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In this issue:

- Super ‘Gotcha’ for Constitutionally Protected Funds
- And one more thing…The fast-approaching 30 June 2022 deadline, for last minute super contributions!
- Media

Dear Friends

Super ‘Gotcha’ for Constitutionally Protected Funds – but it’s not all bad news

As most of you would by now be well aware, superannuation legislation is beyond complex – and at times it defies logic. There is no better case in point than the way our federal government punishes some state based super funds – most of which are to be found in South Australia, particularly Super SA, in all its iterations.

As a result, the discussion which follows (with links to additional details) justifies the label of ‘super-nerd’ awarded to me by my staff – but I wanted to highlight in this eGrow that you can, with the right knowledge and timing, mitigate the limitations and penalties imposed by seemingly ‘black and white’ superannuation rules.

In the case of Constitutionally Protected Superannuation Funds (CPFs), my research indicates that the ATO is waiting with a metaphoric taxation ‘baseball bat’ for those members who have legally built-up balances above $1.65 million (and whilst that balance is higher than most of us retire with, bear in mind that these members are normally senior executives, highly qualified professionals, and long serving public servants).

It is an unpleasant shock to these public servants (many of whom are doctors and surgeons in our state hospital system) when they find that that they are liable to pay tax up to 45% when they start to draw down on, or are rolled out of their CPFs.

Under the current rules, the first $1.65 million of the CPF ‘untaxed’ lump sum is taxed at 15% on rollover, or 17% if taken as a lump sum after age 60 (32% if paid to a dependant or under age 60). Tax is levied on withdrawal from the CPF (which will happen in the CPF eventually, even if it is after death). This is actually a ‘catch up’ tax, as due to their Constitutionally Protected status, the normal 15% super fund tax cannot be levied by the ATO, within a CPF.

A further little-known fact is that all balances which exceed the 2021/22 Untaxed Plan Cap (UTP) threshold of $1.65 million are taxed at 45% if rolled over, or 47% if they are taken as a lump sum.

This means that many professionals, senior executives and long-serving State public servants are saving nothing if their balance exceeds the UTP – and that includes the earnings of the fund.

It gets even worse when you also factor in the rarely discussed annual ‘Division 293’ Tax (this is an additional contributions tax of 15% which applies to individuals whose combined income and contributions are greater than the Division 293 threshold of $250,000 pa). It applies before the CPF balance is rolled over.

Given that many public servant ‘high earners’ are legally salary sacrificing hundreds of thousands of dollars into their CPF every year (as some of the most public service senior members and employees, including medical specialists do) when they lodge their personal tax returns, they will also pay Division 293 tax at the rate of 15%.

When the 45% is levied on the Untaxed Plan Cap excess amounts, we are talking about a total lump sum tax of 60%!

After the election dust has settled, I intend to write to the Federal Treasurer and the South Australian premier about what, in my view, constitutes the inequitable tax treatment of CPFs.

In the meantime, there are steps which can be taken to ensure that the situations outlined above are the exception. A significant number of my clients have benefited from timely strategies, particularly over the last 12 months; details of two most recent examples are included as case studies in my latest Media Release on this topic which you can read here.

And – if you would like to know more about CPFs, please refer to a previous Media Release here.

And one more thing – it's that time of year again

The years seem to be flying by, faster and faster, every year. The fast-approaching 30 June 2022 deadline is, of course, the end of the current financial period.

As a cut-off point for last minute superannuation contributions, this date is misleading. If you are looking at your finances and realise that you can top up your superannuation (a really wise thing to do) the real 'due date' – if you want to ensure that you don't miss the boat – is more like 20 June. Realistically, this is due to the need to allow appropriate time for processing, and there is a very real risk that last minute superannuation contributions may not be accepted beyond this date.

There are two opportunities for your superannuation contributions within a financial year; one is to make sure that you have made tax-deductible Concessional Contributions (CCs) at the indexed maximum level of $27,500 – **remember, this amount is inclusive of your employer's Superannuation Guarantee contributions.**

The other option is to make a Non-Concessional Contribution (NCC) of up to $110,000 with after tax dollars. If you meet all the necessary criteria, you can also bring forward up to 3 years' NCCs, with the result that you could contribute up to $3300,000 to super this financial year.

Media:

If you would like to see my latest contributions to the wealth creation and retirement savings discussion in the Australian media, please click here.

As always, if I or any of my team can be of assistance to you, please don't hesitate to contact us on (08) 8130 5130 or email admin@marinisgroup.com.au.

Yours sincerely

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