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Superannuation Update

Superannuation changes now in place

The major landmark date of 1 July 2007 has finally arrived, and so the various much discussed superannuation changes are now finally actually taking effect. It will be interesting to see the overall effect of these changes on the superannuation industry. In the meantime, in this Update we set out the various applicable superannuation rates and thresholds as from 1 July 2007, along with other recent developments.

If you require assistance in relation to any matter set out in this update, or require assistance or advice in relation to any other tax or superannuation matter, please contact either Arthur Athanasiou or James Shattock – contact details appear below.

Superannuation rates and thresholds from 1 July 2007

The following are the key rates and thresholds that apply from 1 July 2007 in relation to superannuation contributions and benefits, employment termination payments and the superannuation guarantee.

Concessional contributions cap

Concessional contributions include employer contributions (including contributions made under a salary sacrifice arrangement) and personal contributions claimed as a tax deduction by a self-employed person.

For the income year commencing 1 July 2007, the concessional contributions cap is \$50,000 per person. This cap will be indexed in line with average weekly ordinary time earnings (AWOTE), in increments of \$5,000, from the 2008/2009 income year.

Between 1 July 2007 and 30 June 2012, a transitional concessional contributions cap will apply for people aged 50 or over. During this time, if you are aged 50 or over the annual cap will be \$100,000. If you have more than one fund, all concessional contributions made to all your funds are added together and count towards the cap.

Non-concessional contributions cap

Non-concessional contributions include personal contributions for which you do not claim an income tax deduction.



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Superannuation rates and thresholds Continued

For the income year commencing 1 July 2007, the non-concessional contributions cap is \$150,000. People under 65 years of age can make non-concessional contributions of up to \$450,000 over a three-year period. (There had been a transitional non-concessional contributions cap of \$1,000,000 for the period 10 May 2006 and 30 June 2007.)

Low rate cap amount

For the income year commencing 1 July 2007, the tax-free threshold for lump sum benefits is \$140,000, to be reduced by any amount previously applied to this threshold. This tax-free threshold will be indexed in line with AWOTE, in increments of \$5,000, from the 2008/2009 income year.

The tax-free threshold is only relevant for members aged between 55 and 59, as it does not apply to members aged under 55, and as from 1 July 2007 members aged over 60 may receive all their benefits tax-free in any event.

Untaxed plan cap amount

From 1 July 2007, the untaxed plan cap amount limits the concessional tax treatment of benefits that have not been subject to contributions tax in a superannuation fund. For the income year commencing 1 July 2007, the upper threshold is \$1,000,000, and benefits in excess of that amount will be subject to the top marginal tax rate of 45%. The tax treatment of benefits within this upper threshold depends on the age of the member (i.e. 15% for member aged 60 and over, 30% for a member aged under 60, and the first \$140,000 taxed at 15% for members aged between 55 and 59).

This \$1,000,000 threshold will be indexed in line with AWOTE, in increments of \$5,000, from the 2008/2009 year.

Minimum annual pension payments

Once you start a pension on or after 1 July 2007, a minimum amount is required to be paid each year. There is no maximum amount other than the balance of your superannuation account.

The following table shows minimum annual pension percentages for each age group:

Age	Minimum % withdrawal
Under 65	4%
65-74	5%
75-79	6%
80-84	7%
85-89	9%
90-94	11%
95 or more	14%

Employment termination payments (ETPs)

From 1 July 2007, an employment termination payment (ETP) (as opposed to an eligible termination payment) is a payment made in consequence of the termination of employment.

For the income year commencing 1 July 2007, the ETP cap amount (for the taxable post-June 1983 component) is \$140,000. Amounts received in excess of this cap amount will be subject to tax at the top marginal rate of 45%. ETPs received within this cap amount will be subject to tax of 15% for members aged 55 and over, and 30% for members aged under 55. (Note that the post-June 1994 invalidity amount and the pre-July 1983 amount of the ETP is tax exempt.)

The ETP cap amount will be indexed in line with AWOTE, in increments of \$5,000, from the 2008/2009 year.

Transitional ETP cap amounts

Transitional arrangements apply if you were entitled, as at 9 May 2006, to a payment made on the termination of employment under (a) a written contract; (b) an Australian or foreign law (or an instrument under such a law); or (c) a workplace agreement under the Workplace Relations Act 1996.

Employment termination payments made after 1 July 2007 (other than those made under the transitional arrangements) will not be able to be contributed or rolled over into a superannuation fund.

The taxable component of a transitional termination payment will be taxed at no more than 15% (or 30% if under 55) up to the lower cap amount (refer below), and no more than 30% on the amount which exceeds the lower cap amount but does not exceed the upper cap amount (refer below). Amounts in excess of the upper cap amount will be taxed at the top marginal tax rate.

For the income year commencing 1 July 2007, the lower cap amount is \$140,000, and the upper cap amount is \$1,000,000.

Tax free part of genuine redundancy payments and early retirement scheme payments

The table below shows the limit set for genuine redundancy and early retirement scheme payments from 1 July 2007.

Income year	Base limit	For each completed year of service
2007/2008	\$7,020	\$3,511

The base limit and service amount will be indexed in line with AWOTE each income year.

Superannuation guarantee – maximum superannuation contribution base

The superannuation guarantee requires employers to provide sufficient superannuation support for their employees. Employers are obliged to contribute a minimum of 9% of an eligible employee's earnings base to a complying superannuation fund or retirement savings account on at least a quarterly basis.

The maximum superannuation contribution base is used to determine the maximum limit on any individual employee's earnings base for each quarter of any financial year. An employer does not have to provide the minimum support for the part of earnings above this limit.

For the income year commencing 1 July 2007, the maximum superannuation contribution base is \$36,470 per quarter. (In the 2006/2007 year, the amount was \$35,240.)

Deductions for personal superannuation contributions: employees receiving periodic workers' compensation

In ATO ID 2007/99, the issue was if an employee receives periodic workers' compensation payments from an insurer as a result of an injury suffered whilst engaging in eligible employment in a year of income and the payments are included in the employee's assessable income for the year of income, are the payments amounts "attributable to" that eligible employment within the meaning of subsection 82AAS(3) of the Income Tax Assessment Act 1936 ("ITAA 1936").

In this case, the employee was engaged in "eligible employment" as defined in subsection 82AAS(1) of the ITAA 1936 during the 2006/2007 year of income. The employee suffered an injury during the course of their employment in that year, and received weekly compensation payments from an insurer during that year as a result of their incapacity for work.

The compensation payments were based on the employee's weekly earnings before the employee sustained the compensable injury. The purpose of the compensation payments was to provide an income replacement to compensate the employee for their loss of earnings as a result of their incapacity to work. These payments are assessable income under section 6-5 of the ITAA 1997.

It was held in this case that if an employee receives periodic workers' compensation payments from an insurer as a result of an injury suffered whilst engaging in eligible employment in a year of income and the payments are included in the employee's assessable income in that year, then the payments are amounts "attributable to" that eligible employment within the meaning of subsection 82AAS(3) of the ITAA 1936.

The reasons for this decision are as follows. A person who has made a contribution to a superannuation fund during a year of income is entitled to a deduction for the contribution if the requirements in subsection 82AAT(1) of the ITAA 1936 are satisfied. One of the requirements in that subsection is that the person is an "eligible person" in relation to the year of income.

"Eligible person" is defined in subsection 82AAS(2) of the ITAA 1936. In broad terms, a person will be an eligible person within the meaning of that subsection in relation to a year of income unless the person received or was entitled to receive superannuation benefits in respect of eligible employment for the year of income. This rule is subject to the application of subsection 82AAS(3) of the ITAA 1936.

Subsection 82AAS(3) provides that where a person was engaged in particular eligible employment in a year of income, the reference to superannuation benefits in subsection 82AAS(2) does not include benefits provided for the person in respect of that eligible employment if the person's assessable income, exempt income and reportable fringe benefits total attributable to eligible employment in the year of income is less than 10% of the person's total assessable income and reportable fringe benefits in that year.

"Eligible employment" is defined in subsection 82AAS(1) of the ITAA 1936 and means, in relation to a person: (a) the holding of any office or appointment; (b) the performance of any functions or duties; (c) the engaging in of any work; or (d) the doing of any acts or things, that results in the person being treated as an employee for the purposes of the Superannuation Guarantee (Administration) Act 1992.

To determine the answer to the question raised, it is necessary to construe the phrase "attributable to" in the context of subsection 82AAS(3) of the ITAA 1936.

In the present circumstances, the eligible employment of the employee is not the direct or proximate cause of the workers' compensation payments. Rather, the direct or proximate cause of the payments to the employee is the injury suffered by the employee during the course of their employment. Nevertheless, the injury would never have arisen but for the eligible employment of the employee. There is thus a contributory cause or connection between the eligible employment and the workers' compensation payments to show "attributability" within the meaning of subsection 82AAS(3).

Therefore, if an employee receives workers' compensation payments from an insurer as a result of an injury suffered whilst engaging in eligible employment (as that term is defined in subsection 82AAS(1)) in a year of income and the payments are included in the employee's assessable income for that year, then the payments are amounts "attributable to" that eligible employment within the meaning of subsection 82AAS(3). The fact that the workers' compensation payments are not paid by the employer does not affect this conclusion.

Changes to non-resident rules

It has generally been the case that a superannuation fund (especially a SMSF) established in Australia with trustee(s) normally resident in Australia, will still satisfy the residency test if the trustees, or directors of the trustee company, are temporarily absent from Australia, provided that the period of absence from Australia is for a period of less than two years; refer section 6E(1A) and (1B) of the ITAA 1936.

However, it has just been brought to our attention that the residency test for superannuation funds has been changed so that the two year absence rule has been removed. This means that a superannuation fund must satisfy the central management and control test in order to be treated as an Australian superannuation fund. Central management and control means that for practical purposes, decisions about the fund are to be made in Australia. Absence of members from Australia, for however long, does not come into it.

Therefore, it may now be the case that where the central management and control of the fund as discussed above takes place outside Australia, the fund may then be deemed to be a non-resident fund, even where the trustees, or directors of a corporate trustee, are absent from Australia for less than two years.

Resident superannuation funds will be referred to as "Australian superannuation funds", while non-resident funds will be known as "foreign superannuation funds".

This raises the question of how these changes will impact on trustees, or directors of a corporate trustee, who have been a non-resident of Australia for the last 12 months. It is still not clear whether funds in this position would automatically be deemed to be non-resident (or foreign) superannuation funds (whereas under the old rules, trustees or directors absent for 12 months would generally have had another 12 months to resolve the situation).

We will provide further information in relation to these changes to the residency rules as soon as possible.

Further info



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