TAXATION OF SMSFs

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We look forward to meeting you soon.

Wealth Today

Contents

Overview of the taxation of superannuation

Taxation of income in super vs other investment structures

Super is a great tax-effective way to save for your retirement benefit. The tax rates applicable to investing in super versus the common alternatives are summarised in the table below:

Legal structure	Tax rate on income
Individuals	Individuals are taxed at a specific marginal rate of tax dependent upon their taxable income Income received from a partnership is also taxed at each individual partner's marginal rate of tax
Super funds	15% in accumulation phase within complying super fund 0% for an income stream in retirement phase within a complying super fund (NOTE: the transfer balance cap limits how much super can be transferred into retirement phase to $1.6M per member.) 47% in non-complying funds
Companies	28.5% if the company is defined as a "small business entity" 30% for other companies
Discretionary trusts	Income distributed from a trust to beneficiaries will be taxed at the individual's marginal rate of tax as though they earned it directly.

How is super taxed?

Super may be taxed at three points in time. The following is a general summary that applies to most super benefits:

1. Tax on contributions to super:

- concessional contributions – employer or salary sacrificed contributions or personal contributions for which the member is able to claim a tax deduction. Refer to the next section 'Super tax rates' for further information
- non-concessional contributions - personal or after tax contributions, for which no one has claimed a tax deduction. Refer to the next section 'Super tax rates' for further information
- roll-overs from one complying fund to another complying fund generally do not incur tax. Limited exceptions apply.

For more detailed information on Contributions, refer to the Module: Contributing to Superannuation.

2. Tax on investment returns on assets held within super:

- income - Where the member's account is in accumulation phase still (i.e. who has not commenced an income stream in retirement phase), a 15% tax will be applied to taxable income. As per calculating an individual's personal taxation liability, a super fund is able to use tax deductible expenses to reduce assessable income and imputation credits from Australian shares to reduce tax payable.
- For members who have commenced an income stream in retirement phase, income earned from assets set aside or segregated is generally exempt so long as certain conditions are met. Refer to the section titled 'Exempt income' for further information.
- Capital gains – gains made on assets owned by a super fund in accumulation phase for at least 12 months are taxed at a rate of 10%, otherwise taxed at 15%. Capital gains made on assets held to provide for retirement income streams benefits may be tax exempt. Refer to the section titled 'Taxation of capital gains in super' for further information.

3. Tax on withdrawals from super:

- lump sum withdrawals are tax-free once you reach age 60. Withdrawals under age 60 may be taxable depending on your age and the taxation components of your benefit within the fund.
- income streams in retirement phase are tax-free once you reach age 60. Depending on your circumstances and the taxation components of your super, you may pay tax under age 60.

For more information on withdrawing money from super, refer to the eBook: Withdrawing money from Superannuation.

Super tax rates

Tax on super contributions

Concessional contributions

Concessional contributions are contributions where a tax deduction can be claimed by the party making the contribution, either by an individual or by an employer.

TABLE: Concessional contributions – 2019/20 income year

	Concessional (before tax)
Types of contributions included	Employer contributions including Superannuation Guarantee and salary sacrifice Personal contributions for which a deduction has been claimed
Contribution caps*	$25,000
Tax on contributions up to the cap	15% Plus For individuals earning over $250,000: Division 293 tax, if you choose to pay from super
Tax on excess amounts breaching the cap	Refer to section title 'Higher rates of tax applicable to super'

*The concessional cap is indexed to average weekly ordinary time earnings (AWOTE) and rounded down to the nearest $5,000 increment.

WARNING

Concessional contributions which exceed the concessional cap may count towards the non-concessional cap unless withdrawn.

Non-concessional contributions

Non-concessional contributions are personal after-tax contributions for which no party is eligible to claim a tax deduction for. No tax is payable on a non-concessional contribution so long as this is within the specified cap.

TABLE: Non-concessional contributions – 2019/20 income year

	Non-concessional (after tax)
Types of contributions included	Personal voluntary contributions for which no tax deduction has been claimed Spouse contributions
Contribution cap	$100,000 (unless a prior bring forward rule applies)
Tax on contributions up to the cap	Nil
Tax on excess amounts breaching the cap	Refer to section title 'Higher rates of tax applicable to super'

Tax on withdrawals from super

A benefit withdrawn from super generally comprises a tax-free and taxable component. The amount withdrawn will be proportionately split between the tax-free and taxable components.

Amounts withdrawn from age 60 generally are tax-free. If you cash out a lump sum benefit before age 60, tax may apply.

TABLE: Taxation of lump sums withdrawn from super – 2019/20 income year

Age	Component of super benefit	Tax rate
Age 60 and above	Taxable	Nil
Age 60 and above	Tax-free	Nil
Preservation age to age 59	Taxable	No tax up to $210,000** (low rate cap) Marginal tax rate up to a maximum of 15%* on balance
Preservation age to age 59	Tax-free	Nil
Below preservation age	Taxable	Marginal tax rate up to a maximum of 20%*
Below preservation age	Tax-free	Nil

*Plus Medicare Levy

**The $210,000 low rate cap is indexed annually in line with Average Weekly Ordinary Time Earnings 'AWOTE'. This is a lifetime limit.

NOTE

Different taxation rates to the above in the following circumstances:

- the amount withdrawn contains an untaxed element (a higher rate of tax applies as this component arises from contributions that have not incurred contributions tax when paid into a super fund; commonly from a government public sector super scheme)
- death benefits
- payments received upon terminal medical conditions
- disability super benefits.

Higher rates of tax applicable to super

Certain income of super funds and contributions incur tax at higher rates.

TABLE: Higher rates of tax applicable to super income and contributions

		Medicare Levy	Temporary Budget Repair Levy
Non-arm's length income	Top marginal tax rate	No	Yes
No-TFN contributions –	Top marginal tax rate Less Tax rate already paid by fund	No	Yes
Non-complying fund	Top marginal tax rate	No	Yes
Excess concessional contributions	Excess concessional contributions are taxed at your marginal tax rate along with an excess concessional contribution charge on the increase in your tax liability. You may choose to release up to 85% of the excess concessional contributions (as 15% tax has already been paid by the super fund) by notifying the Australian Taxation Office (ATO) within 21 days of receiving an excess concessional contributions determination.	Yes	Yes
Excess non-concessional contributions	You can choose how any excess non-concessional contributions will be treated by advising the ATO within 60 days one of the following options: 1. Release the excess contributions plus 85% of the associated earnings (15% tax paid on earnings by the fund) from super. The earnings will be added to your assessable income and taxed at your marginal rate (less a 15% offset for tax already paid by the fund). 2. Pay excess non-concessional contributions tax and choose not to release the excess contribution from the super fund. The excess amount will be	Yes (for option 2)	Yes (for option 2)

	taxed at the highest marginal tax rate. 3. If you have a nil balance in your super funds the full amount of the associated earnings will be included in your assessable income and taxed at your marginal tax rate (less a 15% offset for tax already paid by the fund).		

Division 293 tax - additional tax for high-income earners

An additional tax of 15% is imposed on concessional contributions for those individuals earning more than $250,000 in the financial year. This additional tax is commonly referred to as Division 293 tax.

Eligibility for concessional tax treatment

Only complying super funds, including complying SMSFs, are entitled to concessional tax treatment. A super fund is complying if the following conditions are satisfied:

- the fund has received a complying fund notice from the Regulator, the ATO in the case of SMSFs (this would be obtained as part of the establishment process of the SMSF). Note this continues to apply unless it is revoked
- the fund has complied with the prescribed conditions to be a complying super fund for the purposes of the super legislation at all times during the year
- the fund is an Australian super fund at all times during the year.

To be a resident regulated super fund, an SMSF must:

- have a corporate trustee or individual trustees who have made an irrevocable election for the super rules to apply to the fund, and
- satisfy the definition of an Australian super fund in the Tax Act.

Australian superannuation fund status

The SMSF must meet the definition of an 'Australian super fund' at all times in the income year to remain complying and so receive the taxation concessions afforded to super funds. The three tests to determine if a fund meets the definition of an Australian super fund are:

1. The fund was established in Australia or any asset of the fund is situated in Australia.
2. The central management and control of the fund is ordinarily in Australia.

Central management and control involves the strategic and high level decision-making processes and activities of the fund, for example:

- formulating, monitoring, reviewing, updating or varying the investment strategy
- formulating a reserve (if any) management strategy
- determining how assets are used to fund member benefits.

3. The fund meets the 'active member' test if the fund either:

Has no active members
OR
If the fund has active members, at least 50% of one of the following amounts must be held by active members who are Australian residents:

- the total market value of the fund's assets attributable to those super interests held by active members
- the total amount that would be payable to or in respect of active members if they voluntarily left the fund and so ceased to be members.

An active member is one that contributes to the fund or contributions have been made on their behalf.

WARNING

The above tests impact members who temporarily or permanently leave Australia and cease to be Australian residents. However, it is possible for a member who plans to live overseas for a period of time to pass the 'central management and control' test, provided they leave Australia with the intent to return.

Taxation of SMSF income

SMSF income tax rate

The income tax rate of a complying SMSF is 15% of its taxable income, which includes:

- assessable contributions (also called concessional contributions) – essentially those for which a tax deduction is claimable by the contributor
- investment earnings – dividends, interest and rent
- capital gains

Exempt income

The income of a complying superannuation fund that is set aside to allow the fund to pay a superannuation income stream liability is exempt from income tax (commonly referred to as exempt current pension income). There are two methods for calculating the amount of income that is exempt from tax. These are generally referred to as either the:

- segregated assets method
- unsegregated assets method.

Segregated assets method

An asset is a segregated current pension asset where it is specifically set aside/ separated/ isolated and so can be identified as solely for paying an income stream commonly referred to as a 'superannuation pension'.

To qualify as segregated pension assets, a superannuation fund's records must evidence that assets are set aside solely for the purpose of discharging income stream liabilities. This would generally occur via a trustee resolution/minute at the time of commencing the pension.

Where 100% of a fund's liabilities are in respect of income streams, its assets will be considered segregated assets by default, regardless of whether a specific election has been made by the trustee.

You will not need to obtain an actuarial certificate to claim exempt pension income under the segregated assets method if both:

- the assets were segregated for the entire year of income
- at all times that pensions were payable during the income year, the SMSF only paid allocated pensions, market-linked pensions or account-based pensions, and no other type of pension.

Unsegregated assets method

Under this method the SMSF has both pension and accumulation members, and it does not set aside specific assets into a separate pool to pay its pension liabilities. Hence only a proportion of the fund's total assessable income will be exempt from tax. This proportion is calculated based on the average value of current pension liabilities as a proportion of the total pension and accumulation values.

To qualify for the tax exemption on income where the unsegregated method is used, the trustee will be required to obtain an actuarial certificate by the time the fund lodges its income tax return for the year.

Higher rates of taxation

Certain types of income are taxed at penalty rates - the top marginal rate on the personal income tax scale.

- non-arm's length component - non-arm's length income includes amounts where the SMSF does not transact with another party on an arm's-length basis and the income received is more than if they were dealing on an arm's-length basis. An example would be leasing a commercial property to a related party and receiving a higher than market value amount of rental income.

Certain other income is also treated as non-arm's length and taxed accordingly. This is outside the scope of this course.

- additional tax on contributions in excess of contribution caps - contributions above the allowable caps, subject to corrective withdrawals where available.
- no-TFN contributions - no-TFN contributions are those assessable contributions where a tax file number (TFN) has not been received from the member. No-TFN contributions do not include personal or spouse contributions made by the member. SMSFs are unable to accept any personal or spouse contributions from a member where a TFN has not been provided to the fund.

Mandated employer contributions are not required to be returned to the employer where the member's TFN has not been quoted; however, this will trigger no-TFN contributions tax. The additional tax on these employer contributions is 34% for complying SMSFs and 2% for non-complying SMSFs.

Where an SMSF pays additional tax on no-TFN contributions and the member subsequently provides their TFN to the fund within one of the following three income years, the fund is entitled to a tax offset equal to the amount of no-TFN contributions tax paid.

Assessable and non-assessable contributions

Super funds are able to accept a number of different types of contributions, commonly referred to as concessional and non-concessional contributions. For the purposes of taxation, these contributions can be split into assessable and non-assessable contributions.

Certain contributions received by a complying SMSF is included in its assessable income and is usually taxed as part of the SMSF income at 15% (commonly referred to as 'contributions tax').

Assessable contributions (or concessional contributions) are included in the funds assessable income and so are taxed at the relevant tax rate of the fund:

- employer contributions including Super Guarantee and salary sacrifice
- personal contributions where the member has submitted a notice of intent to claim a tax deduction
- contributions made by a third party other than by a member's spouse or on behalf of a child.

Examples of non-assessable contributions which aren't included in the funds assessable income (and hence not taxable) are:

- personal contributions where the member does not notify the trustee of their intention to claim a tax deduction. These contributions are normally referred to as non-concessional contributions
- spouse contributions
- government co-contributions
- contributions on behalf of a child that are not made by the child's employer.

IMPORTANT POINT

Special rules apply to the following, which are outside the scope of this course:

- transfers from foreign super funds
- rollover of taxable component (untaxed element)
- excess contributions over the relevant concessional and non-concessional caps
- insurance proceeds.

Non-complying funds

The taxable income of a non-complying SMSF is taxed at the top marginal tax rate.

Special rules apply during the first income year of a fund being a non-complying fund. Where a previously complying SMSF becomes non-complying during an income year, an additional amount is included in its assessable income for the first year. This additional amount is effectively used to recoup the tax concessions previously received by the fund due to its complying status.

Taxation of capital gains in super

The capital gains tax (CGT) provisions apply to complying super funds in the same way as they apply to other taxpayers, with some modifications.

A capital gain arises when an asset is sold at a higher price than it was paid for. It is the difference between the sale price and the original purchase price (commonly referred to as the 'cost base'). A capital loss arises when the sale price is lower than that paid for it. Capital losses can only be offset by capital gains, to reduce the net capital gain upon which tax is payable.

In certain circumstances a discount is applied to the amount of the gain included in the taxpayer's assessable income (in this case the SMSF is the taxpayer). This ultimately reduces the amount of tax payable on the capital gain.

The tax implications of capital gains depend on the period the asset was owned and if the asset is allocated to the accumulation or income stream phase of the fund. In summary, the following table shows the effective tax rates on capital gains under different situations:

	Assets owned over 12 months	Assets owned under 12 months
Accumulation phase - member has NOT commenced income stream	10%	15%
Member has commenced income stream in retirement phase	0%*	0%*

*Subject to meeting the conditions outlined below for current pension income streams

Capital gains tax discount – assets owned greater 12 months

Complying super funds are entitled to a one third (or 33$\frac{1}{3}$%) discount on any realised capital gain on an asset held for longer than 12 months. Therefore, where an SMSF held a CGT asset for at least 12 months prior to disposal, only two-thirds of any realised capital gain must be included in the fund's assessable income. This effectively means a tax rate of 10% on capital gains made.

NOTE

There are alternative specific rules available to assets of super funds purchased prior to 21 September 1999 and 30 June 1988.

Capital gains on assets set aside to pay a current pension

As outlined previously, no tax is payable on income earned from assets that a complying SMSF owns that have been segregated or set aside in order to provide for a current pension income stream. Thus, any capital gains made from these assets are exempt too, as these are not included in assessable income. Likewise, any capital losses on these assets cannot be offset against other assessable income or assessable capital gains generated by assets in the accumulation phase, nor can they be carried forward to future income years.

Where an SMSF uses the unsegregated assets method, it is required to calculate the net capital gain or loss as per normal and then this will be proportioned according to that portion of the fund's assets deemed to be for the purpose of supporting the pension. Where the fund has net capital losses, it must carry those losses forward to offset against future capital gains.

Tax deductions available in super

Like other taxpayers, a complying SMSF is entitled to deduct from its assessable income any losses or outgoings that are:

- incurred in gaining or producing assessable income
- necessarily incurred in carrying on a business for the purpose of gaining or producing such income.

Ongoing operating expenses

Expenses that a complying SMSF can deduct include ongoing operating expenses such as:

- the supervisory levy
- insurance premiums for death and disability policies – these are 100% deductible for death and permanent and temporary disablement policies that meet the specific requirements of the super laws. A partial deduction may be available for other types of policies.
- accounting, actuarial and auditor fees
- ongoing investment management fees and charges, including advice relating to the review and management of the investment strategy
- interest – a complying SMSF is generally prohibited from borrowing money or maintaining an existing borrowing of money, but interest incurred in gaining or producing assessable income would be deductible
- updating the fund's trust deed if this is necessary as it relates to changes in Government legislation
- interest incurred on a limited recourse borrowing used to acquire an income producing asset.

Expenses incurred in retirement/pension phase

Losses and outgoings relating to exempt current pension income are generally not deductible as they are incurred in earning tax-exempt income.

Capital expenses

Expenses that are of a capital nature are not deductible. Expenses of a capital nature generally include any expenditure incurred in establishing, replacing or improving an asset. Therefore, any costs or outgoings to establish an SMSF would generally be of a capital nature and would not be deductible to the fund or to its members.

Examples of capital expenses include costs associated with:

- advice relating to the establishment of an SMSF
- Costs associated with the establishment of the fund, executing a new deed for an existing fund or amending a deed to alter the scope of the fund's activities
- implementing an investment strategy for the fund
- upfront fees or other charges incurred in investing the fund's assets.

Tax losses

Tax losses from previous years can be carried forward to future years and used to offset taxable income in that year, including assessable contributions.

In general, a tax loss occurs where the total deductions the SMSF can claim for an income year exceed the total of the fund's assessable income and net exempt income.

SMSF annual return and paying tax

Each SMSF must lodge an annual return at the end of each income year. This is not only the fund's income tax return, but also includes data to report on its compliance with super regulations, member contributions and pay the SMSF supervisory levy, for instance. A final SMSF return is also required when winding the fund up.

Readers Notes

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