



February 2009 Edition

## TALKING POINT!

### WELCOME

Since the election of the new Federal Labor government in November 2007, it has been a relatively quiet time on the superannuation legislative front. It would seem as though the Federal Government has had their hands full.

Initially, the Rudd Government declared “war” on everything i.e. taxes, inflation, alcopops, binge drinking, plastic bags, climate change, interest rates etc and more recently they have been dealing with the real problem of the “global financial crisis”. However, there have been some legislative changes to superannuation which we wanted to update you on, including:

- Access to tax free super for terminal medical conditions;
- New rules for temporary residents and their super;
- Changes to way same-sex couples are treated for super purposes;
- Changes to the definition of “income” for assessment of the Government’s Con-tribution scheme; and
- Rumours, rumblings and possibilities!!!

### ACCESS TO TAX FREE SUPER FOR TERMINAL MEDICAL CONDITIONS

A new condition of release has been introduced to allow members to have access to their superannuation if they suffer from a terminal medical condition. In addition, a change to the Tax Act has extended the tax free treatment of lump sum benefits paid to those who meet the terminal illness definition from 1 July 2007.

A member who has a terminal medical condition may now access their preserved and restricted non-preserved benefits. Previously, members had to meet another condition of release, such as permanent incapacity to gain access to these restricted benefits.

A terminal medical condition exists if two medical practitioners (at least one of them a specialist in the area of the illness or injury) certify the member is suffering from an illness, or has incurred an injury, which in the normal course would result in the death of the person within 12 months from the date of the certification. There are no restrictions on the amount or form in which the benefits can be paid. However, for members under the age of 60, the tax free treatment will only apply if they take the benefit as a lump sum.

The changes to the Tax Act ensure that lump sum super benefits paid on or after 1 July 2007 to members with a terminal illness are tax-free. The tax-free treatment applies to both the taxed and untaxed elements of the benefit.

An important point is that those members who qualify for the terminal illness, tax-free treatment do not qualify for an “anti-detriment payment” (an “anti-detriment payment” is the refund of the 15% contributions tax that was deducted from a deceased person’s superannuation account).



## TEMPORARY RESIDENTS

The Government has passed changes to the superannuation arrangements for temporary residents. The main changes are as follows:

- Increasing the withholding rate on the “taxed” and “untaxed” components of a Departing Australia Superannuation Payment (“DASP”) from 30% and 40%, to 35% and 45% respectively;
- The superannuation account balance for a temporary resident will become unclaimed monies and payable to the ATO:
  - Once the individual ceases to hold a temporary visa; and,
  - The individual has departed Australia; and,
  - At least 6 months has passed, and the individual has not claimed their super.
- Departed temporary residents who have unclaimed superannuation paid to the ATO will be able to claim back their money at any time by applying to the ATO.

## SAME-SEX RELATIONSHIPS

The Government has now passed legislation to effectively end discrimination against same-sex relationships. The key change in relation to superannuation is the expanded definitions of spouse and child.

The new expanded definitions mean that individuals in same-sex de facto relationships and their children will be treated, for superannuation purposes, in the same way as opposite-sex de facto and married couples and their children.

The implications of these expanded definitions on superannuation are as follows:

- A member of a same-sex couple will automatically qualify as a spouse, meaning they can be directly paid a superannuation death benefit lump sum or pension;
- A same-sex partner will automatically be able to receive a lump sum death benefit tax-free and they will not have to prove “interdependency” or “financial dependency”, as currently;
- A member of a same-sex couple will be able to claim an “anti-detriment payment” upon the death of their partner;
- A member of a same-sex relationship will be able to make a spouse contribution on behalf of their partner and claim the spouse contributions tax offset.

## CHANGE TO INCOME DEFINITION FOR GOVERNMENT CO-CONTRIBUTIONS

In the May 2008 Federal Budget the most significant announcement with respect to superannuation related to the definition of “income” for receipt for the Governments Co-contribution scheme. The change related to the fact that salary sacrifice contributions would be included in the definition of assessable income when assessing the eligibility for the receipt of the Government’s Co-contributions from 1 July 2009.

This change to the definition of income will also apply to certain Centrelink benefits which are income assessed.

## OTHER RUMBLINGS (rumoured but not yet legislated)

- *Changes to OTE for SG purposes – proposed effective date of 1 July 2009* - as you are aware, from 1 July 2008 superannuation guarantee contributions have had to be equal to at least 9% of an employee’s “ordinary time earnings” (“OTE”). The ATO is currently reviewing the current composition of OTE, and last year released a draft



ruling, to include a different definition of “ordinary hours of work” i.e. the employee’s regular hours (even where these are in addition to the employees’ award or agreed ordinary hours and are paid as overtime). Most employers are, generally, only obliged to the 9% Super Guarantee on employees’ standard working hours. The effect of this draft ruling would extend Super Guarantee to “regular, rostered overtime” and payments when made on maternity or paternity leave.

- ***Changes to the SG late payment offset*** – the Government has introduced a bill which is to encourage employers who are liable for a Superannuation Guarantee Charge (“SGC”) to make the relevant payment on a more timely basis. There will be tightening of the period within which an employer can make a superannuation contribution for an employee and use that contribution to offset any SGC.
- ***AIRC decision and default super funds – proposed effective date 1 January 2010*** – under the Federal government proposed “Award Modernisation”, unions have been pushing for the broader introduction of specific industry funds to be the default superannuation fund for employers. However, under the proposal, employers would be able to continue to pay contributions into the existing default fund as long as they were paying into this fund as at 12 September 2008. Therefore, in the future, there would be little flexibility for an employer to change their existing default fund arrangement to anything other than the industry fund named in the award. Obviously, this only applies to those staff covered under award.

#### FOR FURTHER INFORMATION

As with many superannuation matters we believe that you need to fully understand the implications of the actions you are considering. We, therefore, recommend that you take financial advice before taking action on this issue.

If you are interested in finding out more about superannuation, please contact Northbridge Financial Solutions (“NFS”). Northbridge Financial Solutions (AFS Licence No 283108) is authorised under the licence of Community & Corporate Financial Services Pty Ltd (AFS Licence No 225085, ABN 44079121136), is a specialist provider of financial advisory services to corporate superannuation funds and their members.

Contact NFS on (02) 9929 2700, e-mail us at [info@northbridgeadmin.com.au](mailto:info@northbridgeadmin.com.au) or visit our website [www.northbridgeadmin.com.au](http://www.northbridgeadmin.com.au).

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