SUPERCENTRAL

Six member SMSFs finally arrive

- Why have a 6 member SMSF?
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- Another situation where a 6 member SMSF may be relevant is where business principles – partners or directors of a small business – wish to acquire business premises on a geared basis.

The Government's 2018 Budget proposal to allow Self Managed Superannuation Funds (SMSFs) to have up to 6 members has now been finally passed by both the House of Representatives and the Senate.

The Bill, called the *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020*, is likely to commence on 1 July 2021 (assuming it receives Royal Assent on or before 30 June 2021). If the Bill receives Royal Assent on or after 1 July 2021, then the Bill will commence on 1 October 2021.

The operative provision amends s17A (1) of the *Superannuation Industry (Supervision) Act 1993* to change "it (i.e. the fund) has no more than 5 members" to "it (i.e. the fund) has no more than 6 members". There are many consequential changes.

Once the change commences, existing SMSFs will be able, if they so desire, to increase their membership to 6 members and newly established SMSFs will be able to have up to 6 members.

The change only relates to the maximum number of members an SMSF can have. There is no change to the requirement that in general (subject to certain exceptions) each member of an SMSF participate in the management of the SMSF by being a trustee or a director of the corporate trustee of the SMSF.

Why have a 6 member SMSF?

The first comment is that 6 member SMSFs may not be for everyone. Single member SMSFs and dual member SMSFs are likely to remain the most popular type of SMSFs for good reasons.

However, 6 member SMSFs may be relevant to situations where a parent or a couple have children who are working part time and wish to accept their children's SG contributions to minimise the adverse impact of administration fees on relatively small superannuation contributions which would occur in retail or industry funds.

Another situation where a 6 member SMSF may be relevant is where business principles – partners or directors of a small business – wish to acquire business premises on a geared basis. In this situation, the gearing arrangement would be supported by the contribution flow of 6 members rather than only four members. This could be the difference between a maximum concessional contribution inflow, in respect of 2021/22 and subsequent financial years of $165,000 per annum for 6 member fund as against $110,000 per annum for a 4 member fund.

More flexible superannuation bill – passed with benefits

- The source of money used to finance the Covid-19 re-contribution is irrelevant
- Possibly a parent could provide cash to their child who has made a Covid-19 withdrawal for the child to make the Covid-19 re-contribution

Another Government superannuation reform has now been accepted by the Senate. The *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020* has now been passed by the Senate (after adding further beneficial changes).

As part of the 2019 Budget the Government proposed amending the tax law to allow individuals aged 66 and 67 to make up to three years of non-concessional contributions under the “bring forward” rule. Previously only individuals aged 65 or less could use the "bring-forward" rule. This change applies from 1 July 2020.

The Senate has modified the Bill (and the House of Representative have agreed to those modifications) to allow amounts withdrawn from super accounts under the Covid-19 measures to be recontributed to super.

The Covid-19 re-contribution measure will apply in respect of the 2021/22 financial year and will cease to apply in respect of the 2029/30 financial year. This measure will permit individuals who have made Covid-19 withdrawals in 2019/20 and 2020/21 financial years to return all or part of those withdrawals (Covid-19 re-contribution) to the super system.

Importantly, there is no requirement that the Covid-19 re-contribution be made to the superannuation fund from which they were originally paid. Also, you cannot claim a tax deduction for the Covid-19 re-contribution. The Covid-19 re-contribution will not be counted as a non-concessional contribution and so, will not be affected by the non-concessional contribution cap.

More importantly, the source of money used to finance the Covid-19 re-contribution is irrelevant. Possibly a parent could provide cash to their child who has made a Covid-19 withdrawal for the child to make the Covid-19 re-contribution.

The legislation does not address the application of the SIS contribution acceptance rules to the Covid-19 re-contribution. Possibly the Government will amend those rules to permit superannuation funds to accept such re-contributions irrespective of the work test status of the contributor. Or possibly, the Government considers that anyone who made a Covid-19 withdrawal would have been under age 60 (otherwise they could have accessed their super by means of a transition to retirement pension) and so will most likely be under age 67 by 30 June 2030.

Most likely the Government will amend the SIS contribution acceptance rules to expressly exclude "Covid-19 re-contributions" from the operation of those rules much as "downsizer contributions" are expressly excluded.

Trifecta of government super changes: Your Future, Your Super changes also passed

To complete the government's super trifecta of Super Bills which have been accepted by the Senate, the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* has been passed by the Senate – but with two significant changes.

The first change is that provisions to avoid employees having multiple super accounts arising from previous employer SG contributions – the stapled fund changes – will now commence from 1 November 2021 rather than the previously proposed 1 July 2021. This means that the stapled fund changes will only apply to an individual if they commence new employment on or after 1 November 2021.

The application of the Your Future, Your Super changes to self managed superannuation funds will be considered in the next issue of SC News.

Minimum pension drawdown relief extended to 2021/22 financial year

- The extension means that for the 2021/22 financial year, the minimum drawdowns for account-based pensions will be reduced by half

The pension drawdown relief which applies for the 2019/20 and 2020/21 financial years will be extended for a further financial year to 2021/22. The extension of this relief was announced on 29 May 2021 in a joint media release of the Prime Minister, Treasurer and Senator Jane Hume, the Minister for Superannuation.

The extension means that for the 2021/22 financial year, the minimum drawdowns for account-based pensions will be reduced by half.

For taxpayers who are receiving an income stream from an account-based pension this means that the minimum drawdown rates for the 2021/22 financial year will be:

- If you are aged 64 or less – 2% rather than 4%
- If you are aged 65 or more and less than 75 - 2.5% rather than 5%

- If you are aged 75 or more and less than 80 - 3% rather than 6%
- If you are aged 80 or more and less than 85 - 3.5% rather than 7%
- If you are aged 85 or more and less than 90 - 4.5% rather than 9%
- If you are aged 90 or more and less than 95 - 5.5% rather than 11%; and
- If you are aged 95 or more - 7% rather than 14%.

For this purpose, your age is determined as at 1 July 2021.

The percentage applies to the pension account balance as at 1 July 2021.

These percentages specify the minimum which must be paid from your pension account during the 2021/22 financial year. You can, if you so wish, specify a higher amount to be paid from your pension account.

Transition to retirement pensions and the extension of the minimum drawdown relief to the 2021/22 financial year

The announced relief also applies to transition to retirement pensions. Consequently for the 2021/22 financial year, the minimum payment from your transition to retirement pension will be 2% rather than 4%.

However, there is no change to the payment ceiling which applies to transition to retirement pension. The maximum payment which can be paid from a transition to retirement pension is 10% of the pension account balance as at 1 July 2021.

Market linked pensions (Term Allocated Pensions) and the extension of the minimum drawdown relief to the 2021/22 financial year

Market linked pensions (also known as Term Allocated Pensions) are a special type of account pension. Generally these pensions cannot be issued after 20 September 2007 (unless the market linked pension is issued in replacement of a previously issued market linked pension or certain other types of defined benefit pensions).

Unlike account-based pensions, market linked pensions are required to have a drawdown not less than a lower limit and not more than an upper. The lower and upper limits are calculated, respectively, as 90% and 110% of a calculated amount for the financial year. The calculated amount is the pension account balance (as at 1 July 2021) divided by a prescribed factor which is related to the remaining term of the pension.

For example, if the pension account balance was $400,000 and the remaining term of the pension was 10 years as at 1 July 2021 then the calculated amount is $48,077 ($400,000 divided by the prescribed factor of 8.32). The lower and upper limits would, respectively, be $43,270 and $52,880 (both rounded). Consequently, without the relief, the pension drawdown must be an amount within these two limits.

As the minimum drawdown relief also applies to market linked pensions, the lower limit for the 2021/22 financial year will be 45% of the calculated amount rather than 90%. In the above example, the lower drawdown limit will be $21,630 (i.e. half of 90% of $48,077).

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