spouse contributions	44
4.5	Government Co-contribution scheme	45
4.5.2	Eligibility requirements	46
	Make eligible personal superannuation contributions	46

	At least 10% of total income must come from employment and/or business (ie. the '10% test')	46
	'Total income' must be less than the higher income threshold	46
	Other requirements	47
4.6	Rollovers and Transfers from other superannuation funds	47
4.6.1	Rollovers from Australian superannuation funds	47
	Taxation implications	48
	Untaxed elements	48
4.6.2	Transfers from foreign superannuation funds	48
4.7	Small business CGT concessions	49
5	Taxation of investment earnings	50
5.1	Income tax rates	50
5.2	Non-arm's length component	50
5.2.1	Dividends – arm's length factors	51
5.3	Low tax component	52
5.3.1	Taxation of investment earnings	52
5.4	Exempt income	53
5.4.1	Segregated current pension assets	53
	Death of pension recipient	54
5.4.2	Current pension liabilities	55
5.4.3	Other categories of exempt income and tax-exempt funds	55
5.5	Capital gains	56
5.5.1	CGT discount	56
5.5.2	Precedence of CGT provisions	56
5.5.3	Pre-June 1988 assets	57
5.6	Deductions	58
	Death and disability policies	59
5.7	Contributions claw backs	59
6	Taxation of benefits	60
6.1	Types of superannuation benefits	60
6.2	Conditions of release	61
	Preservation age	63
6.3.1	Preservation of superannuation benefits	63
6.4	Superannuation benefit components	64
6.4.1	Components from 1 July 2007	64
6.4.2	Tax-free component	65
6.4.3	Taxable component	66
	Element taxed in the fund	66
	Element untaxed in the fund	67
6.4.4	Proportioning rule	68
6.6	Members aged at least 60 years	69
6.6.1	Element taxed in the fund	69
6.6.2	Element untaxed in the fund	69
6.7	Members aged between preservation age and 59 years	71
6.7.1	Tax-free component	71
6.7.2	Taxable component	71
	Lump sum	71
	Superannuation income stream	71
6.8	Members under preservation age	72
6.8.1	Tax-free component	72
6.8.2	Taxable component	72
	Lump sum	72
	Superannuation income stream	72
	Summary of taxation benefits (taxed element)	73
6.9	Benefits received from foreign superannuation funds	73
6.9.1	Lump sum received within six months of commencing residency	73

6.9.2	Lump sum received within six months of termination	74
	Foreign source employment income condition	74
	Other conditions	75
6.9.3	Lump sum received more than six months after termination	75
6.10	Superannuation death benefits	76
6.10.1	Death benefits dependant	77
	Spouse	77
	Interdependency relationship	77
	Dependant	78
6.10.2	Lump sum paid to a death benefits dependant	78
6.10.3	Lump sum paid to a non-death benefits dependant	78
6.10.4	Lump sum paid to the trustee of a deceased estate	79
6.10.5	Income stream paid to a death benefits dependant	80
	Element taxed in the fund	80
	Element untaxed in the fund	81
6.10.6	Reversionary pensions	81
6.10.7	Commutation of income stream death benefit	82
7	Retirement income streams	83
7.1	Types of income streams	83
7.1.1	Account-based income streams	83
7.1.2	Allocated pensions or annuities	84
7.1.3	Market linked pension or annuity	84
	Account based life expectancy pension	84
7.1.4	Defined benefit complying pension or annuity	85
	Non-account-based pension	85
7.1.5	Life expectancy and lifetime pension or annuity	85
7.2	Applicable pension standards	85
7.2.1	Current minimum pension standards	86
	Account-based income streams	86
	Age-based percentages	87
	Non-account-based income streams	87
7.2.2	Former pension standards	87
	Tax-free and taxable components – prior to trigger event	88
	Tax-free and taxable components – upon trigger event	89
7.3	Transition to retirement income stream	89
8	Restrictions on investments made by superannuation funds	91
8.1	The sole purpose test	91
	Carrying on business	93
8.2	In-house assets	94
8.2.1	In-house assets – inclusions and exclusions	95
	Business real property exception for SMSFs	95
	Acquiring listed securities exception	99
8.2.2	Five per cent limitation	99
8.2.3	Grandfathering rules for pre-11 August 1999 in-house assets	100
	Pre-August 1999 investment: convert to a non-g geared company or trust?	103
8.3	The arm's length test	104
8.4	Acquisition of assets from related parties	105
8.4.1	Definition of related party	105
8.4.2	Prohibitions and exceptions	106
8.4.3	Anti-avoidance	107
8.5	Provision of financial assistance to members and relatives of members	107
8.5.1	Any other financial assistance	108
8.5.2	Using the resources of the fund	108
8.5.3	Given to a member or a relative of a member	109
8.5.4	Indicative factors and examples of contraventions	109
8.6	Collectables and personal use assets	111
	Transitional rules:	112

9	Borrowings by superannuation funds	113
9.1	General restriction on borrowing	113
9.2	Instalment warrants	114
9.2.1	General structure of instalment warrant arrangements	114
9.2.2	Caveats	115
9.3	The July 2010 amendments Limited Recourse borrowing	116
	Issues arising from the new provisions	119
	'Single acquirable asset'	119
	Sub-division of land	120
	Repairs or improvements?	121
	Off the plan purchases	122
10	Small business CGT concessions	123
10.1	Eligibility requirements	123
10.1.1	Key concepts	123
	Small business entity	123
	Passively held asset	123
	Affiliate	124
	Connected entity	124
	Maximum net asset value test	124
	Active asset test	124
	CGT concession stakeholder	125
	Ninety per cent test	125
	Significant individual	125
10.1.2	Basic conditions	126
10.1.3	The retirement exemption	126
	Companies and trusts	127
10.1.4	The 15-year exemption	128
	Individuals	128
	Companies and trusts	129
10.1.6	Lifetime CGT cap amount	130
	Case study 1	134
	Case study 2	140
	Case study 3	147