Your

Knowledge

April 2021

We are here to help, contact us today:

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Note: The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

The 1 July 2021 superannuation changes

Changes from 1 July 2021 will impact on how much money you can contribute to superannuation and how much you can have in your retirement phase superannuation account.

In general, your superannuation is either in an accumulation account (when you are building your super), a retirement account (when you meet preservation age and certain conditions of release and can withdraw your super), or in between when you are transitioning to retirement (when you reach perseveration age, are working reduced hours and take some of your superannuation as a pension).

The amount of money you can transfer from your accumulation account into your tax-free retirement account is limited by a transfer balance cap (TBC). From 1 July 2021, the current $1.6m general TBC will be indexed to $1.7m and once indexed, no single cap will apply to all individuals (each person will have an individual TBC between $1.6m and $1.7m).

Indexation will also change other superannuation caps and limits including:

- Non-concessional contributions (contributions from after tax income)
- Concessional contributions (contributions from before tax income such as super guarantee, salary sacrificed super amounts, or contributions you make and claim a tax deduction for etc.)
- Co-contributions (personal contributions made by low and middle income earners matched by the Government up to $500), and
- Contributions you make on behalf of your spouse that are eligible for a tax-offset.

How will the transfer balance cap impact me?

You are accumulating super

If you are building your superannuation (accumulation phase) and not withdrawing it*, indexation of the TBC is a good thing because from 1 July 2021 you will be able to access more of your superannuation tax-free. If you start taking your superannuation after 1 July 2021, for example if you meet a condition of release and retire, your transfer balance cap will be $1.7m. Essentially, if you have never had a transfer balance account credit, then the full indexation is available to you.

For low and middle income earners claiming the government co-contribution, the limit will increase in line with indexation to $1.7m.

Similarly, if you are contributing superannuation to your spouse and claiming the tax offset, the limit will increase in line with indexation to $1.7m. That is, you can contribute to your spouse's superannuation and claim the tax offset as long as their TBC is not more than $1.7m.

You have started taking your super

If you started taking your superannuation before 1 July 2021 and have already had a credit added to your transfer balance account, then your TBC will be between $1.6m and $1.7m depending on the balance of your transfer balance account between 1 July 2017 and 30 June 2021. If your account reached $1.6m or more at any point during this time, your TBC after 1 July 2017 will remain at $1.6m. If the highest credit ever in your account was between $1 and $1.6m, then your TBC will be proportionally indexed based on the highest ever credit balance your transfer balance account reached. That is, the ATO will look at the highest amount your transfer balance account has ever been, then apply indexation to the unused cap amount. For example, if you started a retirement phase income stream valued at $1.2m on 1 October 2018 and this was the highest point of your account before 1 July 2021, then your unused cap is $400,000. This unused cap amount is used to work out your unused cap percentage (400k/1.6m=25%). The unused cap percentage is then applied to $100,000 ($100k*25%=$25k) to create your new TBC of $1,625,000.

Note that indexation only applies to the difference between the $1.6m TBC and the **highest point of your account at any point between 1 July 2017 and 30 June 2021**, not the value of your account at 30 June 2021. That is, if you made additional contributions after 1 October 2018 that increased your account to say $1,440,000, then indexation would apply to your unused cap of $160,000 (instead of $400,000), creating a TBC on 1 July 2021 of $1,610,000.

Indexation does not impact existing child death benefit beneficiaries. Child death benefit income streams commencing after 1 July 2021 will be entitled to the increment if the parent never had a transfer balance account or a proportion if the parent had a transfer balance account.

If you receive income from a capped defined benefit income stream and you are 60 years of age or more, or the income stream is from a death benefit where the member was over 60 at the time of death, then the defined benefit income cap will increase to $106,250 for most individuals. This will mean that the money your fund withholds from your income stream may change.

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The amount you can contribute to super will increase

Indexation will increase the concessional and non-concessional contribution caps from 1 July 2021. These caps are indexed by average weekly ordinary time earnings (AWOTE).

Cap	Current cap	Cap from 1 July 2021
Concessional contributions cap	$25,000	$27,500
Non-concessional contributions cap	$100,000	$110,000

The bring forward rule

The bring forward rule enables you to contribute up to three years' worth of non-concessional contributions in the one year. That is, from 1 July 2021, you could contribute up to $330,000 to your superannuation in one year. You can use the bring forward rule if you are 64 or younger on 1 July of the relevant financial year of the contribution and the contribution will not increase your total super balance by more than your transfer balance account cap.

If you utilised the bring forward rule in previous years, your non-concessional cap will not change. You will need to wait until your three years has expired before utilising the new cap limit.

1 July 2017 – 30 June 2021		After 1 July 2021	
Total Super Balance (TSB)	**Contribution and bring forward available**	**Total Super Balance (TSB)**	**Contribution and bring forward available**
< $1.4m	$300,000	<$1.48m	$330,000
$1.4m - $1.5m	$200,000	$1.48m - $1.59m	$220,000
$1.5m - $1.6m	$100,000	$1.59m - $1.7m	$110,000
$1.6m+	Nil	$1.7m+	Nil

** excludes withdrawals made under the COVID 19 relief measures.*

Please contact Fortunity on 02 4304 8888 if you wish to discuss these changes in more detail.

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Tax treatment of JobKeeper payments handed back to ATO

The ATO has clarified the tax treatment of JobKeeper payments handed back to the Government. The clarification comes after the Super Retail Group, Dominos Pizza and Toyota collectively returned more than $20 million in JobKeeper payments after reporting exceptional trading results.

Where a business has handed back JobKeeper despite qualifying for the payments, the ATO states that:

- JobKeeper payments returned to the Government are still included in assessable income, and
- The returned payments may be deductible in limited circumstances if the repayment is to a achieve the business's objectives. For example, if the media exposure from the returned payment generates goodwill for the business or publicises the business, or the repayment prevents a downturn in business activity.

The message is, if you are returning JobKeeper payments voluntarily, make the decision public. If no one knows about the repayment then it is unlikely to be deductible. If your business decides to hand back JobKeeper despite being entitled to the payments, special arrangements will need to be put in place with the ATO as the repayments are treated differently and require a special payment reference number.

We note that if your business and your employees qualified for the first tranche of JobKeeper payments, you are under no obligation to return the money if trading conditions were better than the estimate you provided to the ATO.

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Professional services firm profits under fire

The Australian Taxation Office (ATO) has been concerned for some time about how many professional services firms are structured – specifically, professional practices such as lawyers, architects, medical practices, engineers, architects etc., operating through trusts, companies and partnerships of discretionary trusts and how the profits from these practices are being taxed.

New draft guidance (PCG 2021/D2) released last month from the ATO takes a strong stance on structures designed to divert income so the professional ends up receiving very little income directly for their work, reducing their taxable income. Where these structures appear to be in place to divert income to create a tax benefit for the professional, Part IVA may apply. Part IVA is an integrity rule which allows the Commissioner to remove any tax benefit received by a taxpayer where they entered into an arrangement in a contrived manner in order to obtain a tax benefit. Part IVA may apply to schemes designed to ensure that the professional is not appropriately rewarded for the services they provide to the business, or that they receive a reward which is substantially less than the value of those services.

The draft guidance for professional services

Set to apply from 1 July 2021, the draft guidance sets out a series of tests to create a risk score. This risk score is then used to classify the practitioner as falling within a Green, Amber or Red risk zone and determines if the ATO should take a closer look at you and your firm. Those in the green zone are at low risk of the ATO directing its compliance efforts to you. Those in the red zone, however, can expect a review to be initiated as a matter of priority with cases likely to proceed directly to audit.

The risk assessment framework will only apply if the firm first meets two gateway tests.

- **Gateway 1** - considers whether there is commercial rationale for the business structure and the way in which profits are distributed, especially in the form of remuneration paid. Red flags would include arrangements that are more complex than necessary to achieve the relevant commercial objective, and where the tax result is at odds with the commercial venture, for example, where a tax loss is claimed for a profitable commercial venture.
- **Gateway 2** - requires an assessment of whether there are any high-risk features. Potentially high-risk features include financing arrangements relating to non-arm's length transactions, where income of a partnership is assigned in a way that is not consistent with existing guidelines, and where there are multiple classes of shares or units held by non-equity holders.

If the gateway tests are passed, then you can self-assess your risk level against the ATO's risk assessment factors. There are 3 factors to be considered:

- the professional's share of profit from the firm (and service entities etc) compared with the share of firm profit derived by the professional and their related parties;
- the total effective tax rate for income received from the firm by the professional and their related parties; and
- the professional's remuneration as a percentage of the commercial benchmark for the services provided to the firm.

The resulting 'score' from these factors determines your risk zone. Some arrangements that were previously considered low risk may now fall into a higher risk zone.

For professional services firms, it will be important to assess the risk level and this needs to be done for each principal practitioner separately. Those in the amber or red zone who want to be classified as low risk need to start thinking about what needs to change to move into the lower risk zone.

Where other compliance issues are present - such as failure to recognise capital gains, misuse of the superannuation systems, failure to lodge returns or late lodgement, etc., - a green zone risk assessment will not apply.
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National licence recognition for tradies

Builders, electricians, plumbers, architects, real estate agents, security guards and other workers who hold an occupational licence in their home state or territory and who want to do the same work in another state or territory will soon be automatically deemed to have the necessary licence.

The Federal, State and Territory Governments have agreed to a mutual recognition regime that will be implemented by the Federal Government. Exposure draft legislation enabling the seamless mutual recognition scheme was released last month with the scheme expected to start from 1 July 2021.

Workers will not need to pay additional licence fees or apply for additional licences.

Workers working in another state or territory will need to comply with local laws and regulations (including vulnerable people character test) and in some cases will need to notify the regulator they intend to work in their State. The States have the capacity to refuse a registration or type of license from mutual recognition.

Those subject to disciplinary action or who have conditions on their registration as a result of disciplinary, civil or criminal action will be excluded from automatic mutual recognition. Information on cancelled or suspended registrations and disciplinary proceedings and to record cancellations and suspensions on registers, will be shared.

JobMaker fails to boost employment

The Government's JobMaker scheme has created 609 new jobs since registrations opened on 1 February 2021, despite around 15,000 businesses registering their interest in the scheme.

The hiring credit is available for jobs created from 7 October 2020 until 6 October 2021 and provides $200 per week for new employees between 16 to 29 years of age, and $100 a week for new employees between 30 to 35 years of age. Payment is from the start date of the employee for 12 months. To date, around 70% of employers taking advantage of the credit are micro-employers with another 20% from the SME sector.

Unlike JobKeeper, the employer keeps the JobMaker payment and does not pass it onto their employee.

One of the reasons for the low take up rate, beyond a general lack of awareness in the business community, is likely to be the complexity of the scheme versus the reward. There are a number of tests and compliance requirements at both the employer and employee level including an 'additionality test' that requires the total headcount of the business to remain above a baseline number of employees. That is, if you employ an eligible employee and an existing employee resigns, the benefit cancels out because there is no longer an increase in total headcount.

In addition, JobMaker only applies where an employer takes an employee from the unemployment queue. That is, the employee had to be receiving the JobSeeker Payment, Youth Allowance or Parenting Payment for at least one month within the three months before they were hired.

It is possible that more businesses will start to take advantage of the scheme now that the JobKeeper scheme has finished. Businesses that were still eligible for JobKeeper could not generally access JobMaker at the same time.

The Treasurer has stated that the Government will review the design of the JobMaker program in the upcoming Federal Budget with only $800,000 of the $4 billion scheme's budget distributed.

Unemployment rate at pre COVID-19 levels

Australia's unemployment rate decreased to 5.8% in February 2021 (0.6% higher than 12 months ago) with just under 70,000 jobs created in the month. Employment in March 2021 was 4,000 jobs higher than March 2020.