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# Self Managed Super

Summer Edition Newsletter 2018

## 'Downsizer' contributions

New laws will permit individuals 65+ to boost their super by up to $300,000 (or $600,000 per couple) using the sales proceeds from selling their own home. However, proceeds from contracts exchanged before 1 July 2018 won't qualify.

**TIP**–Although described as 'downsizer contributions', vendors aged 65+ are not required 'downsize' their accommodation arrangements to qualify.

### Background – non-concessional contributions

The super laws currently impose restrictions on a fund accepting contributions for individuals aged 65+, including:

- A fund cannot accept personal contributions from individuals aged 65 to 74 unless the 'work test' is met in the contribution year. Further, personal contributions cannot be accepted for individuals aged 75+.
- For individuals aged 65 to 74, non-concessional contributions are capped at $100,000 per annum (note, the work test must be met). However, from 1 July 2017, individuals with $1.6+ million in super have a non-concessional contributions cap of zero – meaning that $1+ of non-concessional contributions will result in excess contributions arising.

### Features of 'downsizer contributions'

The new measure allows individuals aged 65+ to boost their super using the proceeds from selling their own home, even though the contribution would not otherwise meet the existing age and work tests. The conditions to be met are:

| Item | Description |
|---|---|
| **Main residence** | Only contributions from selling an Australian main residence qualify, meaning that proceeds from selling a rental property are basically ineligible. Also, proceeds from selling caravans, houseboats and mobile homes won't qualify. |
| **Ten years+ ownership** | The home must be owned by the individual (or their spouse) for 10+years. |
| **$300,000 contributions cap and age restrictions** | Contributions are capped at the lesser of $300,000 per individual (i.e., $600,000 per couple) and the sale proceeds. Further, individuals must be 65+ at the time of contributing to qualify. Hence, if one spouse is 67, and the other is 62 – only the 67 year-old meets the age requirement. |
| **Commencement date** | The new law applies to contracts for sale entered into from 1 July 2018. Contracts exchanged before then that settle from 1 July 2018 are ineligible. |

## HIGHLIGHTS

### DOWNSIZER CONTRIBUTIONS

New concession for 'downsizers' applies from 1 July 2018

### FIRST HOME SAVERS

New initative to assist first home buyers save for their deposit through super

### TRUSTEE Q & A

Is Bitcoin a suitable investment for an SMSF to make?

| Item | Description |
|---|---|
| **Once per lifetime** | 'Downsizer contributions' can only be made from selling one home – proceeds from selling future homes won't qualify (even if contributions from the first home sale were lower than the $300,000 cap). |
| **Timeframe** | 'Downsizer contributions' must be made within 90 days of receiving sales proceeds – usually settlement. SMSF trustees also need to review the fund trust deed to ensure that 'downsizer contributions' can be accepted. |
| **Fund paperwork** | Paperwork must be lodged with the fund to ensure that the trustee correctly identifies the 'downsizer contribution'. |

### What are the benefits of 'downsizer contributions'?

Key benefits of 'downsizer contributions' for eligible individuals aged 65+ are:

- 'Downsizer contributions' allow super to be boosted when the existing contribution restrictions would otherwise prohibit these individuals from contributing $300,000 in one go;

*"'Downsizer contributions' are not tax deductible..."*

## Super reporting – new rules cont'd

- up to $300,000 per individual (or $600,000 per couple) of 'downsizer contributions' do **not** count towards the respective individuals' contributions caps;
- individuals aged 75+ can make 'downsizer contributions' – even though they are not otherwise eligible to contribute personally; and
- 'downsizer contributions' can be made for individuals with $1.6m+ in super without triggering excess contributions.

Note, the contribution will count towards an individual's transfer balance cap if applied to start a 'retirement-phase' pension. Also, the contribution is added to an individual's total super balance (e.g., to determine eligibility for concessions, such as the Government co-contribution).

**WARNING**–'Downsizer contributions' are not tax deductible and are taken into account when considering eligibility for the Age Pension.

**EXAMPLE**–Fred and Jacinta, both aged 80, sell their home for $900,000. They also have $2 million each in their SMSF. Provided the conditions above are met, Fred and Jacinta can contribute $300,000 each as a 'downsizer contribution'; even though they are both aged 75+ and have super of $1.6m+. Further, no excess contributions will arise from the 'downsizer contribution'.

If, for example, they only received $400,000 – they could contribute $200,000 each or split the contribution up – e.g., $300,000 for one, and $100,000 for the other.

## First home savers – new laws

New laws passed by Parliament mean that individuals can now save for their first home through super. That is, eligible first home savers who make voluntary super contributions from 1 July 2017 can access those contributions and earnings (limits apply) to buy their own home from 1 July 2018.

Features of the new law are:

- Voluntary contributions eligible for the scheme include: salary sacrifice contributions and concessional and non-concessional (i.e., after-tax) contributions made personally.
- First home savers must apply to the ATO, who then arrange for the money to be released from super and paid to the saver.
- The voluntary contributions eligible for release are capped at $15,000 per income year ($30,000 in total) plus deemed earnings on the released contributions. The earnings component will be calculated by the ATO.
- Once released, first home savers have 12 months to exchange contracts on their first home (or apply to the ATO for an extension of time).

For the first home saver, no tax is paid on withdrawn non-concessional contributions (as these were not taxed to the fund on the way in). However, withdrawn concessional contributions and deemed earnings are taxed to the first home saver at marginal rates, with a 30% tax offset.

## ATO UPDATE

The ATO has extended the time for lodgement of 2017 SMSF tax returns to 2 July 2018. This extension flows from the additional workload faced by trustees and SMSF advisers dealing with the new super reforms. Google 'QC 54399' to read more about this extension.

The ATO are starting to send out notices to individuals in 'retirement phase' who have exceeded their $1.6 million transfer balance cap and not rectified the excess. This information is largely based on information reported to the ATO by APRA funds. Google 'QC 54015' to access this fact sheet.

Recently, the ATO raised concerns about the following arrangements involving SMSFs:

- Property developments involving SMSFs and related structures;
- Arrangements where SMSF members deliberately make excess contributions to manipulate the taxable and tax free components of their fund balance;
- Arrangements where rental income of a commercial property is diverted to an SMSF whilst ownership remains outside of the fund.

Google 'QC 53934' to read more on these arrangements.

# SMSF trustee Q & A

## Question

**I have heard a lot about Bitcoin, and similar currencies. Can my SMSF invest in Bitcoin or a similar type of 'crypto-currency'?**

## Answer

**The super rules do not outright prohibit SMSFs from investing in Bitcoin and similar.** However, the unique nature of crypto-currencies raises questions as to whether they are a suitable investment for SMSFs to make.

By way of background, Bitcoin and similar are essentially a type of virtual currency in which encryption is used to verify funds transfers. Further, these 'crypto-currencies' operate independently of a central bank.

### SMSFs and Bitcoin

As crypto-currencies are virtual, it creates compliance challenges for trustees who may wish to invest in them via their SMSF including:

- It's difficult to verify that the SMSF actually owns the investment.
- The nebulous nature of these currencies and issues over ownership could expose the fund to being seen as providing financial assistance to a member or relative.
- Being a relatively new investment concept, existing trust deed and investment strategies may not adequately cater for Bitcoin and similar.
- In formulating an investment strategy, SMSF trustees must consider factors such as risk involved in making, holding and realising the fund's investments. The speculative and virtual nature of Bitcoin and similar may cast doubt on whether they are appropriate for an SMSF, considering these investment covenants.
- The specific conditions of a Bitcoin or similar investment may be such that it results in a charge being placed over fund assets (i.e., in contravention of the SMSF investment rules).

From a regulatory perspective, crypto-currencies are a relatively new concept. At this stage, no formal guidance has been provided by the ATO on whether Bitcoin and similar comply with the super rules.

**INFO**–Transactions involving Bitcoin and similar generally give rise to tax implications. Any gains or losses made by the fund may be treated differently if the fund is in 'retirement phase' (e.g., paying an account-based pension).

## Key dates and reminders

### 2 July 2018

General commencement date of transfer balance account reporting for SMSFs that are required to lodge a transfer balance account report (i.e., SMSFs with members with total super of $1m+).

### 2 July 2018

Following the ATO granting an extension for lodgement, 2 July 2018 will generally be the last date for lodgement of the 2017 SMSF Annual Return.

### 2 July 2018

This date is also the last day for a fund to choose to apply the transitional CGT relief. This choice is made via the 2017 CGT Schedule and SMSF Annual Return.

### Early release of super and victims of crime

The Government is reviewing the rules on accessing super early under severe financial hardship and compassionate grounds. The review will address issues such as:

- the rapid increase in the use of super for medical grounds;
- whether the mortgage foreclosure ground should be extended to rental eviction;
- whether the rules around accessing super early for financial hardship reasons are appropriate; and
- whether an offender's superannuation should be available to pay compensation or restitution for their victims of crime.

PO Box 6494
Highton VIC 3216

140 Tenth Street
Mildura VIC 3500

paul@chalmersfinancial.com.au

29 Central Avenue
Torquay VIC 3228

Ph: 03 5264 8879
Mob: 0447 234 231

chalmers FINANCIAL