SMSF Legislative Changes Applicable from 1 July 2013

Essential SMSF Update

(Current at 3 September 2013)

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About Us

Access Super Audit is a Chartered Accountant firm specialised in SMSF audits, we work collaboratively with accounting firms and SMSF administrators, assuring the most effective and non-invasive audit service. Our audit program is developed with 350 audit checkpoints to guarantee the best quality audits. As SMSF audit specialist, we are highly responsive to your audit requests and technical queries. Our expertise in SMSF will also ensure both your clients and your firm are following the best practices in SMSF accounting, tax and administration.

Call us at 1300 371 186 or email admin@accesssuperaudit.com.au to discuss your audit requirement.

Our Audit Process

Step 1: Request Audit Letters

Fill in our online form to request Audit Engagement Letter and Trustee Representation Letter. Or email us fund details.

Step 2: Prepare Audit Files

Our audit is both a financial audit and a compliance audit. Refer to our SMSF Audit Checklist to see what documents are required.

Step 3: Send Us Files

You can email or post us your files, share your DropBox folder with us, or you can upload your files on our website.

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Changes to Contributions

A number of superannuation changes in contributions have been legislated in late June 2013, including a new concessional contributions cap, reform to the excess contributions tax and reduced tax concessions provided to very high income earners. Increased superannuation guarantee and low income super contribution are also summarised below.

New Concessional Contributions Cap

Effective from 1 July 2013

In 2012-2013 financial year, the concessional contributions cap is $25,000 for everyone regardless of their age. As part of the Government's reforms announced on 5 April 2013, a new concessional contributions cap of $35,000 applies from 1 July 2013 to individuals aged 59 and over at 30 June 2013, and from 1 July 2014 to individuals aged 49 and over at 30 June 2014.

- *On 28 June 2013, the Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013 which gives effect to the increased concessional cap received royal assent.*

Concessional Contributions Cap

	2012-2013	2013-2014
Concessional Cap	$25,000	$25,000
Concessional Cap 59 and over at 30 June 2013	$25,000	$35,000

In accordance with section 960-285 of the Income Tax Assessment Act 1997 (ITAA 1997), the concessional contributions cap is indexed in line with average weekly ordinary time earnings (AWOTE), in increments of $5,000 (rounded down). The new indexed amount is generally available each February. Indexation of the general concessional contributions cap has been paused at $25,000 up to and including the 2013-14 year. It is expected that normal indexation resumes for the 2014-15 year.

In 2012/13 Budget, the Government has deferred the start date of the 2010-11 Budget measure of maintaining the concessional contribution cap at $50,000 for individuals over 50 with superannuation balances less than $500,000 by two years, from 1 July 2012 to 1 July 2014. This measure will now not proceed.

Income Tax (Transitional Provisions) Act 1997

292–20 Concessional contributions cap for older Australians—$35,000

(1) Despite section 292-20 of the Income Tax Assessment Act 1997, your concessional contributions cap is $35,000:

(a) for the 2013-2014 financial year—if you are 59 years or over on 30 June 2013; or

(b) for the 2014-2015 financial year or a later financial year—if you are 49 years or over on the last day of the previous financial year.

Note:This amount is not indexed.

Excess Concessional Contribution Tax Reform

Effective 1 July 2013

As part of the Government's reforms announced on the 5th April 2013, it was proposed that any excess concessional contributions will be taxed at the individual's marginal tax rate.

- *On 29 June 2013, the Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Bill 2013 and the Superannuation (Excess Concessional Contributions Charge) Bill 2013 that give effect to this measure received royal assent.*

Previously...

Before 1 July 2013, individuals pay excess concessional contributions tax at 31.5% on any excess concessional contributions to their super fund and the excess amount is also taxed within the fund at 15%. This effectively means that concessional contributions exceeding the annual cap are taxed at the top marginal tax rate of 46.5%.

For the 2011-2012 and 2012-2013 income years, individuals with excess concessional contributions of $10,000 or less have had the once-off choice (subject to certain criteria) to elect to have the amount refunded and included within the individual's own tax return.

From 1 July 2013

1. Excess concessional contributions are included in individual's assessable income and taxed at their marginal tax rate and subject to excess concessional contributions charge to account for the deferral of tax. Individuals have access to a non-refundable offset equal to 15% of their excess concessional contributions. The individual will have the choice of the paying the excess contribution tax personally or through their super fund.

2. The Individual can make an election to release any amount up to 85% of their excess concessional contributions from their superannuation account. This proportionately reduces the individual's non-concessional contributions. The released contributions is send to the ATO, ATO will make the necessary amendment to the individual's tax return and issue the tax refund from the amended assessment.

3. The excess concessional contributions charge is a newly introduced charge, it's payable at a rate same as based on the 90-day bank accepted bill rate plus 3% uplift and will be calculated and compounded daily. The charge will apply on the outstanding tax liability, from the start of the income year in which the excess concessional contribution relates through to the date on which a payment is due under an individual's first assessment notice for the year. If applicable, this charge is subject to shortfall interest charge and general interest charge in the same way as the income tax liability to which the charge relates.

Income Tax Assessment Act 1997

291-15 Excess concessional contributions—assessable income, 15% tax offset
If you have *excess concessional contributions for a *financial year: (a) an amount equal to the excess concessional contributions is included in your assessable income for your corresponding income year; and (b) you are entitled to a *tax offset for that income year equal to 15% of the excess concessional contributions. Note 1: This offset cannot be refunded, transferred or carried forward: see item 20 of the table in subsection 63-10(1). Note 2: You may be liable to pay excess concessional contributions charge: see Division 95 in Schedule 1 to the Taxation Administration Act 1953.
Note 3: You can elect to release excess concessional contributions from superannuation: see Division 96 in that Schedule.

Extra 15% Tax on Concessional Contributions for Very High Income Earners

Effective 1 July 2012

In the 2012/13 Federal Budget, the Government announced that from 1 July 2012, individuals with income exceeding $300,000 will have their contributions tax rate increased from 15% to 30%.

- *On 28 June 2013, the Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Bill 2013) and the Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013 which give effect to this measure received royal assent.*

Previously...

A 15% flat tax on concessional contributions (paid by the receiving superannuation fund) provides high income earners with a larger tax concession than those on lower marginal tax rates.

From 1 July 2012

1. The new legislation imposes an additional 15% tax on "Division 293 taxable contributions" for taxpayers above the high income threshold of $300,000, the effective contributions tax will be 30% for such amount.

2. If the sum of an individual's "income for surcharge purposes" (less reportable superannuation contributions) plus "low tax contributions" (i.e. concessional taxed contributions up to the cap amount) exceeds $300,000 for an income year, an extra 15% tax is payable.

3. A taxpayer's "low tax contributions" will essentially be her or his concessional contributions less any excess concessional contributions for the year. This means the 30% of superannuation contribution tax will not apply to excess contributions. Excess concessional contributions are already effectively taxed at the individual's top marginal tax rate.

4. Higher contribution tax is imposed personally. The individual may request their super fund pay additional tax on their behalf.

Example: An individual tax payer has $285,000 taxable income and $25,000 concessional contributions. The $25,000 concessional contributions will be taxed as follows: the $10,000 exceeding the $300,000 threshold will be taxed at 30% and the remaining $15,000 will be tax at 15%.

Income Tax Assessment Act 1997

293-1 What this Division is about

This Division reduces the concessional tax treatment of certain superannuation contributions made for very high income individuals.

The high income threshold is $300,000.

There are special rules for defined benefit interests, constitutionally protected State higher level office holders, certain Commonwealth justices and temporary residents who depart Australia.

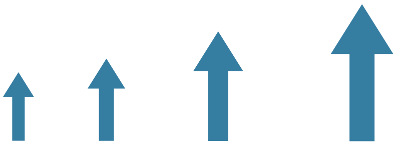
Superannuation Guarantee Contributions and Age Limit

Effective 1 July 2013

From 1 July 2013, employers will be required to contribute an additional 0.25% to their eligible employees' superannuation funds bring the SG rate to 9.25% for the 2013-2014 year. Further incremental changes will occur in future years until full implementation of 12% SG rate in the 2019-2020 year.

From 1 July 2013, the upper age limit at which superannuation guarantee payments need to be provided for an employee has been removed. Before 1 July 2013, employers are not required to make SG contributions for employees over the age of 70.

	SG %
2012-2013	9%
2013-2014	9.25%
2014-2015	9.5%
2019-2020	12%



Low Income Super Contribution

Effective 1 July 2012

From 1 July 2012, individuals with taxable income of less than $37,000 are eligible for a "low income super contribution (LISC)". The low income super contribution, paid directly into an individual's super fund, will rebate 15% contributions tax paid by the fund on super contributions. This measure aims to ensure that low income earners pay no tax on super contributions by increasing their superannuation saving by up to $500.

ATO Guideline

Low income super contribution

Changes to Pensions

Tax Certainty for Deceased Estates

Effective from 1 July 2012

As part of the 2012/13 Mid-Year Economic and Fiscal Outlook (MYEFO), the Government announced that it would amend the law to allow the pension earnings tax exemption to continue following the death of a pension recipient until the deceased member's benefits have been paid out of the fund .

- *On 4 June 2013, the Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulations 2013 that gives effect to this measure was registered.*

Previously...

The Commissioner's view contained in draft ruling TR2001/D3 (now TR 2013/5) is that a pension would cease at the member's death unless automatically reverting to a tax dependent beneficiary. Before the MYEFO announcement was made, there is great uncertainty on the tax treatment of the pension earnings after the death of a pension recipient.

From 1 July 2012

1. The new measures expand the meaning of superannuation income stream benefit to allow earnings tax exemption in the period from the member's death until their benefits are cashed by paying out as a lump sum and/or by commencing a new superannuation income stream (subject to the benefits being cashed as soon as practicable).

2. The tax exemption will not apply on any amounts added to the member's benefit through insurance policy proceeds or via self-insurance. This ensures that the level of the exemption would be no greater than it was before the member's death.

3. The regulation created an alternative method for calculating the tax free and taxable components of certain superannuation benefits paid after the death of a pension recipient.

Example 1: A member is receiving a pension immediately before his death on 2 April 2013. The pension is non-reversionary and the trustee pays the death benefit as a lump sum (which did not contain andy insurance policy proceeds) on 11 June 2013. For the purposes of the earnings tax exemption, the lump sum amount is taken to be the amount of the superannuation income stream benefit payable from 2 April 2013 until 11 June 2013.

Example 2: In the above example, the trustee decide to pay an anti-detriment amount. The anti-detriment amount is a taxable component of the lump sum payment.

Income Tax Assessment Regulations 1997

regulation 995-1.01
(2) In these Regulations:
superannuation income stream benefit:
(a) means a payment from an interest that supports a superannuation income stream, other than a payment to which regulation 995-1.03 applies; and

(b) for the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act—includes an amount taken to be the amount of a superannuation income stream benefit under subregulation (3) or (4).
(3) For the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act, if:
(a) a superannuation death benefit that is a superannuation lump sum is paid after the death of a person (the deceased) using only an amount from a superannuation interest; and
(b) immediately before the deceased's death, the superannuation interest was supporting a superannuation income stream payable to the deceased; and
(c) the superannuation income stream did not automatically revert to another person on the death of the deceased;
the amount paid as the superannuation lump sum, to the extent it is not attributable to any amount (other than investment earnings) added to the superannuation interest on or after the deceased's death, is taken to be the amount of a payment from a superannuation income stream of a superannuation income stream benefit that was payable from the day of the deceased's death until as soon as it was practicable to pay the superannuation lump sum.
(4) For the purposes of sections 295-385, 295-390, 295-395, 320-246 and 320-247 of the Act, if:
(a) immediately before the death of a person (the deceased), a superannuation interest was supporting a superannuation income stream payable to the deceased; and
(b) a new superannuation income stream is commenced using an amount applied from the superannuation interest after the death of the deceased;
the amount so applied, to the extent it is not attributable to any amount (other than investments earnings) added to the superannuation interest on or after the deceased's death, is taken to be the amount of a payment from a superannuation income stream of a superannuation income stream benefit that was payable from the day of the deceased's death until as soon as it was practicable to commence the new superannuation income stream.
(5) In this regulation:
investment earnings does not include:
(a) an amount paid under a policy of insurance on the life of the deceased; or
(b) an amount arising from self-insurance.

Changes to SMSF Levy

As part of the 2012/13 Mid-Year Economic and Fiscal Outlook (MYEYO) the Government announced that it would increase the SMSF supervisory levy to $259 per year from 2013-2014, up from $191 in 2012-2013.

- *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Amendment Regulations 2013 (No. 1) was registered on 13 June 2013*

The reform also bring forward payment of SMSF levy so it is levies and collected in the same year of income. The change in the timing of the collection of the SMSF levy will be phased in over the two financial years (2013-2014 and 2014-2015) to give SMSFs time to adjust.

Year	2012-2013	2013-2014	2014-2015
Amount	$321	$388	$259
Calculations	Levy for 2012-2013 of $191 + 50% of levy for 2013-2014 of $130	50% of levy for 2013-2014 of $129 + levy for 2014-2015 of $259	Levy for 2015-2016

ATO Guideline

SMSF supervisory fact sheet

Other Legislative Changes

Market Valuations/Investment Strategy/Separation of Assets

Effective 6 August 2012

During the Cooper Review, it was noted that SMSF trustees are expected to be self-reliant in determining levels of insurance cover required. To ensure that trustees appropriately consider insurance cover, it was recommended that the investment strategy operating standard to include the consideration of life and TPD insurance. During the Cooper Review, it was noted that there was no effective power to enforce the requirement for separation of assets by the ATO as it was only established by way of a covenant deemed to be incorporated into the governing rules of the fund. Also suggested in the Cooper Review is that assets of SMSF are reported at market value.

- *On 6 August 2012, the Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 2) was registered.*

This regulation amends the Superannuation Industry (Supervision) Regulations 1994 to require SMSF trustees, for years 2012-2013 and later, to value the assets of the fund at market value for reporting purposes; require SMSF trustees to regularly review the fund's investment strategy; require SMSF trustees to consider insurance for their members as part of the fund's investment strategy; and provide the ATO with the power to enforce the requirement for SMSF trustees to keep month and other assets of an SMSF separate from those held by a trustee personally.

Prior to the introduction of the regulation, SMSFs were able to choose either historical cost or market valuation as a method to value their assets. The final regulation has amended the original proposal of assets being valued at 'net market value' to 'market value'. Market value is defined in s10 of SIS Act.

ATO Guidelines

Valuation guidelines for self-managed superannuation funds

Ownership of assets by self-managed superannuation funds

Off-market Transfers

As part of the Government's Stronger Super reforms, it was proposed that from 1 July 2013, off-market transfers between SMSFs and related parties would be banned.

On 29 May 2013, legislation which proposed to give effect to this proposal, the Tax and Superannuation Amendment 2013 (Measures No. 1) Bill 2013 was debated in the House of Representatives. It was agreed that these reform measures are removed.

The proposed prohibition on off-market transfers will not proceed.