

**SUPERANNUATION REFORM CHANGES**

**Effective Budget Night – 7.30pm 3 May 2016**  
**New lifetime cap for non-concessional superannuation contributions**

The government will introduce a \$500,000 lifetime **non-concessional** contributions cap.

The lifetime cap will take into account all non-concessional contributions made on or after **1 July 2007 (i.e., from the 2008 income year)** and will be indexed in \$50,000 increments in line with average weekly ordinary times earnings.

If an individual has exceeded the cap *prior to* commencement date (being 7.30 pm (AEST) on 3 May 2016 (i.e., Budget night)), they will be taken to have used up their lifetime cap but will not be required to take the excess out of the superannuation system.

However, if *after* commencement, an individual makes non-concessional contributions that cause them to exceed the cap, they will be notified by the ATO and must withdraw the excess from their fund. Individuals who choose not to withdraw contributions will be subject to penalty tax.

It is important to be aware that the lifetime non-concessional contributions cap will **replace** the existing non-concessional contributions cap, which allow non-concessional contributions of up to \$180,000 per year (or \$540,000 every three years for individuals aged under 65).

Note that, similar changes are proposed to apply to contributions into defined benefit accounts and constitutionally protected funds.

**Changes effective from 1 July 2017**  
**(effective from the 2018 income year)**

**Allow catch-up concessional superannuation contributions**

From 1 July 2017, the government will allow individuals with a superannuation balance of less than

\$500,000 to make additional **concessional** contributions where they have not reached their concessional contributions cap in previous years.

Only unused amounts accrued **from 1 July 2017** can be carried forward, and can only be carried forward on a rolling basis for a period of five consecutive years.

Allowing people to carry forward their unused concessional cap provides them with the opportunity to 'catch-up' if they have the capacity and choose to do so.

The measure will also apply to members of defined benefit schemes.

**Taxing earnings on assets supporting a Transition to Retirement Income Stream**

From 1 July 2017, the government will remove the tax exemption on earnings of assets supporting Transition to Retirement Income Streams ('TRIS'), being income streams of individuals over preservation age but not retired. Earnings from assets supporting a TRIS will be taxed at 15%.

Importantly, this change is proposed to apply irrespective of when the TRIS commenced.

**Introduction of a \$1.6 million 'superannuation transfer balance cap'**

From 1 July 2017, the government will introduce a **\$1.6 million** 'superannuation transfer balance cap' on the total amount of accumulated superannuation an individual can transfer into pension phase. Subsequent earnings on this pension balance will not be restricted.

By way of background, under current law, if a fund member moves from accumulation phase into ‘**pension phase**’, earnings on assets supporting the pension (income tax and capital gains) are **tax-free** in the fund (assuming no non-arm’s length income and that the asset in question is a ‘segregated pension asset’ or the fund is wholly in ‘pension phase’). Furthermore, there is **no limit** on the amount of accumulated superannuation that an individual can transfer into pension phase.

Under the proposed change, the ‘superannuation transfer balance cap’ will index in \$100,000 increments in line with the consumer price index and a proportionate method will apply to determine the percentage of the cap space an individual has available at any point in time (e.g., if an individual has previously used up 75% of their cap they will have access to 25% of the current (indexed) cap). Note that, subsequent fluctuations in the pension balance due to earnings growth or pension payments are not considered when calculating cap space.

Under the proposed changes, if an individual accumulates amounts in excess of \$1.6 million, they will be able to maintain this excess amount in an accumulation phase account (where earnings will be taxed at the concessional rate of 15%).

Importantly, fund members already in pension phase with balances above \$1.6 million will be required to reduce this balance to \$1.6 million by 1 July 2017 (e.g., it seems such action may include the withdrawal of funds from the superannuation environment, or return a portion of the balance held in pension to accumulation phase via a partial commutation).

It is proposed that, if the \$1.6 million cap is exceeded, the excess amount plus earnings on the excess will be subject to a tax. It is not currently clear as to whether individuals will have the option to withdraw the excess to avoid this penalty tax (i.e., similar to the

tax treatment currently afforded excess non-concessional contributions).

Commensurate treatment for members of defined benefit schemes is also proposed.

### ***Reducing the concessional contributions cap***

From 1 July 2017, the government will lower the annual cap on concessional superannuation contributions to **\$25,000**. Until this time, the existing concessional contributions caps, being \$30,000 for those aged under age 50 years, and \$35,000 for those aged 50 years and over, will apply.

### ***Changes to the contribution rules for those aged 65 to 74***

From 1 July 2017, the government will remove the current restrictions on people aged 65 to 74 from making superannuation contributions for their retirement. Specifically, the government will remove the requirement that an individual aged 65 to 74 must meet the ‘work test’ before making voluntary or non-concessional contributions to superannuation.

### ***Tax deductions for personal superannuation contributions***

From 1 July 2017, the government will change the law to allow **all** individuals under age 75 to claim an income tax deduction for personal superannuation contributions. Individuals who are, for example, partially self-employed and partially wage and salary earners, and individuals whose employers do not offer salary sacrifice arrangements will benefit from the proposed changes.

However, individuals that are members of certain prescribed funds would *not* be entitled to deduct contributions to those schemes (prescribed funds include all untaxed funds, all Commonwealth defined benefit schemes, and certain defined benefit schemes that choose to be prescribed).

Under current law, a tax deduction for personal superannuation contributions is

broadly limited to self-employed individuals, and substantially self-employed individuals (i.e., those that satisfy the ‘10% test’).

***Changes to the ‘high income contribution rules’ (Division 293)***

Currently, Division 293 imposes an additional tax of **15%** on certain concessional contributions (e.g., certain concessional contributions) where an individual’s total ‘income’ (basically, ‘income for surcharge purposes’ less reportable superannuation contributions) plus certain ‘concessional contributions’ for an income year **exceed \$300,000**.

Concessional contributions subject to tax under Division 293 are effectively taxed at 30%.

From 1 July 2017, the government will lower the Division 293 threshold (i.e., the point at which high income earners pay *additional* contributions tax of 15%) **from \$300,000 to \$250,000**.

Consistent with current law, the additional 15% tax will be imposed on the whole amount of the contributions, up to the concessional cap, if ‘income’ for Division 293 purposes is above the threshold. Otherwise, the additional tax is only imposed on the portion of the contribution that takes the individual over the threshold.

The lower Division 293 ‘income’ threshold will also apply to members of defined benefit schemes and constitutionally protected funds currently covered by the tax.

***Removal of the anti-detriment provision in respect of death benefits***

From 1 July 2017, the government will remove the anti-detriment (deduction) provision.

Briefly, the anti-detriment provision allows the spouse (or former spouse) and/or children of a deceased fund member to effectively obtain a refund of all contributions tax paid by the deceased member during their lifetime.

***Removing election to treat pension payments as lump-sum payments***

The government will remove the rule that allows individuals to treat certain superannuation pension payments as lump-sums for tax purposes (which currently makes them tax-free up to the low rate cap of \$195,000).

Currently, an individual drawing down an account-based pension from their superannuation fund can generally make an election, under special income tax rules, for a benefit withdrawal not to be treated as a pension benefit. If such an election is made, the benefit withdrawal is treated (and taxed) as a lump sum benefit instead. As a result, the taxable component of such a withdrawal can be tax-free up to the low-rate cap (i.e., currently, \$195,000), where the recipient member has reached their preservation age (but is under the age of 60).

***Improve superannuation balances of low income spouses***

From 1 July 2017, the government will increase access to the low income spouse superannuation tax offset by raising the income threshold for the low income spouse to \$37,000 (from \$10,800). The offset is gradually reduced for income above this level and completely phases out at income above \$40,000.

The low income spouse tax offset provides up to \$540 per annum for the contributing spouse.

In addition to the above, the government will make additional changes to support older Australians, including allowing individuals to make contributions on behalf of their spouse who is under age 75, without the need for the spouse to satisfy the work test.

***Introducing a Low Income Superannuation Tax Offset (LISTO)***

From 1 July 2017, the government will introduce a Low Income Superannuation Tax Offset (‘LISTO’) to reduce tax on

superannuation contributions for low income earners.

The LISTO will provide a **non-refundable tax offset** to superannuation funds, based on the tax paid on concessional contributions made on behalf of low income earners, up to a cap of \$500. The LISTO will apply to members with adjusted taxable income of **up to \$37,000** that have had a concessional contribution made on their behalf.

This will effectively avoid the situation in which low income earners would pay more tax on savings placed into superannuation than on income earned outside of superannuation.

The LISTO will replace the Low Income Superannuation Contribution when it ends on 30 June 2017.

#### ***Other Budget announcements***

#### **Changes effective for the 2015/16 income year**

##### ***Medicare levy low income thresholds for 2015/16***

For 2015/16, the Medicare Levy low income thresholds will be as follows:

Individuals - \$21,335 previously \$20,896

Families - \$36,001 previously \$35,261

The family income threshold (i.e., \$36,001) will be increased by \$3,306 (previously \$3,238) for each dependent child or student.

For single seniors and pensioners with no dependants who are eligible for the seniors and pensioners tax offset, the threshold will be increased to \$33,738 (previously \$33,044).

##### ***Income tax relief for Australian Defence Force personnel deployed overseas***

The government will provide a full income tax exemption for Australian Defence Force personnel deployed on Operation PALATE II

in Afghanistan. This income tax exemption has effect from 1 January 2016, and will remain in effect until 31 December 2016.

The government will also update the coordinates for Operation MANITOU in international waters, with effect from 14 May 2015, and Operation OKRA in the Middle East, with effect from 9 September 2015, to reflect the actual areas covered by the operations.

#### **Changes effective 1 July 2016 (i.e., 2016/17 income year)**

##### ***Targeted personal income tax relief***

From **1 July 2016**, the government will increase the 32.5% personal income tax threshold from \$80,000 to \$87,000.

This measure will reduce the marginal rate of tax on incomes between \$80,000 and \$87,000 from 37% to 32.5%, preventing around 500,000 taxpayers facing the 37% marginal tax rate.

##### ***Increasing the Small Business Income Tax Offset ('SBITO')***

From **1 July 2016**, the government will increase the current 5% tax discount (referred to as the SBITO) to 8%. The discount is currently available to an individual in receipt of income from an unincorporated small business entity ('SBE') (i.e., basically, an entity with an aggregated turnover of less than \$2 million), and applies to the income tax payable on the business income received from such an entity.

The discount will remain constant at 8% for eight years, and will then increase to:

10% in 2024/25;

13% in 2025/26; and

16% from 2026/27.

The current tax discount (or SBITO) cap of \$1,000 per individual for each income year will be retained.

Furthermore, access to the discount will be extended to individual taxpayers with business income from an unincorporated business that has an aggregated annual turnover of less than \$5 million.

**Reducing the company tax rate over 10 years**

The government will reduce the company tax rate to 25% over 10 years (i.e., by 1 July 2026).

This measure will commence from **1 July 2016**, whereby the government will cut the small business company tax rate to 27.5%, and make this tax rate available to small companies with an annual aggregated turnover of less than \$10 million.

This turnover threshold will then be progressively increased to ultimately have all companies eligible for the 27.5% tax rate in 2023/24. The progressive increase in the annual aggregated turnover thresholds for companies eligible for the 27.5% tax rate will be as follows:

\$25.0 million in the 2017/18 income year;

\$50.0 million in the 2018/19 income year;

\$100.0 million in the 2019/20 income year;

\$250.0 million in the 2020/21 income year;

\$500.0 million in the 2021/22 income year;  
and

\$1 billion in the 2022/23 income year.

In the 2024/25 income year, the company tax rate will be reduced to 27% and then be reduced progressively by 1 percentage point per year until it reaches 25% in the 2026/27 income year.

Franking credits will be distributed in line with the rate of tax paid by the company.

**Increasing the small business entity ('SBE') turnover threshold**

From **1 July 2016**, the government will increase the SBE turnover threshold from \$2

million to \$10 million. The current \$2 million turnover threshold will be retained for access to the small business capital gains tax ('CGT') concessions, and access to the SBITO (i.e., the increased 8% tax discount) will be limited to entities with turnover less than \$5 million (as noted above).

The increased \$10 million turnover threshold will allow an additional 90,000 to 100,000 business entities to gain access to certain small business concessions, such as the following:

The lower (27.5%) small business corporate tax rate (noted above).

The simplified depreciation rules in Subdivision 328-D of the ITAA 1997 (including the ability to claim an immediate deduction for an asset purchased costing less than \$20,000 until 30 June 2017).

Simplified trading stock rules, giving businesses the option to avoid an end of year stocktake if the value of their stock has changed by less than \$5,000.

The option to account for GST on a cash basis and pay GST instalments as calculated by the ATO.

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**NEWSLETTER – MAY BUDGET 2016 (CONTINUED)**

**2016/17 Federal Budget**

Below, we set out an overview of the main measures in this year's Federal Budget in a table form for those who want the changes in the form of a check-list.

**SUPERANNUATION**

<b>Changes</b>	<b>Start date</b>	<b>Comments</b>
<b>New \$500,000 lifetime non- concessional contributions cap</b>	3 May 2016 (7:30pm AEST)	Until the budget was announced, individuals under the age of 65 could make post-tax superannuation contributions (or non- concessional contributions) of up to \$540,000 every 3 years or \$180,000 per year. After the budget was announced, the Government replaced this with a <b>lifetime</b> limit of \$500,000.
<b>Lower concessional contributions cap Limit on transfer of balances to pension phase</b>	1 July 2017	At present, individuals can make pre-tax superannuation contributions (or concessional contributions) of up to \$30,000 each financial year if they are under 50 or \$35,000 if they are 50 or over.  In the budget, the Government announced that this would be replaced with just 1 limit of \$25,000 for all.  To date, there has been no limit on the superannuation balance an individual can transfer into pension phase tax-free. As a result of the budget, however, a limit of \$1.6 million will be introduced.  Superannuation balances in excess of \$1.6 million will need to be kept in accumulation phase accounts.  For the purposes of the measures, individuals' superannuation balances will take into account both
<b>Catch-up concessional superannuation contributions</b>	1 July 2017	The budget announced a new measure to allow additional concessional contributions to be made by individuals who have not reached their concessional contributions cap in previous years and with a superannuation balance less than \$500,000.
<b>Tax on contributions</b>	1 July 2017	The point at which high income earners will pay additional contributions tax will be lowered from its current \$300,000 to
<b>Work test abolished for over 65'ers</b>	1 July 2017	As a generous measure, individuals aged 65 to 74, will no longer need to be working in order to be able to make superannuation contributions.
<b>Transition to retirement pensions</b>	1 July 2017	The budget announced the end of the exemption for superannuation funds earning income supporting transition to retirement pensions (ie pensions paid to individuals over preservation age, but not retired).

**NEWS**

## NEWSLETTER – MAY BUDGET 2016 (CONTINUED)

<b>Limit on tax deduction for superannuation contributions ended</b>	1 July 2017	<p>Again as a generous measure, as a result of the budget, all individuals under 75 will be able to claim an income tax deduction for any personal superannuation contributions they make.</p> <p>At the moment, only individuals who earn at least 10% of their income from salary and wages can claim a tax deduction.</p>
<b>Anti-detriment tax deductions ended</b>	1 July 2017	The budget announced an end to the availability of a tax deduction for anti-detriment payments for death benefits.

Most of the superannuation measures will start on **1 July 2017**, rather than, as would usually be expected, on 1 July 2016. Perhaps the reason for this delay to the start date is that the Government would like to give individuals and superannuation funds enough time to adjust to the measures.

In any event the legislation will not be passed before the elections and even then only if the present Government get back in. In addition, there is considerable pressure being brought to bear on the present Government to moderate the retrospective aspects of this legislation, therefore there is no need to panic at this stage.

### COMPANIES & SMALL BUSINESS

Changes	Start date	Comments
<b>Fall in company tax rate to 25% over 10 years</b>	1 July 2016	Over the next 10 years, the company tax rate will fall to 25%. For small businesses, under the new \$10 million turnover threshold, however, the tax rate will fall to 27.5% from 2016/17. The budget proposes that the 27.5% tax rate apply to all companies by 2023/24.
<b>New \$10 million small business threshold</b>	1 July 2016	<p>The turnover threshold for deciding whether an entity is a small business is planned to rise from \$2 million to \$10 million. This will apply to, for example, the simplified methods for accounting for GST, PAYG and trading stock and the depreciation rules.</p> <p>Unfortunately, however, the new threshold will <b>not</b> apply to accessing the small business CGT concessions. For small business CGT relief purposes,</p>
<b>Non-company small businesses lower tax</b>	1 July 2016	Like businesses operating through a company, businesses operating through other structures (eg as sole traders) will benefit from a fall in the rate of tax applicable to them. This is being introduced as a higher discount to the tax rate applied to income received by non-company entities. Over 10 years, the discount will
<b>Simpler BAS reporting</b>	1 July 2017	The budget announced a simpler BAS for small businesses. The simpler BAS will allow for easier classification of transactions. The system will be trialled from 1 July 2016, with a view to its formal introduction

NEWS

## NEWSLETTER – MAY BUDGET 2016 (CONTINUED)

<b>Div 7A changes</b>	1 July 2018	Changes are on the agenda to the operation and administration of the private company deemed dividend rules. These are designed to simplify the application of the provisions
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It is rather unfortunate that the Government did not introduce the same threshold for the assessment of whether a business is a small business across the board. In particular, it is rather unusual that the Government did not introduce the same standard for CGT purposes. The small business CGT concessions are overly complex and many small businesses struggle with their application. The Government should consider introducing just one uniform threshold test to be used across all the different tax concessions and exemptions.

### INDIVIDUALS

Changes	Start date	Comments
<b>Tax cut for middle income earners</b>	1 July 2016	The threshold for the 32.5% tax rate is to rise from \$80,000 to \$87,000.
<b>Fall in Medicare low income thresholds</b>	1 July 2015	The low income thresholds for the Medicare Levy and the surcharge have already started increasing since 1
<b>No change to negative gearing</b>	N/A	Despite the rumours, the budget made no announcement regarding negative gearing
<b>No change to general discount from CGT</b>	N/A	Despite the rumours, the budget made no announcement to end or reduce the 50% general discount from CGT available to individuals

Rather than increasing the tax rate threshold for so called “middle income earners”, it may have been more equitable for the Government to have introduced indexation to the tax brackets. For years, this measure has been contemplated without any consideration. The tax law could easily have an indexation component to prevent bracket creep. The indexation of the tax brackets would more equitably and fairly guarantee tax cuts for all income earners.

### OTHER MEASURES

Changes	Start date	Comments
<b>GST extended to low- value imports</b>	1 July 2017	The budget announced that GST is going to apply to low value goods imported into Australia. The budget achieves this by requiring overseas suppliers, with an Australian turnover of \$75,000 or more, to register for GST and collect and remit GST on sales.
<b>New 40% tax on multinationals' profits</b>	1 July 2017	Multinationals will be required to pay a new 40% tax on profits transferred offshore through related party transactions, without economic substance, that lower the tax paid on their Australian profits by 20% or more.
<b>Transfer pricing</b>	1 July 2016	Transfer pricing rules will be amended to adopt new OECD Guidelines.
<b>Increase in penalties for non-disclosure by global entities</b>	1 July 2017	Entities part of a group with a global turnover of \$1 billion or more, will be subject to a maximum penalty of \$450,000 for failing to disclose certain information to the ATO.

NEWS

## NEWSLETTER – MAY BUDGET 2016 (CONTINUED)

<b>Start-up innovation incentives</b>	1 July 2017	New tax incentives will be introduced for investors who support innovative start-ups.
<b>TOFA</b>	1 January 2018	The TOFA rules will be simplified, including removing the majority of taxpayers from the rules.
<b>Collective Investment Vehicles (CIVs)</b>	1 July 2017	A new tax regime will be introduced for 2 new types of collective investment vehicles. Investors in these vehicles will be taxed as if investing in the underlying

### Conclusion

The superannuation measures in this year's Federal Budget are rather unfortunate. The measures appear to have been introduced by a Government, out of fear of its opponents. The measures are ill-considered and have been rushed, due to the negative publicity surrounding the (supposed) accumulation of superannuation by the wealthy.

While in the short term, the superannuation measures introduced may serve to weaken public opposition to superannuation and its abuse, ultimately they will only hamper the growth of private savings in Australia. By discouraging individuals from saving for their own retirement the Government is only providing a greater incentive for individuals to rely on the age pension from the Government. With an increasingly ageing population, one can only question the efficacy of such measures.

Public debt will only continue to rise further, in the future if the Government introduces any perceived or actual disincentives for private saving. Private saving, particularly for retirement, ought to be encouraged, not dampened.

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