# SUPERANNUATION
## MONEY MAKING STRATEGIES

2020–2021

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# SUPERANNUATION STRATEGIES and TIPS

## New Opportunities for Older Australians!

In the 2019-20 Budget, the Australian Government announced that Australians over 65 years of age would have greater flexibility in making voluntary superannuation contributions These changes come on stream from 1 July 2020.

1. **RELAXING THE WORK TEST**

From 1 July the Government has removed the 'work test' for individuals aged 65 and 66. This aligns the work test with eligibility for the Age Pension which will increase to 67 from 1 July 2023. The change will enable an additional estimated 55,000 individuals to make concessional and non-concessional (after tax) voluntary contributions even if they are not working. The work test – which requires older Australians to work a minimum 40 hours over a 30-day period in order to make a voluntary superannuation contribution – will remain in place for those aged 67-74.

The suspension of the work test, will enable individuals aged 65 and 66 who are no longer working, or only working a few hours per week, to contribute to superannuation and enjoy the tax concessions that it provides. Taxpayers in this age bracket will also have automatically met a condition of release (i.e. turning 65), and therefore will be able to withdraw these contributions as and when they please.

2. **ENABLING MORE SPOUSE CONTRIBUTIONS**

From 1 July 2020, the Government has increased the age limit for spouse contributions from 69 to 74 years. Before this date, individuals aged 70 and over could not receive contributions made by another person on their behalf. Therefore, individuals up to and including age 74 will be able to receive spouse contributions, with those aged 65 and 66 no longer needing to meet the work test. As has been the case in the past for recipient spouses aged between 65 and 70, a recipient spouse aged 67 to 74 will need to satisfy the work test in order for the super fund to accept the contribution. Giving taxpayers with greater ability to contribute on behalf of their spouse, can be particularly advantageous where the recipient spouse is significantly older, or has a low income, or where the contributing spouse is unable to contribute personally.

3. **EXTENDING ELIGIBILITY FOR THE BRING-FORWARD CAP**

In a measure designed to complement the above removal of the work test, from 1 July 2020, access to the bring-forward cap has been extended from taxpayers aged less than 65 years of age to those aged 65 and 66. This will enable these individuals to make up to three years' worth of non-concessional contributions, normally capped at $100,000 per year, to superannuation in a single year (but no more than $300,000 over the three-year total period). This will give older people increased flexibility to save for retirement. Individuals in this age bracket will be able to contribute lump sums that they have on hand into superannuation more quickly; bringing forward the accompanying tax concessions available in the superannuation environment – rather than a maximum of $100,000 per year under the current rules that apply. This change may result in significant front-end tax savings.

## SG Amnesty! Act Now!

On 6 March 2020, the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 received royal assent, and is now law. The bill contains the superannuation guarantee (SG) amnesty which provides tax incentives for non-compliant employers to pay SG that is owing to employees for prior quarters. The amnesty has been introduced to address the SG gap or SG shortfall (the difference between the theoretical amount payable by employers to be fully compliant with their SG obligations, and the amount they have actually paid) which is estimated to be $2.85 billion annually. The amnesty was originally announced in May 2018 to apply from 24 May 2018 until 23 May 2019, however the legislation to establish the amnesty did not pass the parliament before the May 2019 election. Nonetheless, in anticipation of that original bill being passed, more than 7,000 employers came forward and disclosed and paid prior year SG shortfalls. Treasury estimates that thousands more will join them now that the amnesty is law.

**BENEFITS**

Prior to the amnesty, if an employer had an SG shortfall for a prior quarter (i.e. they had not paid SG in full and on time), then they were liable for:

- an administration fee of $20 per employee for which there has been a shortfall
- the shortfall
- 10% interest
- part 7 penalties of up to 200% of the SG Charge at the discretion of the Commissioner. For example, if an employer had an SG charge liability of $15,000, the part 7 penalty may be an additional $30,000.

Under the amnesty, the administration fee, and part 7 penalties will not be imposed (the Commissioner's discretion to level part 7 penalties will therefore be quashed). Additionally, all catch-up payments that an employer makes during the 12-month amnesty period will be tax deductible. By contrast, before the amnesty was introduced, SG charge paid to the ATO was not deductible, and late contributions that an employer made to an employee's superannuation fund and elected to offset against their SG charge liability were also not deductible.

Note that only amounts paid by 6 September 2020 (the end of the amnesty period) will be deductible.

**QUALIFICATION**

To qualify for the amnesty, a disclosure of an SG amount owing must be made during the amnesty period. The amnesty period is the period that started on 24 May 2018 and 6 September 2020 (6 months after royal assent). However, as that end date falls on a weekend, the ATO says employers have until 11:59PM on 7 September 2020 to disclose. Any disclosures made during this period may qualify. Disclosures are made in this period by downloading the approved 'SG amnesty form' on the ATO website (one form per every quarter in which there is a disclosure of a shortfall), and paying the amount.

A disclosure will not qualify if, before the disclosure, the ATO informed the employer that the ATO is already examining the employer's SG compliance for that quarter. Therefore, the disclosure must be purely voluntary – not as a result of ATO scrutiny.

Therefore, if an employer has already lodged an SG Charge Statement (and in that Statement disclosed particular SG Shortfalls), then those particular shortfalls are not eligible for the amnesty even if the amount of the shortfall has yet to be paid. Likewise, shortfalls that the ATO uncovers during current, future, or past audits of the employer are not eligible

for the amnesty.

Prior period shortfalls that are eligible for the amnesty span almost 26 years – that is, from 1 July 1992 when SG was introduced, to the quarter ending 31 March 2018. The disclosed shortfall must relate to those periods.

**TAKING UP THE OFFER**

To apply for the amnesty, employers must download the approved 'SG amnesty form' (one form per quarter) from the ATO website and save the form as an .xls file type. Send the form by secure mail via either the Business Portal or Online services for agents (using the mail function, select 'new message', type 'superannuation' as the topic, type 'lodge SG amnesty' as the subject, then attach the form). Employers will then be informed by the ATO within 14 days of whether they are eligible for the amnesty. If they are, they can pay the full amount owing to the ATO, or set up a payment plan.

Importantly, paying the amounts direct to the ATO (rather than the employee's super fund) caters for employers who cannot pay the full amount upfront, or where the amount is owed to a past employee and the employer cannot ascertain their current superannuation fund details.

If an employer has paid SGC direct to the employee's superannuation, this should consist of the SG shortfall and interest. These employers must then claim a late payment offset (offsetting the amounts of SGC otherwise owed). To claim the offset, employers can submit a completed spreadsheet version of the SGC statement (available on the ATO website) via the Business Portal or Online services for agents by both:

- attaching the spreadsheet to a new portal message, and
- selecting the 'superannuation' and 'lodge SGC statement' as the topic and subject.

Note that if an employer has lodged the 'superannuation amnesty form' with the ATO, then they must pay the ATO (don't pay the SCG owing to the employee's super fund or a clearing house).

**ALREADY DISCLOSED?**

If an employer has already disclosed unpaid SG (i.e. the disclosure was made between 24 May 2018 and 6 March 2020) in anticipation of the amnesty passing into law, they do not need to lodge again or apply on the amnesty form. The ATO will review this prior disclosure and determine and notify eligibility. If these employers are yet to actually pay, then they should do so or set up a payment plan with the ATO.

**TAKE-HOME MESSAGE**

The superannuation guarantee amnesty provides real incentives to come forward and disclose and pay prior period SG shortfalls. Irrespective of the amnesty however, all employers should be encouraged to get their SG affairs in order. Moving forward, with the advent of Single Touch Payroll and super funds now being required to report more regularly to the ATO, SG non-compliance will be more easily and more quickly detected. Where future shortfalls are detected, this may prompt the ATO to audit prior year SG compliance by that employer to determine whether there were any shortfalls. Those shortfalls would then not be eligible for the amnesty concessions

## COVID-19 Super Access

Eligible citizens and permanent residents of Australia or New Zealand who are financially impacted by COVID-19 can apply for up to $10,000 in 2019/2020 and up to a further $10,000 in 2020/2021.

Eligible temporary residents are permitted to access their superannuation in 2019/2020 only where they fall into one of the following categories:

- They hold a student visa that they have held for 12 months or more and they are unable to meet immediate living expenses
- They are a temporary skilled work visa holder and still employed but unable to meet immediate living expenses
- They are a temporary resident visa holder (excluding student or skilled worker visas) and they cannot meet immediate living expenses.

**ELIGIBILITY**

Australian citizens and permanent residents of Australia or New Zealand, can take advantage of this measure where they meet any of the following criteria:

- You are unemployed (not just unemployed as a result of COVID-19)
- You are eligible to receive one of the following:
  - o Jobseeker payment
  - o Youth allowance for jobseekers (unless you are undertaking full-time study or are a new apprentice
  - o Parenting payment (which includes the single and partnered payments)
  - o Special benefit
  - o Farm household allowance
- On or after 1 January 2020 either:
  - o You were made redundant
  - o Your working hours were reduced by 20% or more (including zero)
  - o You were only a sole trader (not an employee also) and your business was suspended or there was a reduction in turnover of 20% or more.

Eligibility is self-assessed by each individual applicant. Just like tax returns, there is no need to attach any evidence to support your application. However, you should keep any evidence on file in the event that your eligibility is later questioned by the ATO. While in most cases eligibility will be self-evident (e.g. such as where you are receiving JobSeeker) criteria such as a sole trader establishing a 20% downturn will require detailed proof. Penalties apply should it later be determined that you are ineligible.

**APPLYING**

Applications should be submitted online through myGov:

- Until 30 June 2020 for the 2019/2020 financial year, and
- Between 1 July and 24 September for the 2020/2021 financial year.

Before submitting your application, it is recomended that you double-check that the following information is correct:

- Your contact details
- The amount that you request (check your current balance through your super fund's online portal to ensure your request is based on the latest available account balance)
- Your bank account details into which the withdrawals will be paid, noting that only Australian bank accounts are accepted.

## All Individuals – Contribute to Super!

Contributing to superannuation remains extremely popular! Contributions in the December quarter 2019 (the latest available statistics) were $119.1 billion, up 13% from $112.3 billion in the same quarter a year earlier (more than a 6% increase). There are a number of reasons for this however,

aside from providing for one's retirement, the chief reason may be the concessional tax environment.

**CONCESSIONAL TAX ON EARNNIGS**

For most individuals, earnings made inside superannuation will be taxed less than earnings held outside superannuation. Superannuation earnings (such as interest, dividends, rent etc.) are taxed at 15% when your account is in accumulation mode (i.e. not in pension mode). These earnings are tax-free when your account is in pension mode (up to a $1.6 million account balance). By contrast, investment earnings on assets (such as shares, property, term deposits etc.) held outside of superannuation are taxed at your marginal tax rate as follows:

| Taxable Income | 2019/2020 Tax Rate (not including Medicare Levy) |
|---|---|
| 0 – 18, 200 | Nil |
| 18, 201 – 37, 000 | 19 cents |
| 37, 001 – 90, 000 | 32.5 cents (plus 3,572) |
| 90, 001 – 180, 000 | 37 cents (plus 20,797) |
| 180, 001 | 45 cents (plus 54,097) |

Note that your tax liability outside of superannuation may be further reduced by tax offsets such as those for low-income earners and pensioners.

**CONCESSIONAL TAXATION OF CAPITAL GAINS**

Capital gains made by superannuation funds are likewise taxed at 15% when your account is in accumulation mode. Where a CGT assets supports a pension, any capital gain made when those assets are sold is tax-free. On the other hand, if the same CGT asset was held by one of the following entities it would be taxed as follows:

- **Individual** – marginal tax rate (see earlier)
- **Company** – 27.5% (or 30% for a company with a turnover of more than $50 million)
- **Trust** – marginal tax rate of individual beneficiary.

Any capital gain made by your superannuation fund is reduced to 10% (a 33% discount) where that asset has been held for 12 months or more. Although this is a lesser discount than the 50% discount available to trusts and individuals, this is negated by the base CGT superannuation taxation rate of 15%. Companies do not receive this CGT discount.

Of course, the concessional taxation rates although significant, are just one factor you should consider before you make a voluntary contribution to superannuation. Others include cashflow, the potential for future adverse rule changes, and a number of other issues. Speak to your Accountant and Financial Advisor before making a contribution.

**TAX TIP**

Regarding cash-flow problems, if you wish to contribute to superannuation but do not have the cash on hand, you may wish to consider transferring any listed shares you own, or 'Business Real Property' that you own.by way of an in-specie contribution. Talk to your advisor about this option.

## Individuals Under 75 – Deductions for After-Tax Contributions

If you are unable to salary sacrifice superannuation – perhaps your employer does not allow it, or you are not an employee – you can still access the same taxation benefits, and simultaneously provide for your retirement. This includes people who derive their income from:

- Salary and wages
- Self-employment
- Investments (such as interest, dividends, rent, capital gains)
- Government pensions and allowances
- Superannuation
- Partnership or trust distributions
- Foreign source.

Since 1 July 2017, most individuals up to age 75 can claim an income tax deduction for personal after-tax superannuation contributions. Before this date, you could only claim a deduction for your personal contributions where less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee – this was known as the '10% Rule'. This rule prevented most employees from claiming a tax deduction for this type of contribution. This rule no longer exists.

***EXAMPLE***

Cameron is a teacher who in 2019/2020 earned $87, 000, and $250 of deductions. Keen to provide for his retirement and optimise his tax position, he makes an after-tax contribution to superannuation of $16,000.

| **Tax Position – No Contribution** | **$** |
|---|---|
| Gross salary | 87, 000 |
| Salary sacrifice amount | 0 |
| Other Deductions | 250 |
| Annual taxable income | **86, 750** |
| Tax payable | 19, 740 |
| Medicare levy (2%) | 1, 735 |
| Low and Middle Income Tax Offset | 1,080 |
| Total tax | **20,395** |
| Gross disposable annual income | 66, 354 |
| Salary sacrificed superannuation | 0 |
| Total after-tax package | **66, 354** |

| **Tax Position – Salary Sacrifice Contribution** | **$** |
|---|---|
| Gross salary | 87, 000 |
| Salary sacrifice amount | 0 |
| Other deductions | 250 |
| Super contribution deductions | 16,000 |
| Annual taxable income | **70,750** |
| Tax payable | 14,540 |
| Medicare levy (2%) | 1, 415 |
| Low and Middle Income Tax Offset | 1,080 |
| Total tax | **14,875** |
| Gross disposable annual income | 55,874 |
| Superannuation – 15% Contributions Tax | 2, 400 |
| **Total after-tax package** | **53, 474** |

By entering into this arrangement, Cameron's income tax liability has been reduced by 5,520 (or $3, 120 after taking into account the 15% superannuation contributions tax).

Assume Cameron salary sacrificed the $16,000 instead. (employers are not required to). In that case, Cameron would enjoy exactly the same tax savings as he enjoyed by making an after-tax contribution. By salary sacrificing however, he would enjoy the savings progressively in real time throughout the year – rather than having to wait until year-end to claim his deduction in his tax return.

To claim a deduction, the following conditions must be satisfied:

- **Age** – All individuals under the age of 65 are eligible. Those aged 67 to 74 meet the superannuation 'work test' (work for at least 40 hours in a period of not more than 30 consecutive days in the financial year in which you plan to make the contribution). For those aged 75, the contribution must be made no later than 28 days after the end of the month in which you turn 75. Older taxpayers are ineligible.
- **Minors** – If the individual is under 18 at the end of the income year in which the contribution is made, they must derive income in that year from being an employee or carrying on a business.
- **Complying Fund** – The contribution must be made to a complying superannuation fund.
- **Notice Requirements** – To claim the deduction you must provide your superannuation fund with a *Notice of intention to claim a deduction form* before you lodge your tax return in respect of that financial year.

Having met these conditions, you can claim the full amount of the contribution (up to the concessional contribution caps – see later) in your personal tax return at Label D12.

### TAX TIP – Earning Less Than the Tax-Free Threshold?

From a tax perspective, no tax benefit will be enjoyed if you earned less than $20, 542 as those earning less than this amount do not pay tax anyway (after factoring in the low-income tax offset).

### TAX TIP – Losses Not Allowed

You generally make a tax loss when the total deductions you can claim for an income year exceed the total of your assessable income and net exempt income for the year. Individuals can generally carry forward a tax loss indefinitely, and use it to offset income in a future year. Carried-forward tax losses are offset first against any net exempt income and only then against assessable income.

However, personal superannuation contributions cannot be claimed as deductions where they would give rise to a tax loss. Therefore, if your deductions already exceed your assessable income, the superannuation deduction cannot be claimed and therefore cannot increase or create a tax loss which would normally be carried forward to future years!

### TAX TIP – Larger Deduction Using Carry-Forward Cap

Although deductions are generally limited to your non-concessional cap of $25, 000 per year, where you have an unused carry-forward concessional contribution cap (under the new law from 1 July 2018 – see later), you claim an even larger deduction for your concessional contributions.

For example, if you had an unused concessional carry-forward cap of $20, 000 in 2018/2019, and you had spare cash on hand, you could claim a deduction of up to $45, 000 for a concessional contribution in 2019/2020 (the 2018/2019 unused cap amount plus the 2019/2020 $25 000 cap). This would significantly reduce your tax liability for that year. If we use the same taxable income level of the previous example ($86,750), and assume the same tax rates, a tax deduction of $45 000 would result in a saving of $15,430 (compared to not making a contribution).

## Individuals Under 75 – Know Your Concessional Cap

Having a working knowledge of your concessional superannuation cap and which contributions counts towards this cap is important for individuals aged under 75 for at least two reasons:

- Knowing the maximum amount you can salary sacrifice
- Knowing how much you can contribute as an after-tax contribution and claim a deduction for
- Knowing how much you can transfer from a foreign superannuation fund to an Australian superannuation fund.

If you exceed the cap, you can be charged Excess Contribution Charge and have the excess amounts included in your assessable income (see later). For 2019/2020 and 2020/2021, the concessional contributions cap is $25, 000 for all taxpayers. The cap is per taxpayer, per year (not per each of your superannuation funds if you have more than one). The $25, 000 cap is indexed in line with Average Weekly Ordinary Time Earnings in increments of $2, 500.

Concessional contributions include:

- Salary sacrificed contributions
- Superannuation Guarantee contributions from your employer (the compulsory 9.5%)
- Other compulsory employer contributions (such as extra contributions required under an Award or other employment agreement)
- Other amounts paid by your employer from your pre-tax income, such as administration fees and insurance premiums
- Personal contributions claimed as a tax deduction (see earlier), and
- Certain amounts transferred from a foreign superannuation fund to an Australian superannuation fund (this won't affect most taxpayers).

These amounts must be added up for the purposes of the $25,000 cap. If you earned $80 000 as an employee for example, your employer would contribute $7,600 in Superannuation Guarantee. This would mean that the maximum amount you could sacrifice without exceeding the cap would be $17,400 ($25, 000 - $7, 600).

### EXCEEDING THE CAP

Knowing your concessional cap (and the amounts that are counted towards it) is essential if you wish to avoid the consequences of exceeding the cap which are as follows:

- Have the excess amount included in your assessable income in your tax return (less a 15% tax offset to take account of the tax paid on the contribution by your superannuation fund). You will then be required to pay income tax on the excess amount at your marginal tax rate
- Being charged Excess Contribution Charge on the increase in income tax payable. This is effectively an interest charge to recognise the delay in paying income tax on time.

To pay the extra income tax owing, you can choose to withdraw up to 85% of your excess concessional contribution. If you withdraw less than 85%, this excess amount you have not withdrawn, then counts towards your non-concessional contributions cap.

## Individuals under 75 – Increase Your Concessional Cap

Although the concessional contributions cap is set at $25, 000, from 1 July 2018 any unused amount can be carried forward for up to five years – allowing you to channel more money into the concessionally taxed superannuation environment, and potentially allowing you to claim a larger deduction by making an after-tax contribution. Before this change to the law, the concessional operated on a year-by-year basis – any unused amounts from a previous year could not be carried forward and used in subsequent years. You either used it, or you would lose it! Practically speaking, the first year that you can take advantage of this reform is this financial year (2019/2020) for any unused 2018/2019 cap) and, of course, subsequent years.

### *EXAMPLE – Carry-Forward Concessional Cap*

Catelyn is a lawyer who earns $95, 000. As a result her employer would normally contribute $9, 025 in Superannuation Guarantee on her behalf. From 1 July 2018, she was on unpaid Maternity Leave, and returned to work exactly 12 months later.

Under the old rules, unable to carry-forward her unused concessional caps from previous years, in 2019/2020, Catelyn's concessional cap would be $25 000 and not take into account her unused 2018/2019 cap. However, under the new rules, Catelyn's cap in 2019/2020 would be $40 975 ($25 000 unused carry-forward amount from 2018/2019 + $15 975 standard $25, 000 cap in 2019/2020).

Assuming she made no contribution while on Maternity Leave in 2019/2020, under the new rules Catelyn would be able to make a personal contribution of up to $40 975 in 2019/2020 (the unused $25 000 cap + $15 975 of the unused 2019/2020 cap, taking into account the $9 025 in Superannuation Guarantee paid by her employer). This would give her extra capacity to catch-up on her superannuation contributions that were not made during her time off work – either by salary sacrificing, or making an after-tax contribution for which she could claim a tax deduction. The maximum amount of the tax deduction allowed in 2019/2020 would also increase by $25 000 (being the unused cap amount from the previous year.

The ability to carry forward the unused portion of superannuation concessional contribution cap may come in particularly handy for:

- Those who are returning to the workforce, such as parents who have taken time out to look after new-born children
- Those whose income has increased from prior years, such as individuals who now work full-time or who have been promoted
- Those who have received a one-off windfall gain.

## Individuals Under 75 – Know Your Non-Concessional Cap

If you exceed your non-concessional contributions cap you may be taxed at the top marginal tax rate on the excess. The annual cap for 2019/2020 and 2020/2021 is $100, 000. While the annual cap stands at $100, 000, there is also a bring-forward cap that allows you to contribute larger amounts annually (see later for this strategy). Contributions counted towards the non-concessional cap include:

- Contributions that your employer makes from your after-tax income
- Contributions that you make from your after-tax income that you do not claim a deduction for (as per earlier, $25 000 is the general cap for claiming a deduction)
- Contributions your spouse makes to your superannuation fund
- Excess concessional contributions you have not elected to release from your superannuation fund (see earlier)
- Contributions which exceed your CGT Cap Amount (this only relates to business owners – see later)
- Retirement benefits you withdraw from superannuation and later recontribute (under a re-contributions strategy, and
- Most transfers from foreign superannuation funds, but excluding amounts included in your fund's assessable income.

### TRANSFER BALANCE CAP

However, your non-concessional contributions cap will be nil for the financial year where you have a 'Total Superannuation Balance' of greater than or equal to the General Transfer Balance Cap ($1.6 million in 2019/2020 and 2020/2021) at 30 June in the previous financial year. In that case, if you make a non-concessional contribution in that year, it will constitute excess non-concessional contributions. Excess non-concessional contributions can be withdrawn from your superannuation fund. If you elect not to withdraw, they will be taxed at the top marginal rate of tax (45%) in your superannuation fund.

Returning to the $1.6 million cap (also known as the General Transfer Balance Cap), this is made up of the balance of all of your superannuation and retirement savings accounts. This is reduced by the sum of any personal injury structured settlement amounts contributed to superannuation. The cap applies to each individual. The ATO can provide you with your current 'Total Superannuation Balance' when you contact them.

## Individuals Under 67 – Bring Forward Your Non-Concessional Cap

Set at just $100, 000 (down from $180 000 per year – which was the cap before July 2017) the standard non-concessional cap can be quite restrictive for individuals who wish transfer large amounts into superannuation as quickly as possible in order to take advantage of the concessional tax environment. The good news is that individuals aged under 67 can achieve this aim by accessing the bring-forward cap. This cap allows you to make non-concessional contributions in a single year up to the value of three times your annual cap (therefore up to $300, 000). However, in utilizing the bring-forward cap by making non-concessional contributions in excess of $100, 000, you will restrict your ability to make non-concessional contributions over the following two financial years as illustrated in the following table:

**Practical Guide To The Bring-Forward Option for 2019/2020 and 2020/2021**

| | Maximum Annual Contribution (Scenario 1) | Maximum Annual Contribution (Scenario 2) | Maximum Annual Contribution (Scenario 3) |
|---|---|---|---|
| Year 1 | Less than $100,000… 3-year averaging not triggered this year | Between $100,001 and $299,999… 3-year averaging is triggered this year | $300,000 contribution… Entire 3-year cap used this year |

**Practical Guide To The Bring-Forward Option for 2019/2020 and 2020/2021**

| | Maximum Annual Contribution (Scenario 1) | Maximum Annual Contribution (Scenario 2) | Maximum Annual Contribution (Scenario 3) |
|---|---|---|---|
| Year 2 | Cap Resets. Therefore…Up to $100,000 per year or $300,000 over the next three year | Up to the difference between $300, 000 and year 1 contributions – over the next two years | No further contributions can be made over the next two years |
| Year 3 | | | |
| Year 4 | | Cap Resets. Therefore…Up to $100, 000 per year or $300,000 over the next three years | Cap Resets. Therefore…Up to $100,000 per year or $300,000 over the next three years |

However, the $1.6 million Transfer Balance Cap may restrict your ability to access the bring-forward strategy. To access all or part of the non-concessional bring-forward cap you must:

- Be under 67 years of age for at least one day during the year in which the contribution is made, and
- Have a total superannuation balance of less than $1.5 million in the financial year prior to making the contribution, as follows:

| TOTAL SUPERANNUATION BALANCE ON 30 JUNE IN YEAR PRIOR TO MAKING CONTRIBUTION | MAXIMUM NON-CONCESSIONAL CONTRIBUTIONS CAP FOR THE YEAR IN WHICH THE CONTRIBUTION IS MADE | BRING-FORWARD PERIOD |
|---|---|---|
| Less than $1.4 million | $300 000 | 3 years |
| $1.4 million to less than $1.5 million | $200 000 | 2 years |
| $1.5 million to less than $1.6 million | $100 000 | No bring-forward period, general cap applies |
| $1.6 million | Nil | N/A |

Although you cannot claim an income tax deduction for non-concessional contributions, the three-year bring-forward cap allows you to contribute large amounts into the concessionally taxed superannuation environment as quickly as possible. This may come in handy where:

- You have received an inheritance
- You have sold 'big-ticket' assets (e.g. a rental property)
- You are a business owner and you wish to make an in-specie contribution of business real property (see later).

### *EXAMPLE – Bring-Forward Cap*

Husband and wife Jack and Amy are 60 and 64 years of age respectively. They jointly own a residential investment property which they sold in 2020/2021. Keen to provide for their retirement and access the superannuation concessional tax rates, they wish to contribute the profit of $520,000 from the sale into superannuation.

Under the standard $100,000 cap, it would take Jack and Amy until at least 2022/2023 to contribute the entire profit to superannuation. However, as they are under 65 and provided their total superannuation balance is under $1.4 million each (see earlier table) they can utilise the bring-forward cap and contribute the entire profit ($260,000 each) to superannuation in 2020/2021 and therefore enjoy the concessional superannuation tax rates earlier than under the standard $100,000 cap.

Having triggered the bring-forward cap, Jack and Amy are unable to make any further non-concessional contributions in 2020/2021 and 2021/2022, and are only permitted to make a $40,000 contribution in 2022/2023 (see "Scenario 2' in earlier table). In 2023/2024, their bring-forward cap resets at $300,000 provided their total superannuation balance is less than $1.4 million.

## Over 67-75s – Ensure You Meet the Work Test

If you are 67 years or over, but under 75, to make a superannuation contribution you must satisfy the 'work test'. To satisfy the 'work test', you must be gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in the income year that you wish to make a contribution. 'Gainfully employed" is broadly defined and includes 'being employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment'. (It does not include voluntary work but may include part-time work provided the 40 hours in a period of 30 consecutive days requirement days is met).

To meet this requirement and make a contribution to superannuation, you may wish to increase the number of hours you work over a 30-day period. To be clear, the Work Test only needs to be met once during the financial year in which you make the contribution (that is, once over a 30-day period). Therefore, if you so choose, there is no need to work for even one day for the remainder of the year.

### TAX TIP – Bring-Forward Contribution

By taking advantage of the $300,000 bring-forward non-concessional cap and making a contribution in the year you are retiring, it allows those who 64 and 65, to effectively circumvent the 'work test' in the subsequent one or two years.

Following on from the previous example, if Amy retired in 2019/2020 (aged 65), she would not need to meet the Work Test in 2020/2021 or 2020/2021 – despite the majority of the $260 000 contribution relating to those two years.

## First-Home Buyers – Super Saver Scheme

Accelerate saving for your first-home by participating in the Government's First Home Super Saver scheme! The scheme is aimed at helping individuals to more quickly save for their first-home by utilising the concessional superannuation tax rates.

Under the scheme, first home buyers who make voluntary superannuation contributions can then withdraw those contributions (up to certain limits) and an amount of associated earnings to put towards purchasing their first home. Concessional tax treatment will then apply to amounts that are withdrawn under the scheme.

### ELIGIBLE TAXPAYERS

To be eligible for the scheme you must:

- Be 18 years or older
- Have not used the scheme previously, and
- Have never held a freehold interest in real property in Australia, a company title interest, or a long-term lease over land (being renewals or extensions that are for at least 50 years and the terms of which apply to the lessee under substantially the same terms under which the lessor owned or held a lease of the land). This ensures that individuals who have an interest in a leasehold arrangement that is broadly equivalent to ownership will not be able to use the scheme.

This third criterion means that if you have owned an investment property, commercial property or vacant land previously you would not be eligible to use the scheme. These individuals may be able to leverage their existing property to help buy a home. Note that if you are eligible, you will not be disqualified on the basis that the person who you may be buying the home with (e.g. spouse) is not eligible. Eligibility is assessed on an individual basis. If you are both eligible, then you can both access the scheme, and then pool your withdrawn savings together to buy your first home.

### ELIGIBLE CONTRIBUTIONS

The scheme applies to voluntary contributions that are made into superannuation on or after 1 July 2017. Such contributions can be withdrawn under the scheme from 1 July 2018. Generally, only the following contributions are eligible:

- Personal contributions for which you are claiming a tax deduction
- Personal contributions for which are not claiming a tax deduction, and
- Salary sacrifice contributions.

Mandated employer contributions, such as Superannuation Guarantee contributions, contributions to defined benefit interests and constitutionally protected funds, and contributions made prior to 1 July 2017 cannot be accessed. Additionally, any employer contributions or member contributions that are required to be made due to Commonwealth or State or Territory laws or due to the rules of a superannuation fund are not eligible to be released, to the extent that those contributions are required to be made.

There are no separate contribution caps under the scheme. Therefore, any voluntary contributions count towards your standard superannuation caps outlined earlier.

### RELEASE

Eligible contributions (plus associated earnings) made from 1 July 2017 are accessible. Contributions can be accessed on a once-off basis and are limited to $15, 000 per year and $30, 000 in total, plus associated earnings in respect of contributions. To take account of the tax payable by your superannuation fund, only 85% of the contribution can be released. To initiate the release process, individuals must request a *First Home Saver Determination* from the ATO. In making a Determination, the ATO will identify a 'maximum release amount' based on your past contributions and associated earnings. Individuals who receive a Determination can then request that the ATO issue a release authority which you can then provide to your superannuation fund in order for them to release the amounts. When released:

- The ATO will include the withdrawn amount in your assessable income for the year. This will be subject to tax at your marginal tax rate (plus Medicare levy), less a 30% tax offset.
- The ATO must withhold an amount to assist in meeting the increased tax burden from the released amount. If they are unable to make an estimate of your assessable income for the year, they will withhold a maximum of 17% for the year.

### PURCHASE OF PROPERTY

Once released, individuals will have 12 months (or 24 months if the ATO grants an extension) to enter into a contract to purchase or construct residential property. You must also move into the property and live in it for at least six of the first 12 months. Alternatively, you can recontribute the amount (less any tax withheld) to superannuation as a non-concessional contribution whereby no tax deduction will be allowed. The re-contribution also needs to be made within 12 months. Failure to take either of these courses of action will result in tax of 20% being applied to your withdrawal.

### THE ATTRACTION?

What makes the scheme attractive is the concessional tax treatment. The 30% offset means that earnings made on your contributions are taxed concessionally, and this will largely be paid by your superannuation fund (not you personally). Additionally, when contributing you will likely be entitled to a tax deduction for the amount of your contribution. Or, if you salary sacrifice the amount, the contribution is not subject to PAYG withholding tax by your employer (unlike the remainder of your salary).

By comparison, if the money was invested outside of superannuation, earnings would be taxed at your marginal tax rate which can be as high as 47% (icluding Medicare Levy). In his speech announcing this measure, the Treasurer said that most individuals who use the scheme will accelerate their savings by 30%. He cited an example of an individual who earns $80, 000 and makes additional superannuation contributions of $15, 000 each year, would have a total of $25, 603 after two years – making them almost $5,300 better off than under the highest interest-earning savings account of 3.05% then available.

The Government has designed a calculator for you to estimate the potential benefit of the scheme for you – depending on your income, and the amount you can contribute to superannuation. The calculator is available at **https://www.csc.gov.au/assets/fhssscalculator/index.html#/welcome**

## 65 and Over Selling Your Home – Extra Contributions to Superannuation

The Superannuation "Downsizer" legislation allows older Australians to contribute extra to superannuation from the money left over when selling the family home, or the former family home.

The scheme allows 'downsizer contributions' to be made in respect of a person who is aged 65 or over from the proceeds of the sale of a dwelling that was their main residence at some stage. Prior to this measure being enacted, older Australians were restricted in making significant 'downsizer contributions' because of the various superannuation rules and in particular the superannuation contribution caps which were significantly reduced from July 2017. As noted earlier, over 67s also do not have access to the bring-forward non-concessional cap. Another restriction for over 67s is the so-called superannuation "Work Test" (see earlier). The Downsizer scheme is exempt from these restrictions and caps, and also from the $1.6 million Transfer Balance Cap.

### KEY FEATURES

The key features of the Downsizer scheme are as follows:

- The individual making the contribution must be aged 65 or over
- The contribution must be from the proceeds of the sale of an eligible Australian dwelling
- The dwelling must have been owned for at least 10 years
- The dwelling in whole or in part must have qualified for the Main Residence exemption from CGT
- The contribution to superannuation must be made within 90 days of the disposal of the dwelling
- The contribution must be no more than the lesser of $300,000 or the proceeds from the sale
- The individual notify their superannuation fund in the approved form at the time the contribution is made that they wish to treat it as s Downsizer contribution
- The individual must not have previously made a Downsizer contribution in respect of an earlier main residence.

Although referred to as the "downsizing" scheme, there is actually no requirement to purchase a new, smaller home after having sold your dwelling. You can move into another dwelling that you may own, or indeed, purchase a bigger, more expensive home to move into, or move into a nursing home or move in with a relative.

### PROCEEDS FROM DWELLING

Downsizer contributions can only be made from the proceeds of eligible dwellings. For the purposes of the scheme, the dwelling must be located in Australia and must not be a houseboat, caravan, or other mobile home. Although an ownership interest in the dwelling is essential in order to make an eligible contribution, this ownership interest can be held by you or your spouse; whether that ownership interest was held solely, jointly or as tenants in common. The following example, adapted from the Explanatory Memorandum to the legislation, illustrates this point:

### EXAMPLE

Justin owns an income producing farm with a total of 200 hectares of land which he has owned for 15 years. Only Justin's name is on the title. Justin and his wife, Caitlyn have lived in the residence on the farm for the past 15 years. Justin sells the farm including the main residence for $3 million dollars. Under the existing CGT rules, Justin is entitled to disregard the capital gain on the main residence and the adjacent land (up to 2 hectares) which is not used to produce income.

As Justin qualifies for at least a partial main residence exemption on the sale of the property, and his wife Caitlyn would have qualified had her name been on the title deed, they are entitled to make a downsizer contribution of up to $300,000 each into their superannuation as this is less than the sale price of the property.

There is no need to apportion the sale price of the property based on which part of the property was eligible for the main residence exemption and which part was not for the purposes of working out the maximum amount Justin and Caitlyn can contribute to their superannuation accounts.

### TEN YEAR OWNERSHIP INTEREST

An individual and and their spouse, or an individual or their spouse, must have owned the dwelling for 10 years or more just prior to disposing of it. This timeframe is calculated from the date of settlement of the contract to purchase through to the settlement date of the later contract. Failure to meet this timing requirement – even by one day – renders you ineligible for the scheme. Therefore, if you are nearing the 10-year ownership mark and you are wishing to use the scheme to contribute to superannuation, they should consider delaying the sale, or seeking an extended settlement where possible.

Interestingly, in the quite common case where a vacant block of land is purchased and the family home is then built, the '10-year clock' commences from the settlement date of the block of land. Likewise, if an individual's dwelling has been lost or destroyed or they have knocked it down, and another replacement dwelling has been built, the '10- year clock' will continue to tick throughout the time that there was no dwelling.

In certain cases, there may have been a change in ownership between two spouses over the 10-year period that preceded the sale of dwelling. Provided that either of the spouses held an ownership interest in the dwelling at all times during the period, downsizer contributions can be made in respect of the person who held the ownership interest just before disposal and in respect of another person who is their spouse at that time.

This may occur, for example, where a spouse who held the ownership dies. In such case, the surviving spouse can count the period of ownership of their deceased spouse (including the period the dwelling is held by the trustee of the deceased estate) towards the 10-year ownership test.

### NOTICE REQUIREMENTS

When you choose to make a contribution under the scheme, you must complete the *Downsizer Contribution Form*. This form must be provided to your superannuation fund when making the contribution. This will alert your fund to the fact that the 'Work Test', the 75-year old age limit, and the $1.6 million cap are irrelevant in determining whether to accept your contribution.

### TIP

If your spouse is not eligible to make a downsizer contribution (for example, they are under 65 years of age, or were not eligible for the main residence exemption) they can still of course use the sale proceeds to make a contribution, or you can use the sale proceeds to make a contribution on their behalf. Such a contribution is subject to the non-concessional contribution caps (see earlier), and also the other contribution restrictions that do not apply to the downsizer scheme, including the $1.6 million Total Superannuation Balance cap (see earlier). If an individual contributes on behalf of their spouse, they may also be eligible for a spouse tax offset of up to $540 if the recipient spouse earns under $40,000.

### DOWNSIDES

If contemplating taking advantage of this scheme, be mindful of the following:

- **Age Pension Asset Test** – for those in receipt of the Age Pension, while the family home is not taken into account in determining whether the quantum of your assets exclude you from qualifying the Age Pension or full Age Pension, superannuation savings are taken into account once you reach Age Pension Age.
- **Selling your home and buying a new, smaller home** (though, as noted, buying another home is not compulsory under the scheme) comes with a range of costs including Stamp Duty, legals, Agent's commission etc. Therefore, the scheme should perhaps be viewed as an additional incentive to sell rather than selling solely to take advantage of the scheme. Folks moving into a nursing home may find the scheme particularly appealing.

## Small Business Owners – Extra Capacity to Contribute!

Business owners wishing to contribute the proceeds of the sale of their business or part of their business should consider the *Lifetime CGT Cap*. The advantages of this cap are:

- It is exempt from the $1.6 million 'Total Superannuation Balance' contribution restriction, and
- It is in addition to the recently-reduced $100,000 non-concessional contribution cap (and the $300,000 bring-forward cap)
- It can be accessed by over 67s (unlike the bring-forward non-concessional cap – see earlier)

The Lifetime Cap is $1.515 million in 2019/2020, increasing as a result of indexation to $1.565 million in 2020/2021. The cap is only available for business owners where the following conditions are met:

(a) The taxpayer is either:
   - o The taxpayer has an aggregated turnover of less than $2 million, including the turnover of connected entities and affiliates)
   - o The net assets of the business are less than $6 million, or
   - o You are a partner in a partnership that is a Small Business Entity for the income year and that CGT asset is an asset of the partnership.

(b) The contribution is made to a complying superannuation fund

(c) The contributor notifies the recipient superannuation fund by completing a CGT Cap Election form before or when they make the contribution to the fund. In the absence of this, the fund must report the contribution as a non-concessional contribution which may be taxed at 47%.

(d) The amount contributed consists of one of the following:
   - o Capital proceeds from the sale of an asset that qualifies for the 15-Year Ownership Exemption
   - o Capital gains from the sale of an asset that qualifies for the $500, 000 Retirement Exemption
   - o A contribution by a CGT Concession Stakeholder of a company or trust of an amount from the disposal of active assets held for at least 15-years
   - o A contribution of capital proceeds from the disposal of assets that would have qualified for the 15-year exemption but for the asset being disposed of before then because of the permanent incapacity of the person which occurred after the asset was purchased.

(e) If the taxpayer is over 67, they meet the 'Work Test' – see earlier.

Under the 15-year exemption, the entire capital proceeds, (not only the capital gains) can be contributed to superannuation subject to the amount of the Lifetime Cap. Where the 15-Year Exemption does not apply, the amount you can contribute under the Retirement Exemption is the remaining amount of the capital gain that you are seeking to disregard under that exemption. Also note that a contribution to superannuation under the CGT Retirement Exemption limit can be met by an in-specie contribution of property.

***EXAMPLE***

Brock is a 66-year old sole trader who commenced business back in 2007. The business has a turnover of $11 million, but net assets of $5.5 million and therefore can access the CGT Small Business Concessions.

In August 2020 he sells his business to Cameron for $1.6 million, and after using other CGT concessions (such as the 50% CGT discount, and the 50% Active Asset reduction) has a $400 000 capital gain left over. As the sale does not qualify for the 15-year CGT ownership exemption, Brock wonders how he can contribute the proceeds to superannuation and enjoy the concessionally taxed environment as soon as possible.

**ANSWER**

Standard Non-Concessional Cap

As he is 67 years of age, Brock cannot use the non-concessional bring-forward cap – you must be under 67.

*CGT Lifetime Cap*

Brock may be able to use the Lifetime CGT Cap as the net assets of the business are less than $6 million and although he does not qualify for the 15-Year Ownership Exemption, he does qualify for the Retirement Exemption. If you are over 55, then to qualify for the Retirement Exemption you need only meet the basic conditions for access to the CGT Small Business Concessions (i.e. be carrying on a business, and meet the turnover or net asset value test) and also keep a written record of the amount you are choosing to disregard (in this case, $400 000). There is no need to retire.

The maximum amount he can contribute under the CGT Lifetime Cap is $400 000 (equal to the remaining amount of the capital gain that he is seeking to disregard). Brock must then complete a CGT Cap Election form and provide it to his fund before or when he makes the contribution to the fund.

Note also it is important that Brock keep working in the financial year that he makes the contribution, otherwise being 65 or over he may not meet the 'Work Test' (see earlier) and therefore he would be prohibited from making a contribution.

The take-home message is that the *CGT Lifetime Cap* provides small business owners with extra capacity to make contributions, and is now more valuable than ever given the reductions to the non-concessional cap. Assess the nature of your capital gain – where it qualifies for the 15-Year Exemption or the Retirement Exemption – the Lifetime CGT Limit can be utilised. This can allow you to more quickly get the proceeds of your sale into the concesssionally taxed superannuation environment than you would otherwise be permitted.

## Those Facing Hardship – Access Your Superannuation

Individuals who have fallen on hard times, need to be aware that they may be able to access their superannuation early (in addition to the COVID-19 access– see page 2). By way of background, you can only access your superannuation once you meet a condition of release. By far the most common conditions of release are:

- Reaching Preservation Age (currently 56) and retiring
- Ceasing an employment arrangement on or after the age of 60
- Reaching 65 years of age (even if you are still working)
- Dying.

However, individuals can also access their superannuation

savings on compassionate grounds. Subject to certain cashing restrictions, an individual's superannuation benefits can be released on compassionate grounds where they lack the capacity to meet the following expenses:

- Medical treatment or medical transport for the individual or a dependant
- Payment of a loan, to prevent either foreclosure of a mortgage on the individual's principal place of residence, or exercise by the mortgagee of an express or statutory power of sale over the individual's principal place of residence
- Payments to modify the individual's principal place of residence or vehicle to accommodate the special needs of the individual or a dependant arising from severe disability
- Expenses associated with an individual's palliative care in the case of impending death, funeral or burial
- Any other expenses which are consistent with the compassionate grounds criteria, outlined above, but may be outside the specific criteria.

The amount of superannuation that can be released on compassionate grounds is limited to what is reasonably needed. If your application is successful, the amount will be paid as a lump sum by your superannuation fund. Your application must be made to the Federal Department of Human Services www.humanservices.gov.au

## Over 55s – Ease into Retirement

Although some detrimental changes have been made recently, the Transition to Retirement (TTR) strategy still offers an attractive way for older workers to ease into retirement, without impacting their standard of living.

### THE STRATEGY

Under this strategy, once you've reached Preservation Age (currently 56) you can commence drawing a pension from your superannuation fund which can then be used to supplement your employment income. The rules are as follows:

- You must have reached your Preservation Age
- You can only take an income stream from your superannuation account generally by way of an Account-Based pension. These pensions require a minimum percentage amount be paid to you each year
- No lump sum withdrawals are allowable until retirement
- There is no 'Work Test' to be met
- No more than 10% of your account balance at the start of the financial year may be paid each year
- The taxable part of your income stream will be taxed at your marginal tax rate, but if your pension is paid from a taxed source, you will receive a tax offset equal to 15% of the taxable part of the income stream. Once you reach 60 years of age, the income stream is tax-free, and
- Your pension can be rolled back into accumulation mode at any time.

### ADVANTAGES

- Supplement - You can supplement your workforce income by accessing your super benefits early
- Taxation - Less tax is paid on the pension income, as compared to your employment income
- Lifestyle - You can reduce your working hours without sacrificing your way of life
- Flexibility – The pension can be rolled back into accumulation mode at any time. This provides flexibility for those who wish to return to full-time work and therefore no longer have the need for their pension income.

### DISADVANTAGE

On the downside, by drawing on your superannuation earlier than normal, you are depleting your retirement savings which can be detrimental long-term.

### CASE STUDY

Jackson is 57 and earns $100,000. He has a superannuation balance of $300,000. He intends retire in the next five years, however he is looking to cut back his working hours by leaving early on Fridays such that his annual income will be reduced to $90 000. To make up this amount, Jackson intends draw down a $10 000 TTR pension from his fund each year.

**Tax Position – No TTR Strategy (2019/2020 Tax Rates)**

| | $ |
|---|---|
| Gross salary | 100,000 |
| Other Deductions | 250 |
| Annual taxable income | 99,750 |
| Tax payable | 24,404 |
| Medicare levy (2%) | 1,995 |
| Tax offset | 787 |
| TTR Pension | 0 |
| Tax on TTR Pension | 0 |
| Net income | **74,138** |

**Tax Position – TTR Strategy**

| | $ |
|---|---|
| Gross salary | 90,000 |
| Other Deductions | 250 |
| Annual taxable income | 89,750 |
| Tax payable | 20,715 |
| Medicare levy (2%) | 1,795 |
| Tax offset | 1,080 |
| Net income | **68,319** |
| TTR Pension | 10,000 |
| Tax payable on TTR Pension# | 3,900 |
| Less 15% Tax Offset | 585 |
| Total Tax on Pension Income | 3315 |
| Net Pension Income | **6685** |
| Total after-tax package | **75 004** |

*#added to salary and taxed at marginal tax rates*

By adopting this strategy, Jackson therefore enjoys a boost to his take-home pay of almost $900 per year, but is working less hours. The downside is that he has reduced his superannuation balance by $10,000. Note that Jackson's TTR pension will be tax-free once he reaches the age of 60.

### CHANGED RULES FROM 2017

There have been recent adverse changes to TTR pensions, however these changes do not affect the after-tax amount that a TTR recipient receives from their pension. From 1 July 2017, income derived from assets supporting this type of pension (e.g. interest, rent, dividends etc.) will be taxed at 15% inside your super fund rather than tax-free. This applies irrespective of when the TTR pension commenced – even if it was commenced before this date. Prior to this reform, such income was tax-free. While this will impact your total superannuation savings, recipients of TTR pensions will not have their pension that they draw reduced. Turning back to the above example, Jackson will still receive $6,685 in after-tax TTR pension, it's just that the money earned on assets supporting that pension will be taxed inside his superannuation fund at 15% rather than being tax-free.

However where a TTR recipient has meet another superannuation Condition of Release with a nil cashing restriction (such as turning 65 or turning 60 and ending employment), their TTR pension earnings are tax-free.

## Acquiring Residential Premises from a Related Party

Broadly speaking, an SMSF cannot acquire assets from a related party unless that asset is (a) either shares, units or bonds listed on an approved stock exchange or (b) Business Real Property. Because of the definition of Business Real Property (see earlier), an SMSF generally cannot acquire residential property from a related party. This is because such a property is likely being used for residential purposes (i.e. private accommodation) rather than “exclusively in a business”.

However, as outlined in SMSF Ruling 2009/1, there are limited circumstances where this is not the case and that residential property does constitute ‘business real property’ such as:

- A house used exclusively by a doctor in his medical practice (or any other business where this is the exclusive use)
- A primary production business with a residence on it
- Motel with manager’s residence
- Bed and breakfast (in certain circumstances).

Unless one of these rare exceptions applies, most SMSFs wishing to acquire residential property will need to do so from an unrelated party.

### NEED TO BORROW?

Unless the SMSF has the cash on hand, it will need to borrow to acquire the property. SMSFs can only borrow via a Limited Recourse Borrowing Arrangement (LRBA). Under an LRBA, the SMSF trustees take out a loan from a third-party lender (e.g. bank) and then uses those borrowed funds to purchase a single asset (or a collection of identical assets that have the same market value) to be held in a separate holding Trust (bare Trust). Any investment returns such as rent go to the SMSF. If the loan defaults, the lender’s rights are limited to the asset held in that Trust. When the loan is paid out, the property is transferred to the SMSF.

There is a common misconception that LRBAs are restricted to commercial property such as Business Real Property. This is not the case. They can also be used to acquire residential property. We caution that LRBAs are complex and should only be entered into under the guidance of your Accountant.

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