2021/22 Federal Budget Update

The 2021/22 Federal Budget has been delivered and it's reasonable to say that SMSFs have fared well, albeit there is a lot of time and a likely Federal Election between now and the assumed commencement date for some of the measures, so anything is possible. As it stands, if passed, most of the measures will take effect from 1 July 2022.

In this Federal Budget Bulletin we will highlight the key superannuation announcements including two measures specifically targeted at SMSFs and Small APRA funds. Importantly we will compare the announcements with the current state of play to ensure everyone is on the same page with what can and cannot be done at this point in time.

The key announcements impact the following:

- Post 67 work test requirements
- Downsizer contributions
- First home super saver scheme
- SMSF Legacy Pensions
- SMSF residency test
- Superannuation Guarantee eligibility

Removal of work test

From 1 July 2020 the SIS Regulations were amended to allow members under the age of 67 to make or receive non mandated contributions without satisfying the work test. The work test requires an individual to be gainfully employed for a minimum of 40 hours in a 30 consecutive day period. This is the law as it currently stands.

The Government are now proposing to remove the work test requirement for all individuals up to age 74 to allow them to make or receive **non-concessional** contributions and **salary sacrifice** contributions. Intriguingly if an individual wishes to make personal deductible contributions they will still be required to meet the work test post age 67. This is proposed to commence from the start of the financial year after the legislation receives Royal Assent, the Government have indicated their expectation that Royal Assent will occur prior to 1 July 2022, hence that start date.

Presumably the work test exemption, introduced from 1 July 2019 to allow individuals with a total superannuation balance less than $300,000 at the previous 30 June to make contributions in a year if they ceased gainful employment the previous year, will still apply for personal deductible contributions.

The new measure identifies that people eligible to make or receive these voluntary contributions will be able to utilise the bring-forward provisions subject to satisfying the eligibility criteria i.e. having a total superannuation balance below certain thresholds at the previous 30 June.

As it stands, we are still awaiting passage of legislation to allow individuals aged 65 or 66 on 1 July to utilise the bring-forward provisions. On the assumption that the work test removal will not take effect until 1 July 2022, it is important that anyone age 65 or over is aware of the current status and doesn't create an excess contribution situation for themselves.

Importantly, all individuals looking to contribute post age 67 in either the 2020/21 or 2021/22 Financial Years must still satisfy the work test requirements to be able to make a voluntary contribution, excluding downsizer contributions.

Downsizer contributions

Speaking of downsizer contributions, the proposal is that from 1 July 2022, again based on the Royal Assent assumption, the eligibility age to make a Downsizer contribution will reduce from 65 to 60.

Care is obviously needed between now and the commencement date to ensure that anyone making the contribution is 65 or older at the time of the contribution, otherwise the contribution will be counted as a non-concessional contribution and will be subject to current cap rules.

The most significant issue with reducing the age of eligibility is that under current circumstances individuals who qualify for the downsizer are largely at the end of their non-concessional contribution cycle and have maximized non-concessionals based on their total superannuation balance.

Should in the future a client utilise the downsizer contribution rules earlier than currently allowed (pre age 65) it will impact their total superannuation balance and may reduce their capacity to make non-concessional contributions. That's not to suggest that the current rules don't also create issues given non-concessionals can be made without the work test prior to age 67, but that is a one or two year consideration not a 5+ year issue.

First home super saver scheme (FHSSS)

The Government have announced that the maximum allowable withdrawal under the FHSSS will increase from $30,000 to $50,000, again with a likely start date of 1 July 2022. There are also some technical changes to allow applications to be cancelled and monies to be returned to a super fund by the ATO prior to the amount being released to an individual, without the amount being treated as a contribution.

Whilst this measure will provide for a greater deposit to be saved via the superannuation system, the annual allowable contribution limit remains at $15,000 which means the shortest period to save the full release amount increases from two years to four.

SMSF Legacy Pensions

In a major reprieve for the SMSF (and Small APRA) sector, members will be given a two year window of opportunity to commute existing Market Linked (SIS Reg 1.06(8)), Life Expectancy (SIS Reg 1.06(7)) and Lifetime (SIS Reg 1.06(2)) pensions.

This is a measure that many within the Industry, including ourselves, have been working closely with the Regulator to see introduced. Whilst the announcement is largely a positive one, there will be a lot to consider and very rarely do these measures come without a little pain.

The commuted amounts, which will include reserves, will be able to be used to fund newer types of income streams, subject to an individual's transfer balance cap but will also be available to be withdrawn as a lump sum from an accumulation interest, that's as good an outcome as could be hoped for.

A key issue indicated in the Budget is that any reserves commuted will be assessed as a taxable contribution to the fund and result in a 15% tax liability. The amount will not count against an individual's contribution cap so will not create an excess contribution issue. This does add a bit of a sting to the measure given the reserves have traditionally not been entitled to the exempt current pension income deduction beyond the amount required to fund the annual pension payments as determined by an Actuary.

Individuals will not be required to commute these types of pension, however, it should be assumed that if they are not commuted within the two year timeframe then they will remain in place until the death of the member or the relevant reversionary pensioner dies.

Flexi-pensions, established under SIS Regulation 1.06(6) will not be eligible for this measure. We await this measure and the timing of it to see the full extent of how the process will unfold.

SMSF Residency Test

Quite possibly the most significant announcement for SMSFs, at least from a compliance point of view, is the proposed amendments to the Australian Superannuation Fund requirements. As it stands, to satisfy the definition of an Australian Superannuation Fund and be entitled to tax concessions, an SMSF must satisfy three tests including both the Central Management and Control test and the Active Member test.

Central Management and Control

The Central Management and Control test requires all high level strategic decisions to be made by trustees located in Australia, allowing for a two year temporary absence safe harbour rule. The Government have announced that this two year period will be extended to five years, from 1 July 2022.

There are other requirements attached to the Central Management and Control test but this increase will give greater certainty to a large portion of funds who were otherwise borderline, that they will satisfy the requirements.

Active Member Test

The Active member test was always disproportionately unfair to SMSFs, versus APRA funds, as it required at least 50% of all active (contributing) members to be resident members. The test will be removed from 1 July 2022 allowing non-resident members to contribute to their SMSF without being cause for concern. This is a significant change if the law is passed.

Clearly until such time as the law is passed and brought into effect, SMSFs need to be vigilant to ensure that they satisfy the current requirements and only allow contributions where at least 50% of the active interests in the fund belong to resident contributors. Further the current requirements dictate that 50% of Trustees must be present in Australia to exert control or their absence be temporary and for no longer than two years or the fulfilment of a specific purpose.

Super Guarantee eligibility

It may not be a big ticket item for SMSFs, but the removal of the $450 monthly income threshold before superannuation guarantee is required to be paid is a win for casual workers. Until 30 June 2022, employees who earn less than $450 per month are not entitled to receive the superannuation guarantee (10% from 1 July 2021), a measure that has been in place since the superannuation guarantee system was introduced. From 1 July 2022 these workers will have certainty that their employer will be making contributions on their behalf.

Budget Summary

On the whole, these measures are all positive albeit that their impact and application are all subject to the introduction and passage of legislation yet to be seen. Each measure, save for the super guarantee eligibility, has its pros and cons that will be determined in the fullness of time and with the exception of the FHSSS the other measures can have undesirable outcomes if individuals act on the announcements prior to their passage and commencement.

SuperGuardian will continue to monitor and update our network on these announcements as information becomes available.