

Aspects of Financial Planning

Superannuation contributions splitting

July 2010

Members of a couple can split certain superannuation contributions with their spouse. This has beneficial implications for some of our clients who can take advantage of two low rate caps and equalise their superannuation account balances.

Background

Superannuation contributions splitting has a history that dates back to 2001. During the 2001 Federal election, the Government announced a superannuation contributions splitting proposal and after several consultation papers a number of variations of this proposal were released. The Government's intention to implement contributions splitting was confirmed in the 2005/06 Federal Budget and shortly after the *Tax Laws Amendment (Superannuation Contributions Splitting) Bill 2005* was introduced and subsequently passed through Federal Parliament.

This piece of legislation made the necessary changes to the Tax Act to allow individuals to split their superannuation contributions with their spouse. Amendments were also made to the relevant regulations in order to give effect to these changes.

Superannuation contributions splitting applies to contributions made from 1 January 2006. Combined with other changes to superannuation such as tax free superannuation income for those 60 and over, the removal of certain impositions on superannuation, the introduction of the transition to retirement rules and improvements to income stream products, spouse splitting provides advantages for clients in various circumstances and at various stages of their life.





Contributions

Only concessional contributions are able to be split with your spouse and these are subject to a maximum limit known as the “maximum splittable amount”.

Maximum splittable amount

Individuals are able to split contributions up to their maximum splittable amount for a particular financial year.

From 1 July 2007, the maximum splittable amount is the lesser of:

- 85% taxed splittable (concessional) contributions; and
- The concessional contributions cap for the financial year.

Prior to 5 April 2007, non-concessional contributions were also able to be split.

Example

Lewis, aged 49, has taxed splittable contributions of \$75,000 in the 2009/10 financial year. The maximum he can split with his spouse is \$25,000, which is the lesser of 85% of his concessional contributions, being \$63,750, and the concessional contributions cap, being \$25,000, for the financial year.

Alternatively, if Lewis made concessional contributions up to his concessional contributions cap of \$25,000 in the 2009/10 financial year, the maximum he can split with his spouse is \$21,250, which is the lesser of 85% of his concessional contributions and the concessional contributions cap.

Taxed splittable contributions

Taxed splittable (concessional) contributions are those made by your employer including superannuation guarantee (SG) contributions, any additional contributions your employer pays above the required 9% and any contributions you may have salary sacrificed throughout the year. Taxed splittable contributions also include those made by yourself for which you have claimed a personal tax deduction.

A number of contributions and rollovers into your superannuation fund cannot be split. These include:

- Employment termination payments, such as redundancy payments
- Rollovers from other superannuation funds (including overseas superannuation funds)
- Small business CGT retirement exemption amounts





- Superannuation contributions or benefits subject to a payment split or on which a payment flag is operating under Family Law provisions; and
- Current accumulated benefits.

The process

After examining many proposals, the Government decided on an annual split option. This restricts individuals to splitting contributions once every financial year based on the previous financial year's contributions. For example contributions made between 1 July 2009 and 30 June 2010 will be able to be split between 1 July 2010 and 30 June 2011.

The legislation also allows members who are rolling over their entire benefit to another fund (ie exiting the fund), to make an application to split contributions made in that same financial year prior to their benefit being transferred.

Individuals are required to submit a written application to the trustee of the superannuation fund requesting their previous year's contributions be split. The regulations specify the information that should be provided on the application form, including most importantly, the actual dollar amounts of taxed and untaxed splittable contributions you would like to transfer to your spouse.

If you are planning on claiming a tax deduction for any contributions that have been made in a financial year, the notice of your intention to claim a tax deduction must be submitted to the trustee prior to your splitting application.

The splittable contributions form a 'contributions splitting superannuation benefit' which is paid into your spouse's superannuation fund or transferred into their account in the same fund, as the case may be.

Spouse

Before we examine the implications of the contributions splitting superannuation benefit, it is worthwhile determining who is considered a spouse. A spouse is your husband or wife or another person who although not legally married to you, lives with you on a genuine domestic basis in a relationship as a couple at the time the application is made. The legislation includes de facto and same-sex relationships but does not extend to other members of your family.





Contributions cannot be split to a spouse who satisfies a retirement condition of release, such as:

- Permanent retirement on or after preservation age (currently 55). This retirement condition of release is satisfied where a person has reached preservation age and an arrangement of gainful employment has come to an end. The person must also intend never to again become gainfully employed for 10 hours or more each week.
- Retirement upon attaining age 60. This retirement condition of release is satisfied where an arrangement under which the person was gainfully employed has come to an end. The person must also have attained age 60 on or before the ending of the employment.
- Attaining age 65. This retirement condition of release is satisfied when a person attains age 65 as their benefits may be cashed at anytime notwithstanding their employment arrangements.

The trustee will require a declaration from the receiving spouse stating they do not satisfy a retirement condition of release in order to process the contribution split. This is important as it means the working arrangements of the receiving spouse need to be considered prior to each decision to contribute where the intention is to split the contribution to a spouse at year end. These conditions ensure that contributions cannot be split to a spouse who is able to immediately access them.

Contributions splitting superannuation benefit

The money transferred to the receiving spouse will form a contributions splitting superannuation benefit in their superannuation fund comprising entirely of a taxable component. This money will be fully preserved in the fund until the spouse meets a condition of release such as retirement after preservation age. The contributions splitting superannuation benefit will have a zero eligible service period meaning it does not take on any of the transferring spouse's service period.

Superannuation fund

Contributions splitting is voluntary on superannuation funds. Most superannuation funds do allow contributions splitting but it is an important question to ask your fund. Members of self managed superannuation funds (SMSFs) will need to review their fund's trust deed to ensure the deed allows for contributions splitting. Another factor to consider is your type of fund, as the legislation applies to superannuation funds that are accumulation style funds and does not apply to defined benefit funds unless a component of the member's benefit is an accumulation interest.





Funds are not required to accept a splitting application from a member if:

- The member has already made an application in a relevant financial year
- The amount requested to be split exceeds the maximum splittable amount
- The spouse is over age 65 years; or
- The spouse is over preservation age and currently satisfies a retirement condition of release.

In addition, funds may impose additional restrictions or limits on how and when they will offer splitting. For example funds may limit the amount to be split based on a minimum fund balance or insurance liabilities. Once an application for splitting has been accepted by the trustee, funds are required to process the request and transfer the benefits to the receiving spouse as soon as practicable and in any case within 90 days.

Applicability

Superannuation contributions splitting can apply to all couples at any time as long as the receiving spouse does not satisfy a retirement condition of release. It allows couples to equalise superannuation contributions each year into each other's funds. The legislation has been specifically designed to benefit low income spouses or non working spouses who currently have little or no superannuation support. However it applies equally to high income earning spouses with a small superannuation balance or a smaller balance than their partner.

It is also worthwhile considering the applicability for couples with a large age differential. For example if one member of a couple is nearing retirement, it may be worthwhile directing the majority of super contributions into that person's super fund.

Benefits

A benefit of this legislation is the ability for both members of a couple (who are under 60) to take advantage of two low rate caps. The low rate cap allows individuals upon reaching retirement, to withdraw up to the maximum limit (\$160,000 in 2010/11), from their superannuation fund tax free.

An additional benefit, if contributions splitting has been undertaken over a number of years, is derived when the couple commence income streams prior to age 60. By balancing superannuation benefits during their working lives and commencing an income stream at retirement, they are effectively splitting their pension income between themselves.

Thirdly, directing contributions to the spouse nearer to age 60, and with the potential to access their benefit, allows an earlier withdrawal of tax free superannuation benefits.





Transition to retirement pensions

Transition to retirement rules introduced in 2005 allow members who have reached preservation age and who are not retired to access their superannuation in the form of a non-commutable income stream. A popular strategy involves continuing to work, drawing a superannuation pension and simultaneously salary sacrificing employment income back into superannuation. This process results in higher superannuation contributions being made into the 'transition to retirement' member's fund which, from 1 January 2006, can be split with their spouse. This provides couples with the opportunity to commence a transition to retirement income stream and use this in conjunction with spouse superannuation splitting.

Implications of the 2010 Federal Budget

Currently, the transitional concessional contribution cap of \$50,000 for individuals aged 50 and over will end on 1 July 2012. From that date onwards, the standard concessional contribution cap of \$25,000 will apply to all individuals. As announced in the 2010 Federal Budget, the Government proposes to continue the increased concessional contribution cap of \$50,000 as a permanent measure from 1 July 2012 for individuals aged 50 and over but only if the individual's total superannuation savings are less than \$500,000.

Even though this measure is proposed to commence on 1 July 2012, it is important for those whose superannuation balance is approaching or has just exceeded \$500,000 to start considering now what they need to do to take advantage of the higher concessional contribution cap.

Strategies that could be used to manage this include:

- Contribution splitting with your spouse; and
- Reviewing or commencing a transition to retirement income stream.

It is unclear at this stage how the operation of the \$500,000 balance will be administered and whether for example pension balances will be included in the figure. It has been announced that the superannuation industry will be consulted on the operation of this measure. Your Centric Wealth adviser is able to discuss these strategies with you.





Conclusion

Although not as effective as it was when first introduced, contributions splitting brings with it a number of financial planning opportunities for members of a couple with superannuation savings capacity. The legislation facilitates a person splitting employer and taxable personal contributions made during the previous financial year with their spouse. This allows both members of the couple to utilise two low rate caps. With sound financial planning advice, couples can stream contributions over their working life to the most appropriate member at certain times, enabling couples to plan for a more tax effective retirement.

This strategy should be viewed in the wider context of your overall portfolio and in conjunction with the risks of legislative changes to superannuation. Due to the volatility of superannuation rules, and specifically the risk that lump sum access could be restricted, it is worth considering diversifying a portion of your assets outside of superannuation.





Centric Wealth Advisers Ltd may be able to be of assistance

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