# rdl overview

Winter 2021

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# Super Contribution Changes From 1 July 2021

The maximum amount you can contribute to super is due to increase from 1st July 2021. From this date the concessional (ie tax deductible) and non-concessional (non-tax deductible) contribution caps, which are indexed by average weekly ordinary time earnings (AWOTE), are set to increase to new levels, as follows:

- The annual **concessional contributions cap** – currently $25,000 will increase to $27,500
- The annual **non-concessional contributions cap** – currently $100,000 will increase to $110,000

Employees who are currently operating under salary sacrifice arrangements may wish to review their

arrangements from 1st July 2021 where they want to make concessional contributions up to the maximum cap. Of course, it is possible for individuals to make personal concessional superannuation contributions, even where they are employed, and some may prefer to do this instead of revising salary sacrifice arrangements..

**The bring forward rule**

The bring forward rule enables you to contribute up to three years' worth of non-concessional contributions in the one year. From 1 July 2021, eligible individuals may contribute up to $330,000 to superannuation in one year. Individuals can use the bring forward rule if they are 64 or younger on 1 July of the relevant financial year of the contribution, and the contribution will not increase their total super balance by more than their transfer balance account cap.

If you utilised the bring forward rule in previous years, your non-concessional cap will not change. You will need to wait until your three years has expired before utilising the new cap limit.

As with all things relating to super, the rules are complex, so speak with your RDL advisor before acting.

# Super Guarantee Rate to Increase From 1st July 2021

The 2021 Federal Budget stipulated that the Government intends for the scheduled increase of the super guarantee rate from 9.5% to 10% to still take place on 1 July, 2021. Employers should note this, as the new regime to enforce the timely payment of employer superannuation contributions imposes significant sanctions on employers who fail to comply.

> **"You can't build reputation on what you're *going* to do."**
>
> Henry Ford

# Why the ATO Wants Your TPAR

If your business makes payments to contractors or subcontractors you may need to lodge a *Taxable payments annual report* (TPAR) by 28th August each year.

This report details payments made to contractors for providing services to your business, allowing the ATO to identify contractors who are not meeting their tax obligations. Contractors can include subcontractors, consultants and independent contractors. They can be operating as sole traders (individuals), companies, partnerships or trusts.

If your business provides any of the following services, you need to know about TPAR:

- building and construction services
- cleaning services
- courier services or road freight services
- information technology (IT) services
- security, investigation or surveillance services

Late last year the ATO used the information in these reports to prosecute a tradesman who under-reported income and GST.

Appearing before the Brisbane District Court, Ben Ogden was found to have underreported sales income across four quarterly business activity statements, lodging $85,359 in reported sales despite his bank statements revealing deposits of $375,209. The failure to disclose actual sales resulted in a GST shortfall of $26,570, with Mr Ogden also understating his income on his tax return, leading to a tax shortfall of $70,441.

According to the ATO, an analysis of TPAR reports lodged by entities that engaged Mr Ogden for work in the building and construction industry showed various discrepancies. At the time an ATO spokesperson said that "the ATO uses information reported on the taxable payments annual report to make sure that businesses are complying with their tax obligations."

Businesses that provide mixed services — a mixture of any of the above services — and receive payments for these services that exceed 10 per cent or more of their total GST turnover will also need to lodge a TPAR by 28 August each year. In commenting on restaurants, cafés, and other retailers, ATO assistant commissioner Peter Holt has said that while "these businesses may not have previously needed to lodge a TPAR, if the total payments received for these deliveries or courier services are 10 per cent or more of the total annual business income, they will need to lodge (a TPAR)."

To date the ATO has not imposed a penalty for late lodgment of TPAR, but it is only a matter of time before it begins to get tough.

Joel Hernandez
*Director – Audit, Tax and Business Services*

# Tax Treatment of JobKeeper Payments Handed Back to ATO

The ATO has clarified the tax treatment of JobKeeper payments handed back to the Government. The clarification comes after the Super Retail Group, Dominos Pizza and Toyota collectively returned more than $20 million in JobKeeper payments after reporting exceptional trading results.

Where a business has handed back JobKeeper despite qualifying for the payments, the ATO states that:

- JobKeeper payments returned to the Government are **still included in assessable income**, and
- The returned payments **may be deductible** in limited circumstances if the repayment is to achieve the business's objectives. For example, if the media exposure from the returned payment generates goodwill for the business or publicises the business, or the repayment prevents a downturn in business activity.

The message is, if you are returning JobKeeper payments voluntarily, make the decision public. If no one knows about the repayment then it is unlikely to be deductible. If your business decides to hand back JobKeeper despite being entitled to the payments, special arrangements will need to be put in place with the ATO as the repayments are treated differently and require a special payment reference number.

Businesses considering returning JobKeeper payments may wish to retain a portion to cover the tax component.

We note that if your business and your employees qualified for the first tranche of JobKeeper payments, you are under no obligation to return the money if trading conditions were better than the estimate you established at the time.

# STP Net Widens From 1st July

From 1st July 2021 small employers (ie those with 5 to 19 employees) with closely held payees will be required to report payments to their closely held payees through Single Touch Payroll (STP). They can choose to report these payees each pay day, monthly or quarterly. For some employers this will require access to an electronic reporting system.

The eligibility criteria for the STP quarterly reporting concessions for "micro employers" (ie employers with up to 4 staff) will also change from 1st July 2021, and will only be available to micro employers who:

- report through a registered tax professional
- meet certain eligibility requirements which now include the need for exceptional circumstances to exist.

The STP system is gradually expanding to cover all employers. If you need help meeting your STP obligations please contact your RDL accountant.

# Your SMSF and You

In general, all interactions between your Self Managed Super Fund (SMSF) and its members should be at arm's length – that is, the terms of the transactions are the same as what would be entered into between independent parties, but there are circumstances where the interests of the fund and its members intersect. A transaction which is favourable to either party is deemed to be at non-arm's length terms, which could create some taxation issues.

**Can I charge my SMSF for work that I do?**

Let's say your SMSF owns a residential rental property and the property needs a fence. You're a builder and can build the fence. Can you charge the SMSF for the fence?

The answer is maybe.

What you charge and how it is charged is critically important here.

If the fund acquires the fencing material, and is invoiced by the building business to construct the fence, and pays a market rate for the labour involved, then there is unlikely to be a problem as the charges are transparent and at market value. However, documentation is essential and you may also need to verify that the labour cost charged is the market rate.

However, if the business decides to install the fence for no charge, or alternatively charge an excessively high rate, then the transaction could be deemed to be non-arm's length.

If the building business acquires the fencing material and then installs the fence at arm's length rates for the SMSF, this could still cause in-house asset issues as the fund has acquired an asset from the member; the fencing material. It all gets very messy and it might just be easier to have someone else do it!

What happens if the building business either charges below market rates or does not charge the fund for labour cost? The rules have recently been extended to capture non-arm's length expenses where a related party is acting in a capacity other than as trustee and a non-arm's length expense was not charged. i.e., where the fund benefits from work performed by a member in a capacity other than trustee. The ATO sees these non-arm's length expenses as potentially artificially inflating an SMSF's earnings.

The market value of the work performed might be treated as a contribution, or all of the income from the asset could be deemed to be non-arm's length, which means tax at 47% will be charged on all income and capital gains derived from the asset.

This same scenario applies to any member of an SMSF (or relative of a member) who provides services to their SMSF – electricians, plumbers, accountants, real estate agents, etc.

The rule is, work that is done for the SMSF by a related party in their professional capacity must be equivalent to arm's length market value, with no acquisition of materials. Free, below market value, or above market value, may breach the superannuation rules. And, where work is performed by a related party at market value, it must be documented and provable.

**Can I charge for the work I do to administer my fund?**

Trustees of an SMSF cannot be remunerated for the work that they do for the fund. The exception is where you are qualified to provide certain services to your fund and act in that professional capacity. For example, you are a real estate agent and are buying and selling property assets for the fund. In this case, you are not being paid for work you do in your capacity as trustee but as a professional providing a service at market value (see *Can I charge my SMSF for work that I do?*).

**Can I lend money to my SMSF?**

Members of a fund can lend money to their SMSF in very limited circumstances, and usually to buy property, if the following conditions must be met:

- It is a limited recourse loan to the SMSF and is appropriately documented, and
- The SMSF is not charged higher than an arm's-length rate of interest for borrowing, i.e., the loan is on commercial terms, there are 'safe harbour' guidelines provided around loan to value ratios, and repayment terms to ensure the loan is at arm's-length.

**Can my SMSF lend me money?**

Your SMSF cannot lend money to a member or their relative, and can only lend to other related parties in very limited circumstances. There are lots of potential pitfalls if you are looking at making a loan from your SMSF so best to check with your RDL accountant first.

# Proposed Tax Residency Changes

Determining whether an individual is a resident of Australia for tax purposes can be complex. The current residency tests for tax purposes can create uncertainty, and are often the subject of legal action.

In the recent Federal budget, the Government announced its intention to replace this uncertainty with more objective criteria based on the framework proposed in a 2019 Board of Taxation report.

That framework contained three tests:

- Physical presence test: Anyone physically in Australia for 183 days or more within an income year will be an Australia tax resident. Those who fail this test will then be required to either apply a commencing or ceasing residency test.
- A commencing residency test: a person will be a resident if
  - They are in Australia for more 45 days in the income year; and
  - Any two of the following factors are satisfied, whereby they have:
    - The right to reside permanently in Australia
    - Australian accommodation
    - Australian family
    - Australian economic interests
- A ceasing residency test: Australian tax residents will cease to be a tax resident if they:
  - Undertake employment overseas mandated for a period of more than two years, have accommodation continuously in place for the period of employment, and return to Australia for less than 45 days each year; or
  - Are long-term residents physically in Australia less than 45 days in the current year and less than 45 days in each of the two preceding income years; or
  - Are short-term residents who are physically in Australia for less than 45 days in the current year and less than two factors in the factor test above apply.

There may well be changes to this framework before it is legislated, but if these general principles are adopted, it could well be much easier for long-term Australian tax residents to become non-residents for tax purposes. While non-residents are generally only taxed on Australian-sourced income, they do not have access to the tax-free threshold and other tax concessions such as the principal place of residence capital gains tax exemption. These proposed changes could have adverse tax implications for people working overseas and maintaining a former Australian home or holding investments. The changes are expected to apply in the first year after the legislation receives Royal Assent.

# Proposed New Reporting For Not-For-Profits

Registered charities are entitled to various tax concessions. Some have tax deductibility attached to donations, some have more advantageous fringe benefit tax concessions, but all are income tax exempt. The process of registration and ongoing reporting obligations are in place to ensure that these tax concessions are only provided to valid charities.

There are also entities (not meeting the definition of a "charity") that are able to self-assess their entitlement to the income tax exemption. These include:

- Community service organisations;
- Cultural organisations;
- Education organisations;
- Health organisations;
- Employment organisations;
- Resource development organisations;
- Scientific organisations; or
- Sporting organisations

Depending on their structure, these organisations may be reporting to their state regulator, or to ASIC, or they may not actually be reporting to any regulator.

The recent Federal budget announced that from 1 July 2023 these self-assessing income tax exempt organisations with ABNs will be required to submit an annual online ATO form. The measure is intended to increase oversight of these self-assessing entities and ensure that only those that are eligible are receiving the income tax exemption concession.

Claire Harris
*Manager – Not For Profit Specialist*

**"Achievement is a habit – cultivate it"**

Harry Mills

**Disclaimer**

The contents of this publication are general in nature. No person should act on the information contained without first seeking specific professional advice.

# Insights

WINTER 2021

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**INSIDE...**

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- Bridging the Gap – How the 2021/22 Federal Budget Supports Women
- Child Care Subsidy Enhancements

# Superannuation and Retirement Measures Explained

A key feature of the 2021-22 Federal Budget is the opportunities giving older Australians, including self-funded retirees, greater flexibility around contributions to superannuation and accessing the equity in their home if they choose to do so.

### Repealing the work test

*Individuals aged 67 to 74*

Under current rules, voluntary contributions to super from the age of 67 require you to be working in the financial year you choose to contribute. The 'work test', as it's known, limits voluntary contributions to those who either chose to, or, are able to continue to work in their late 60's.

Recognising that retirees aged 70 today, potentially only had 20 years or more of compulsory superannuation guarantee during their working lives, the Government has announced that it will amend the work test rules to assist retirees who may not have had the full benefit of compulsory superannuation throughout their working lives.

From 1 July 2022, individuals aged 67 to 74 will no longer be required to meet the work test when making, or receiving, non-concessional (ie non tax deductible) superannuation contributions or salary sacrificed contributions.

Personal deductible contributions will still be subject to meeting the work test, and all other existing contribution caps continue to apply.

### Extending access to downsizer contribution

*Individuals aged 60 and over*

Since 1 July 2018, eligible individuals have been able to make additional contributions to superannuation under a once-off opportunity when they sell their principal place of residence, which has been held for a minimum of 10 years.

The 'downsizer contribution' allows eligible individuals aged 65 or older to contribute up to $300,000 to superannuation.

To improve the flexibility for Australians to add to their superannuation savings, and encourage people to downsize sooner, and increase the supply of family homes, the Government has announced the eligibility age for a downsizer contribution will be revised to age 60 from 1 July 2022.

### Improving the Pension Loans Scheme

The Government has announced an increase to the flexibility and attractiveness of the Pension Loans Scheme (PLS) for eligible senior Australians. From 1 July 2021, the following enhancements will be made;

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- No Negative Equity Guarantee – borrowers under the PLS, or their estate, will not be in a position of owing more than the market value of their property.
- Immediate access to lump sums – eligible individuals will be able to receive a maximum lump sum advance payment equal to 50% of the maximum Age Pension (currently $12,385 for singles, and $18,670 for couples combined).

The PLS is a voluntary, reverse mortgage type loan agreement to assist older Australians boost their retirement income by unlocking equity in their real estate assets.

Full-rate Age Pensioners can receive an annual income boost worth 50% of the annual full age pension (which, from 1 July 2021, can be taken as a lump sum). Part-rate Age Pensioners will also be able to access a lump sum worth 50% of a full Age Pension.

Self-funded retirees of Age Pension age, who do not receive an Age Pension can also receive an income boost over a year worth 1.5 times the full rate of Age Pension payment. Following the increase in flexibility from 1 July 2021, 50% of this payment can be taken as a lump sum, with the remainder as a regular income payment.

**Legacy Superannuation product conversion**

In line with the intention of simplifying the retirement system, the Government will provide certain individuals with temporary options to transition out of legacy retirement income products and into more flexible, contemporary retirement products.

A two-year period will open, and provide for the conversion of market-linked, life-expectancy and lifetime pension and annuity products, available on a voluntary basis.

Such products will be able to be exited by fully commuting and then transferring the underlying capital, including any reserves, back into a superannuation fund account in the accumulation phase.

From here, a more conventional account based income stream can commence, subject to the individual's available transfer balance cap space.

Importantly, existing social security concessions that may apply to the eligible legacy product will be lost upon conversion. However, exiting the legacy product will not cause a re-assessment of the former social security treatment of the product.

This measure is expected to commence from 1 July 2022.

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# Bridging the Gap – How the 2021/22 Federal Budget Supports Women

Supporting the safety and economic security of women was a prominent theme of the 2021/22 Federal Budget. While many of the announcements specifically address the safety and economic security of women, other measures seek to address the root causes of the gender pay and superannuation gap.

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**Women's Economic Security Package**

The Government has announced several measures in the Budget to support women's economic security. The Child Care Subsidy percentage for families with multiple children aged 5 and under in childcare has been announced to commence from 11 July 2022. This measure, if passed, will see an increase in the subsidy percentage by 30% for the second and subsequent child/ren, but this will be capped at no more than 95%.

Workforce participation was another common theme in the Federal Budget. Many of the announcements seek to remove the barriers that exist for women accessing non-traditional roles and re-entering the workforce after career breaks. The Government has announced its support to these projects to facilitate more career opportunities and supported career pathways for women.

Women experience far more significant drops in household disposable income than men after separation or divorce. To help support women's economic security, the Government proposes to streamline this process by providing lawyers to assist with mediation to distribute property of less than $500,000 between parties and after separation following a relationship breakdown.

**Improving retirement outcomes**

The Budget announced a number of measures to improve the retirement outcomes for women. On average, women will retire with lower superannuation balances and lower retirement incomes. Currently, the superannuation guarantee is payable once the $450 per month threshold is reached. As highlighted by the retirement income review, 63% of people impacted by the $450 per month threshold are women. The Government has announced they intend to remove this threshold from 1 July 2022 and in turn improving the coverage of superannuation for those impacted.

The Government made no comment on making changes to the rate of super guarantee that you can earn as an employee, meaning it will increase by 0.5% to a rate of 10.0% from 1 July 2021. It is currently legislated to then increase at 0.5% per annum until it reaches a rate of 12.0% from 1 July 2025.

While many of the measures announced in the 2021/22 Federal Budget aim to create Jobs, many measures support women personal safety, economic prosperity and seek to bridge the gender pay and superannuation gap. It is important however to remember that what was announced in the Budget is just that, announcements.

**"The safest way to double your money is to fold it over and put it in your pocket."**

Kin Hubbard

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# Child Care Subsidy Enhancements

From 1 July 2022, eligible Australian families are set to benefit from reduced out-of-pocket child care expenses as the Government plans to increase the rate of the subsidy for families with multiple young children and also remove the annual cap.

**Increased subsidy for families with multiple children**

Currently, eligible families can receive the Child Care Subsidy to assist them with the costs of child care by reducing their out-of-pocket expenses, help individuals participate or increase their participation in the workforce, as well as support the early learning and development of children.

The rate of the subsidy can depend on several factors including the cost of the care and whether it is more expensive than a cap on fees, the hours of activity of the parent(s), and the family's income. The subsidy received is worked out the same way for each child, no matter the number of children the family have in care. This means the child care costs double if there is a second child in care.

As part of this measure, the Government will increase the Child Care Subsidy percentage for families with multiple children aged 5 and under in child care from 11 July 2022. There will be an increase in the subsidy percentage by 30% for the second and subsequent children, but this will be capped at no more than 95%.

The rate of Child Care Subsidy a family can receive is based on their 'family income' as illustrated in the table on the next page.

*Example*

Rita is a single mother has two children Sam (2) and Elise (3) in centre-based day care for 4 days a week, for 10 hours a day at a cost of $10.40 per child per hour. Rita earns $40,000 for the year working 4 days a week.

Currently, her out-of-pocket cost of child care is $124.60 per week for both of her children.

Under the proposed changes from 11 July 2022, her out-of-pocket costs will reduce to $83.20 per week, a saving of $41.60 per week.

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**Child Care Subsidy percentage***

| Current family income thresholds | Current % for 2021/22 From 1 July 2022 for first child aged 5 and under | From 1 July 2022 for each additional child aged 5 and under (proposed) |
|---|---|---|
| Up to $69,390 | 85% | 95% |
| $69,390 - $129,390 | 85% minus 1% every $3,000 of income > $69,390 | 95% |
| $129,390 - $174,390 | 65% minus 1% every $3,000 of income > $129,390 | 95% minus 1% every $3,000 of income > $129,390 |
| $174,390 - $253,680 | 50% | 80% |
| $253,680 - $343,680 | 50% minus 1% for every $3,000 of income > $253,680 | 80% minus 1% for every $3,000 of income > $253,680 |
| $343,680 - $353,680 | 20% | 50% |
| $353,680 | 0% | 0% |

** All income thresholds are based on 2020/21 thresholds and are indexed on 1 July.*

**Removal of annual cap**

Currently, there is a cap on the amount of Child Care Subsidy a family can receive if their annual family income is more than $189,390 (2020/21). The cap means that no more than $10,560 can be received as a subsidy for each child where a family earns more than this limit.

Although the subsidy percentage worked out by applying the table on this page may be higher, the cap means that out-of-pocket expenses for the family would be higher than if there was no cap.

As part of this measure the Government will remove this cap from 1 July 2022.

> **"Money - if it does not bring you happiness, it will at least help you be miserable in comfort."**
>
> Helen Gurley Brown

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