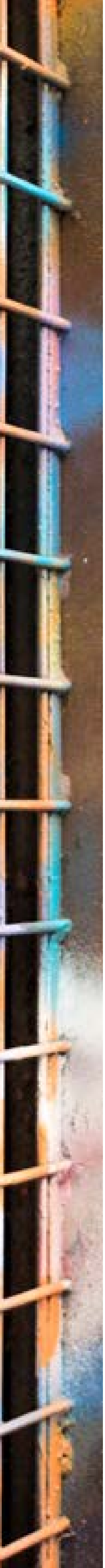

HALL CHADWICK

SMSF Insights_

October 2021

Preparing your director ID

Director ID is a new requirement for all directors. If you're a director of a corporate trustee of a SMSF you can apply for a director ID from November 2021 on the new Australian Business Registry Services.

Why a director ID? Read our recent update.

SMSF numbers, members and balances continues to rise

Australian SMSFs are now holding over $822 billion in assets with around 28% being listed shares and 18% in term deposits. Almost two thirds are managed by corporate trustees and just over half are in accumulation stage. Read the SMSF Quarterly Report June 2021.

Update to SMSF residency rules

Some relief for those SMSF trustees who are unable to meet the central management and control test because they can't return to Australia due to border closures. The ATO has advised compliance resources to determine whether the SMSF meets the relevant residency conditions won't be applied. The ATO has said "Provided there are no other changes in the SMSF or your circumstances affecting the other residency conditions, we will continue to not apply compliance resources to determine whether the fund meets the residency test."

The government announced in 2021-22 Federal Budget a proposal to extend the safe harbour test to 5 years. This extension will allow an individual who is overseas to continue active control of their SMSF, as opposed to appointing a legal personal representative as the trustee of the SMSF under an enduring power of attorney. Also, the government intends to remove the active member test when determining whether an Australian superannuation fund is a complying fund.

The new safe harbour test will be in effect on the 1 July following assent of the enabling legislation, expected to occur prior to 1 July 2022.

It looks like a duck, quacks like a duck, but it... might not be a duck?

The ATO has noted an increase in the number of Australians being targeted by investment schemes. Sometimes people will pose as financial advisers or superannuation experts promising to deliver higher returns and encouraging people to invest in fake schemes risking their retirement savings.

Depending on the information you provide, this could also open the door for fraudsters to use the information they have collected to access your superannuation accounts.

It is important to protect your identity and account details to ultimately protect your superannuation.

1 Keep your details with the ATO up to date

2 Unless you have total trust in the request, don't share your TFN, date of birth, bank or super details.

3 Check the ASIC Financial Advisers Register or ASIC Professional Registers if you need confirmation you are dealing with a licensed professional.

Why too many super contributions could mean extra tax for you

There are limits on how much you are able to contribute to your super fund each financial year, without having to pay extra tax.

How much you can contribute to your super fund, and whether or not your fund is allowed to accept your contribution may also depend on your age and total overall super balance.

Contribution caps apply to all super funds. If you have more than one super fund, all of your contributions are added up and count towards your caps.

If you exceed these caps, you may need to pay extra tax. You can avoid this by understanding what your own contribution caps are, and what may apply to you.

Understanding the types of contributions

There are two types of contributions you (or others) can make into your super fund:

1 Concessional – Once the concessional (before tax) contributions are in your super fund, they are taxed at a rate of 15%. You may need to pay extra tax if you exceed the concessional contributions cap.

2 Non-concessional – (After tax) contributions are not taxed once they are received by your super fund. However, you may need to pay tax on them if you exceed your non-concessional contributions cap.

Download 2021-2022 Tax Rates

Explaining the income and assets tests

Since the time of Paul Keating, our governments have been focused on three foundational pillars for retirement savings in Australia. These pillars are:

1 Compulsory Superannuation,

2 Voluntary Superannuation, and where super is not enough,

3 The Age Pension.

The Age Pension has been around since the first decade of the 1900s and has for the most part, since its implementation) kicked in from age 65 for a male and age 60 for a female. The age for a female to access the pension increased to age 65 quite some time ago, and more recently, the government started moving the age to access the aged pension from 65 to 67 for everyone.

This gradual increase is set out in the following table

Period within which a person was born of change	Pension Age	Date
From 1 July 1952 to 31 December 1953	65 years & 6 months	1 July 2017
From 1 January 1954 to 30 June 1955	66 years	1 July 2019
From 1 July 1955 to 31 December 1956	66 years & 6 months	1 July 2021
From 1 January 1957 onwards	67 years	1 July 2023

From July 2021 therefore, you will need to be 66 and a half years old to be eligible to access the Age Pension. In two years, that age will increase to 67.

The Age Pension is designed as a backup for those who do not have the resources to fund their own retirement. The way that the government assesses whether or not you are in need of the age pension is through the Income Test and the Assets Test.

The Income Test looks at how much income you earn, and if it is too much then your eligibility for accessing the Age Pension is reduced. As you earn more, it reduces to the point where you have no pension entitlement at all.

As an example, a married couple of Age Pension age who own their own home can earn up to $320 per fortnight and still receive the full Age Pension. If they were to earn over that $320 however, their combined pension would reduce by 50 cents for each dollar earned over the $320, as per the standard rules.

If you were single, you could earn up to $180 per fortnight without ramifications to your Age Pension, but for every dollar earned over that amount, incur a reduction of 50 cents per dollar.

The Assets Test looks at how much you are in possession of in certain assets. If that amount is over a certain threshold, it starts to reduce your access to the pension until the amount is zero. Using the same example as previously mentioned, a couple who own their own home can have up to $405,000 in assets before it starts to reduce their Age Pension.

When applying both the income and the assets tests, you use the result that gives you the lowest pension. This is why it is important to always plan ahead if you think you will need to be accessing the Age Pension, which is where we can come in to help.

SMSFs breaking the rules – the implications

One of the main differences between owning a Self Managed Super Fund ('SMSF') and owning other entities is that your SMSF must appoint an auditor (at least 45 days before your first annual return is due), and then have the SMSFs accounts audited each year by the auditor.

Not only does the auditor have to audit the accounts but they must also ensure that the fund has complied with all the rules. If the auditor determines that the fund has not complied with the rules they must report that contravention to the ATO.

Usually, when the auditor finds a contravention of the rules, they will discuss this with the trustees and work out how to rectify the contravention. When the auditor notifies the contravention to the ATO, they will also usually notify how it was fixed. This will usually lead to no action being taken by the ATO.

But sometimes the trustees are not so willing to fix their contravention, and in these instances, the ATO can impose substantial penalties on the trustees who have to pay those penalties personally rather than through the assets of the fund.

Although contraventions are not common and only occur in around 2% of funds each year, there are common contraventions that can occur frequently. These include things such as the fund lending money to a member or a relative of a member, or members taking money out of the fund before they are entitled to.

In any of these instances, it is essential that the money is paid back, with interest, as soon as it is realised that the money wasn't to be taken. If you don't do so, the penalties will usually end up costing more than the money that was taken, which will result in losing more money altogether.

Aside from financial penalties, the ATO can also impose other penalties. These can include education orders where they direct you to do some free study about being the trustee of an SMSF.

If you are not willing to show the ATO that you are interested in fixing any contraventions or your contraventions are too prevalent, they have the ability to disqualify you from having an SMSF.

The biggest penalty that the ATO can impose is classifying your fund as noncomplying. This will result in the whole fund being taxed at around 47%, and you will immediately lose close to half of your overall superannuation total.

This is why it is of paramount importance that you work together with your auditor and ensure that you fix any contraventions as soon as possible, once you are made aware.

Using your super for an investment property – is it worth it?

In 2007, the government changed the law to allow superannuation funds to borrow in order to buy assets. The most common asset that is generally bought with a loan is a property, and there are many super funds borrowing to buy properties. The question here is - is this a sensible move for you?

It depends on your circumstances. Borrowing to buy property is most certainly a suitable wealth creation strategy for many people, but it comes with risk, and that induces even more risk inside the superannuation environment.

On the positive side, you have access to gearing that should (over the long-term) provide you with a greater return on your investment. This is after all the reason that borrowing to buy assets occurs in the first place.

The downside however is that you have to be able to get a loan. At the moment, none of the four major banks will lend to a self-managed super fund to buy property. Other lenders will have severe restrictions on what they lend (such as only lending 70% of the value of the property).

Working out how to do it is a complicated process, so the advice of a licensed advisor should be sought. Their recommendation may be that you should only do it if you have a large super balance.

You will also need to be highly conscious of your cash flow requirements as well. In situations where you borrow money to buy a property, you will be required to contribute that money on an ongoing basis. As this is your superannuation that you may be looking to use, you need to be certain that you will be able to meet all of the cash flow requirements through super.

What if you need to fund a period of time with no tenants in your investment property? Will you be able to cover that?

With gearing, there is another risk to take into account before making a decision on whether or not to use your super when

purchasing an investment property. Not only are your profits amplified, so are your losses. There have been instances where people have lost all their super because they have invested in the wrong asset.

Upon the sale of that asset, they have had to use all of their super (and then some of their own money) to pay back the loan. There is no doubt that borrowing to buy a property in your super fund is a great strategy but only for people with the right circumstances to do so. If you are looking for more information on this, come speak directly with us.

We're ready to help. Contact us to discuss further on +61 3 9820 6400.

Key Contacts

Ken Yew

Manager Superannuation

kyew@hallchadwickmelb.com.au

John Christopoulos

Director

jchris@hallchadwickmelb.com.au

This is issued as a helpful guide to clients and for their private information. Items herein are general comments only and do not constitute or convey advice per se. We recommend that our formal advice be sought before acting in any of these areas. ©2021 Hall Chadwick Melbourne Pty Ltd A.B.N. 88 081 186 450. All rights reserved. Liability limited by a scheme approved under Professional Standards Legislation.

Hall Chadwick Melbourne | Chartered Accountants & Business Advisors

+61 3 9820 6400 | hcm@hallchadwickmelb.com.au

Level 14 440 Collins Street, Melbourne VIC 3000 Australia

PrimeGlobal | An Association of Independent Accounting Firms