

Heffron Super News



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In this issue:

With under 2 weeks remaining in the current financial year, what as the last minute steps clients should be taking?

Pension payments

Have your pension clients made their payments in full? In cash? (only lump sums can be paid in specie).

Bear in mind that the concession announced earlier this year (whereby pension payments are effectively halved) now applies for both 2008/09 and 2009/10.

In-house assets - transitional rules

The end of the special transitional rules for in-house assets on 30 June 2009 was discussed in detail in Issue #58 of Heffron Super News.

These are the rules allowing funds to keep making investments into (say) private unit trusts without having those new investments treated as in-house assets. While that was possible under certain circumstances for the period 11 August 1999 – 30 June 2009, it will cease on 1 July 2009.

At the most recent meeting of the National Tax Liaison Group (Superannuation), the ATO was asked to consider exactly how far a fund needs to go to ensure that its final reinvestment occurs on or before 30 June 2009.

For example, industry representatives asked whether the fund could simply advise the unit trust trustee that it wished to reinvest its 2008/09 distribution – whatever the amount happened to be. Would this be sufficient to meet the requirement to make the investment **before** 30 June 2009? Alternatively, is it necessary to actually **know the amount** of the distribution and hence apply this to purchase a specific number of units before 1 July 2009?

Unfortunately, the ATO concluded the latter. In other words, in their view it is necessary to know the amount of the distribution before 30 June 2009 (presumably by preparing accounts on or before that day). Only then would the fund be able to identify exactly how many new units it had purchased before 30 June 2009.

In-house assets - every year

The transitional rules make 30 June 2009 particularly important for those with investments in private unit trusts and companies that pre-date 11 August 1999. However, 30 June is always important for any fund holding in-house assets (ie, investments in or loans to related parties).

This is because it is the date at which the Fund's in-house asset investments are tested against its total assets to determine whether or not the 5% threshold has been breached¹.

Trustees and advisers have some leeway in the *lead up* to 30 June each year to ensure they take every opportunity to keep the value of in-house assets under 5% of total assets at the end of the year. In situations where the position is very finely poised, this might include:

¹ Note that this threshold is also tested each time a new in-house asset is purchased but those funds who are not acquiring new assets are only required to consider it at 30 June each year rather than continuously throughout the year.

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- seeking additional contributions or rollovers before 30 June;
- deferring non essential drawings (such as lump sums or pensions) until after 30 June; and
- ensuring that all other assets have been revalued appropriately.

Unfortunately, if the fund crosses 30 June with its in-house assets over 5%, there is nothing the trustee can do but sell some of the in-house assets. The ATO has no discretion under the law to provide a less drastic means of returning to the required position (ie, under 5%) such as:

- allowing for subsequent falls (which reduce the value below 5% naturally); or
- receiving additional contributions in the new financial year.

Timing pensions & contributions

Many clients make large contributions towards the end of the financial year – perhaps contributing \$450,000 non-concessional contributions as well as \$100,000 in concessional contributions.

We often suggest that clients who have reached age 55 (and are therefore eligible to start

pensions) make these contributions on different dates.

Doing so provides an opportunity to (say) convert the \$450,000 non concessional contribution to its own pension. This keeps it quite separate to the remainder of the client's superannuation (technically, it is referred to as a separate "superannuation interest").

Separation can be invaluable in a number of areas:

- Estate planning – a pension which consists only of non-concessional contributions is entirely tax free regardless of whether or not the beneficiary is a dependant for tax purposes. Isolating a pension that is entirely tax free in this way gives the family group flexibility to specifically direct the tax free money to the non dependent beneficiaries;
- Choosing how to draw income – ie, those who are under 60 might choose to take any payments over and above their minimum pension from a pension which is entirely tax free. In contrast, those over 60 might make the opposite decision (to preserve more of their tax free superannuation for their beneficiaries).

Crucially, it is not possible to separate a client's tax free / taxable components in this way if they have been combined in a

single accumulation account – even for a day. This is where it is beneficial to make the concessional and non-concessional contributions (and therefore commence pensions) on different days.

Collapsing / combining pensions

30 June / 1 July is a common "consolidation" date – where clients with pensions combine those pensions with some or all of the contributions which have been made during the year. Because contributions cannot be added directly to a pension account, the usual approach is:

- The pension is stopped (commuted and rolled back to "accumulation" phase);
- The resulting balance is combined with the client's "accumulation" balance – ie, new contributions during the year together with any investment earnings; and
- A brand new pension starts with the balance.

Whenever a pension is stopped, it is crucial to make sure it is paid up to date first. For example, if a pension stops 300 days into the financial year, payments of at least:

$$\frac{300}{365} \times \text{Normal Minimum Payment}$$

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Avoiding this complexity is one of the reasons clients often “consolidate” their pension and accumulation accounts on 30 June or 1 July.

Unfortunately, the ATO has recently indicated that in their opinion, a commutation on 1 July will give rise to a minimum payment requirement (ie, it will be necessary to pay 1 day’s worth of pension payments first).

For this reason, we suggest that future consolidations occur on 30 June rather than 1 July.

Making contributions before 30 June!

This is naturally the time of year when the exact date a contribution is received becomes important!

A recent draft ruling (TR 2009/D3) identified exactly when a contribution is considered to have been ‘received’ by a fund:

- In the case of a cheque – as soon as the cheque is held by the trustee² unless it is subsequently dishonoured (note that the cheque does not have to have been cashed or even presented);

² Note that this assumes the cheque is not post-dated. If it is post-dated, it is not received until at least the date on the cheque.

- In the case of shares – when beneficial ownership passes to the superannuation fund. Importantly, the ATO interpret this as including the date on which the fund trustee receives a **properly completed** off-market transfer form. (There was previously some suggestion that the contribution would not be received until the transfer was actually **processed** by the registry.)

Watch the timing of s290-170 notices

Those who wish to claim a personal tax deduction for their contributions must provide a notice to the trustee under Section 290-170 of the Income Tax Assessment Act 1997³.

Under normal circumstances, clients have until they lodge their personal tax returns to provide this notice. However, the situation changes if they:

- withdraw or rollover the contributions; or
- start a pension from the account balance which contains the contributions (according to the recent draft ruling from the ATO – TR 2009/D3 – this applies even if

³ The trustee must also acknowledge this notice.

the pension doesn’t actually include the amount of the contribution).

If a client intends to do either of these things, it is important to provide the s 290-170 notice to the trustee **first**. Otherwise, it will not be valid.

Advanced SMSF Training Day

Registrations are now open for this year’s Advanced SMSF Training Day. Note the early bird rate finishes on 31 July 2009.

Please go to our website (www.heffron.com.au) to download the invitation or contact us for further information.

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