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Self-employed? You could claim a deduction for saving for your retirement

A recent change to the rules around superannuation means that more Australians may be eligible to claim a tax deduction for putting money into super.

Before June 30, 2017, if more than 10% of your income was sourced from salary or wages from an employer, you were rendered ineligible to claim any tax deduction for after-tax contributions you may have made to your superannuation fund.

But this rule has been removed, effective for the 2017-18 financial year and onwards, so now anyone who puts their own money into super — called personal contributions or (in the lingo of superannuation professionals) non-concessional contributions — may be able to claim a tax deduction for it.

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About this newsletter

Welcome to GBS Partners client information newsletter. This monthly tax and superannuation update is aimed at keeping you informed about news, current issues and changes in relation to income tax and superannuation matters. Should you require further information on any of the topics contained herewith, please contact this office on:

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Shares and tax:
A stockmarket investment primer

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Investing in the stockmarket is a lot more common than it was years ago, with ordinary Australians having experience with shares and the stockmarket either directly or through managed funds or via their superannuation fund.

Recent research conducted by the Australian Securities Exchange (ASX) found that around 60% of Australians hold share investments outside of their institutional superannuation fund, and 31% directly own listed investments. Over the past five years the proportion of 18 to 24 year olds investing in shares has doubled from 10% to 20%, and over the same time the proportion for 25 to 34 year olds has increased from 24% to 39%.

From a simple taxable income point of view, owning shares means that the dividends these provide will form part of the shareholder's assessable income. But there are other tax implications, which may derive from, but are not limited to:

- participating in a dividend reinvestment plan
- participating in a bonus share scheme
- transactions the company you have invested in undertakes, such as takeovers and demergers.

Otherwise, the key tax issues most stockmarket investors need to be aware of are:

- you need to declare all your dividend income on your tax return, even if you use your dividend to purchase more shares, for example through a dividend reinvestment plan
- the costs you may be able to claim as tax deductions include management fees, specialist journals and interest on money you borrowed to buy the shares
- receiving bonus shares can alter the cost base (costs of ownership), from a capital gains point of view, of both your original and bonus shares
- in some demergers, you may be eligible to choose to rollover any capital gain or capital loss you make. This means you do not report your capital gain or capital loss the year the demerger occurs. Instead, you settle your tax obligations in the year that another CGT event happens to those shares
- if you receive a retail premium for rights or entitlements that you didn't take up, you need to declare these premiums as income on your tax return for the year.

DIVIDENDS

A dividend is assessable income in the year it is paid or credited to you. Your dividend statement shows the relevant date – often referred to as the payment date or date paid. Most dividends you are paid or credited will be in the form of money, either by cheque or directly deposited into a bank account.

However, the company may give you the option of reinvesting your dividends in the form of new shares in the company – this is called a dividend reinvestment scheme. If you take this option, you must pay tax on your reinvested dividends. The amount of the dividend received will form part of the cost base of the shares you receive.

Keep a record of your reinvested dividends to help you work out any capital gains or capital losses you make when you dispose of the shares.

continued ⇨

Shares and tax: A stockmarket investment primer *continued*

BONUS SHARES, INHERITED AND GIFTED SHARES

Bonus shares are extra shares you receive for those you already hold in a company. If you dispose of bonus shares, you may:

- make a capital gain,
- have to modify your existing shares' cost base and reduced cost base in the company.

If you acquire shares as part of a deceased estate, you have certain tax obligations and entitlements for these shares. If you inherit shares:

- you treat inherited shares in the same way as any other capital gains tax assets
- where the deceased acquired the shares before 20 September 1985, you must use the market value on the day the person died, not the market value on the day you received the shares
- you must keep records, so you do not pay more tax than you need to.

It can also be the case that shares are gifted. A family member may give shares to relatives – for example, a parent gives shares to their child.

Giving shares: If you give shares as a gift, you:

- treat the shares as if you disposed of them at their market value on the day you gave them as a gift
- may have a capital gain or a capital loss.

If you give shares as a gift, a capital gains tax event occurs and you must include any applicable capital gain or loss in your tax return for the year you gave away the shares.

Receiving shares: If you receive shares as a gift, you:

- treat shares as though you received them at their market value on the date you received them
- have certain tax obligations and entitlements.

If you dispose of shares you received as a gift, you must use the market value on the day that you acquired the shares as the first element of your cost base.

DEMERGERS

A demerger occurs when a company restructures by splitting its operations into two or more entities or groups. If you own shares in a company that demerges, you may:

- receive new shares and/or cash
- be entitled to a demerger rollover.

Make sure you:

- are entitled to a rollover before you choose to use it
- declare any capital gains or losses you made under the demerger.

TRADER OR INVESTOR?

Share traders and share investors deal with income and expenses differently. A share trader conducts business activities for the purpose of earning income from buying and selling shares. A share investor invests in shares with the intention of earning income from dividends and capital growth, but does not carry on business activities.

Shares as business: A share trader is a person who carries out business activities for the purpose of earning income from buying and selling shares. For a share trader:

- receipts from the sale of shares constitute assessable income
- purchased shares are regarded as trading stock
- costs incurred in buying or selling shares – including the cost of the shares – are an allowable deduction in the year in which they are incurred
- dividends and other similar receipts are included in assessable income.

Shares as investment: A shareholder is a person who holds shares for the purpose of earning income from dividends and similar receipts. For a shareholder:

- the cost of purchase of shares is not an allowable deduction against current year income, but is a capital cost
- receipts from the sale of shares are not assessable income – but any capital gain on the shares is subject to capital gains tax
- a net capital loss from the sale of shares can't be offset against income from other sources, but can be offset against another capital gain or carried forward to offset against future capital gains
- the transaction costs of buying or selling shares is not an allowable deduction against income, but are taken into account in determining the amount of any capital gain
- dividends and other similar receipts from the shares are included in assessable income
- costs (such as interest on borrowed money) incurred in earning dividend income are an allowable deduction against current year income.

continued ⇨

Shares and tax: A stockmarket investment primer *continued*

DISPOSING OF SHARES

If you dispose of shares, you may make a capital gain or a capital loss, which must be reported in the income year you dispose of the shares. If you make a capital loss and you do not have other capital gains to offset it against in that financial year, you can carry it forward to later income years. To do this you will need to keep your taxation records.

If you dispose of shares you must:

- only apply the 50% discount where you held the shares for more than 12 months
- not reduce your capital gain by the 50% discount until after you have applied all your current year and/or carry-forward capital losses
- declare any capital gain or loss in the financial year you enter into the contract, not when you received the proceeds; if there is no contract, the CGT event happens when you stop being the owner of the shares
- use the reduced cost base if you make a capital loss; this does not include any costs you have already claimed as a deduction - for example, deductions for interest on a loan you took out to purchase your shares.

RECORDS YOU NEED TO KEEP

You need to keep proper records, regardless of who prepares your tax returns. You must keep:

- your acquisition and disposal statements (your “buy” and “sell” contracts) — keep these records for five years from the date you dispose of your shares
- your dividend statements — keep these records for five years from 31 October or, if you lodge later, for five years from the date you lodge your tax return.

You will receive most of the records you need to keep from:

- the company that issued the shares
- your stockbroker or online share trading provider
- your financial institution, if you took out a loan to buy the shares.

There is of course a lot more to consider when investing in the stockmarket, but you can talk to this office should you need further questions answered. ■

Self-employed? You could claim a deduction for saving for your retirement *continued*

The change means a lot more people, in particular the self-employed, will now be able to put their own money into retirement savings and be able to claim a tax deduction for doing so. Most self-employed people can claim a deduction for after-tax contributions they make until they are 75 years old.

If you’re eligible and want to claim a tax deduction, you need to complete a “notice of intent to claim a deduction” form. You can get this from your super fund or the ATO website (or try typing the ATO’s form identifier, which in this case is ATO NAT 71121, into an internet search).

Once you complete the form, send it to your fund (and make sure you get an acknowledgment from them). You must do this before the end of the relevant year for which you want to claim the deduction (and with enough time allowed for the exchange of notices). Then you can claim a tax deduction for the payments you made as part of your tax return.

It is important to note however that there is a limit to how much can be contributed. Both types of contributions to super — before-tax (“concessional”, such as payments made by an employer) and after-tax (“non-concessional”, as mentioned above) — have caps.

Concessional contributions are capped at $25,000 a year, and non-concessional contributions are capped at $100,000 a year. If you exceed the concessional cap, the excess is lumped in with your taxable income and taxed accordingly (there may be an extra charge to make up for the “late” collection of the tax involved).

Exceeding the non-concessional cap can mean that the excess is taxed at 47%. (For the latter, there is a “bring-forward” alternative if you want to contribute more, which is governed by your fund’s balance and your age, but ask us if this is a realistic option.)

Also, if you’re eligible to claim a tax deduction for your personal super contributions, the amount claimed will count towards your concessional contributions cap. ■

Have you had a change in creditable purpose for GST reporting purposes?

Sometimes your business may end up using an asset you purchased, such as a property for example, in a way that is different to what you had originally planned.

It pays to remember that if you claimed GST credits for assets that have had their intended use change from that originally planned, you need to report adjustments for this change in creditable purpose in your activity statement.

For example, if you constructed new residential premises to sell, but then rent it out, you will be required to make an increasing adjustment on your BAS. This will be required even if you still market the property for sale. You may also need to make an adjustment if you use the property for private purposes.

Adjustments are required for changes in creditable purpose because the GST credit originally claimed will either have been too much or too little.

Generally an adjustment will not be needed for a change in creditable purpose if:

- the value of the purchase or importation was $1,000 (GST-exclusive) or less
- the value of the purchase or importation related to business finance was $10,000 (GST-exclusive) or less.

Adjustment periods

"Adjustment periods" are the reporting periods in which you have to account for any adjustments in an activity statement. An adjustment period for a purchase or importation is a reporting period that both:

- starts at least 12 months after the end of the reporting period you claimed a GST credit in (or would have claimed had the purchase or importation been creditable), and
- ends on 30 June (or, if none of your reporting periods end on 30 June, the reporting period that ends closest to 30 June).

The maximum number of adjustment periods in which you can make adjustments depends on the value of the purchase or importation, and also upon the nature of them (see tables below).

If you cancel your GST registration, your final reporting period is also an adjustment period for purchases and importations. ■

Adjustment periods for most purchases and importations

Value of the purchase or importation (GST-exclusive)	Number of adjustment periods
$1,001 to $5,000	2
$5,001 to $499,999	5
$500,000 or more	10

Adjustment periods for purchases or importations that relate to business finance

Value of the purchase or importation (GST-exclusive)	Number of adjustment periods
$10,001 to $50,000	1
$50,001 to $499,999	5
$500,000 or more	10

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Will new LRBA rules stymie your SMSF contribution plans?

Photo by Simon Rae on Unsplash

An "integrity" measure, which aimed to stop SMSF trustees from manipulating their total superannuation balance in order to keep below the $1.6 million threshold, may have the unintended outcome of reducing the appeal of LRBAs.

Legislated changes to limited recourse borrowing arrangements (LRBAs) in regard to calculating an SMSF member's total superannuation balance (TSB) amends quite recently introduced rules so that the TSB calculation may or may not (depending on meeting certain conditions) be required to include the outstanding amount of the fund's LRBA loan.

The previous measure that the new legislation amends, which was introduced with the 2017-18 federal budget, had the aim of preventing SMSF members from manipulating their TSB to keep it below the $1.6 million threshold.

The amount of TSB is an important factor, as the rules state that a TSB as at June 30 of a previous year will determine eligibility to several concessions written into the SMSF landscape — such as being able to make non-concessional contributions, access to tax offsets, using the segregated assets method in calculating exempt-current pension income, and being able to use the unused concessional contributions cap carry-forward rules.

The proposed changes (the legislation is still in the Senate at the time of writing) are to apply from July 1, 2018, and propose to include a member's share of the outstanding value to an LRBA in their TSB at a particular June 30 where:

- the LRBA loan is a related party loan, or
- the member has met a condition of release with nil cashing restrictions (such as retirement, turning 65 or a terminal medical condition).

Affected funds will be required to proportion any outstanding LRBA loan balance between members to calculate each one's TSB. Importantly, it will pay to remember that if the lender is not a related party, the calculation will only apply to members who have met a full condition of release. Otherwise the new rule applies to all members with interests supported by assets that come under the LRBA.

The new legislation will capture any new LRBA for members who meet a full condition of release (and remember, every member will do so at some stage). This means they will be required to include their share of the outstanding balance of any new LRBA taken out after July 1, 2018 in their TSB on June 30. Indeed, should the proposal become law, some members will find they may need to wind up their LRBA if they wish to continue to make more non-concessional contributions to their fund should the LRBA balance cause them to exceed the $1.6 million limit.

The following questions and answers may clear up further considerations for the funding of SMSF assets post July 1, 2018.

continued ⇨

Will new LRBA rules stymie your SMSF contribution plans? *continued*

Q For fund members under 65 years of age in accumulation phase, when will the debt for a post-June 30, 2018 LRBA affect their TSB, which may therefore have an affect on an individual's (non-concessional) contributions cap?

ANSWER: Where the LRBA lender is an arm's length party, such as a bank, their share of the outstanding LRBA debt will only count towards their total superannuation balance (TSB) and therefore have the potential to affect their non-concessional contributions cap when the fund member attains 65 years of age or satisfies another condition of release with nil cashing restrictions.

Where, however, the LRBA lender is a related party or an associate, then the LRBA debt will immediately count towards the fund member's TSB, potentially affecting the permitted level of the LRBA debt and the ability of the fund member to make further non-concessional contributions. As a result, we are still likely to see related party lenders in LRBAs where the fund members' account balances and LRBA debt are not sufficiently high enough to be affected by the contribution caps.

Q If the rate of interest for a pre-July 1, 2018 LRBA has been zero or less than commercial rates in the past, what are the implications for the SMSF post-June 30, 2018?

ANSWER: The income deemed to have been generated from the interest payments foregone will be taxed as non-arm's length income under the rules, and at a flat rate of 45%.

Q SMSFs are permitted to invest in fixed unit trusts that meet the requirements of the regulations. To what extent are fixed unit trusts a substitute for an LRBA?

ANSWER: The reasons why LRBAs largely replaced regulated fixed unit trusts following the advent of LRBAs in 2007 are also the reasons why they are a very limited substitute for LRBAs. The trustees of fixed unit trusts are subject to borrowing restrictions, and can only hold ungeared real estate and cash as trust assets. Non-SMSF unitholders in such fixed unit trusts can borrow in their capacity as unitholders, but cannot use the trust property as security for their borrowings.

Q If the unit trust in which the trustee of an SMSF has invested turns out to be a non-fixed unit trust, for example units can be issued or transferred at nominal values, what are the taxation implications for the SMSF?

ANSWER: As a non-fixed, hybrid or discretionary unit trust is not a permitted investment for the unit trust, income generated will be taxed as non-arm's length income at a flat rate of 45%.

Q Are there other trust alternatives for SMSFs to regulated fixed unit trusts?

ANSWER: Yes there are. A private fixed unit trust in which an SMSF, together with the fund members personally and their associates, does not hold a controlling interest, is not subject to the borrowing restrictions; nor is the debt of such a fixed unit trust counted as an asset for contributions cap purposes. An example of such a fixed unit trust is a unit trust with the trustees of two SMSFs not associated with each other each holding 50% of the units, neither holding casting votes. The challenges with these trusts are first finding compatible non-associated investors and second dealing with the situation where only one investor wishes to exit from the fixed unit trust. ■

Apportioning GST annually for business and private purchases

Photo by Christin Hume on Unsplash

The general case regarding GST credits is that business owners can claim input tax credits relating to eligible business expenses when you lodge your business activity statement (BAS), which may be monthly or quarterly. However it is not unusual for business owners to occasionally make purchases that contain a private use component. Where expenses are partly for private use, only the proportion of credits relating to business use can be claimed.

When you can only claim a portion of a GST credit on a purchase, generally because the purchase is partly for business purposes and partly for private use, there are two ways of accounting for the GST credit:

- calculate the portion of GST credit that you are entitled to and claim it on your monthly or quarterly activity statement
- claim the entire GST amount as a credit on your monthly or quarterly activity statement and make a single annual adjustment at a later date.

This second option, with a single adjustment, is called annual private apportionment. This measure was introduced a few years ago to allow eligible taxpayers to claim the entire amount of input tax credits when lodging their monthly or quarterly BAS, both business and private, without apportioning for private use.

By electing to make an annual private apportionment of GST, you are choosing to account for the private portion of your business purchases once a year rather than each time you lodge an activity statement.

You can elect to make an annual private apportionment if both of the following apply:

- your business's annual turnover is $10 million or less, or your (non-business) enterprise's GST turnover is $2 million or less, and
- you have not elected to pay GST by instalments or report GST annually.

Annual private apportionment applies to all purchases that are made partly for business and partly for private purposes, unless:

- the business portion of the purchase relates solely to making input taxed supplies
- any part of the purchase is a "reduced credit acquisition" – that is, a purchase that relates to making financial supplies that you can claim a reduced GST credit for.

You must make any adjustments in a later activity statement to account for the portion of the purchase relating to private use. You can make the adjustment in any activity statement up to the one that covers the due date for lodging your income tax return. This means you can apportion for private use for both GST and income tax purposes at the same time.

The ATO expects however that a business that has elected to make annual private apportionments for GST must re-assess its eligibility for it on 31 July each year.

Your adjustment will either increase the amount of GST you are liable to pay or reduce your GST refund for the tax period you make the adjustment in.

If eligible, you can choose to use annual private apportionment at any time — for example, you can start at the beginning of the next tax period for which an activity statement is due. You do not need to notify the ATO if you choose to use annual private apportionment, but you must keep records that include the date you chose annual private apportionment and the date it took effect.

If you make input-taxed financial supplies as a minor part of your business you can use annual private apportionment for your purchases that relate to making those supplies as long as you do not exceed the financial acquisitions threshold. ■