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The aged care system reform

The aged care system is set to change significantly with the introduction of new rules for residents entering into the system on or after 1 July 2014.

Australia's aged care system touches the lives of millions of Australians with more than one million people receiving aged care services.

Decisions regarding aged care can be emotionally draining, even before the additional stress associated with the costs of funding the aged care system. It is important to plan ahead for aged care as it can reduce the stress, confusion and financial burden it places on family members.

The aged care reform is currently being implemented in stages. It is part of a 10-year plan to reshape aged care and build a better, fairer, sustainable and nationally consistent aged care system in Australia.

The aged care reform will see a substantial increase in home care services, as well as more choice and control for the elderly about how their care is given.

The aged care reform will also prevent people from being forced to sell their family home in an emergency fire sale when they need to go into residential aged care.

For new individuals entering into residential aged care on or after 1 July 2014, the key areas of reform include:

- removing the current distinction between high and low-level care
- residents will have a choice of paying a fully refundable lump sum, a rental style payment, or a combination of both
- removal of a monthly retention amount from the accommodation bond
- allowing residents to select the types of extra services they receive
- replacing the current income-tested daily care fee with one that is based on an income and asset assessment. This care fee will be capped at the current level of $25 000 (indexed) per year and $60 000 (indexed) over a lifetime. This fee will be in addition to the basic daily care fee
- home care recipients will be asked to pay a basic daily fee based on the single basic age pension rate. This fee will be determined by the level of resident's income and will be capped at $5 000 or $10 000 per year

The resident's family home will not count as an asset if their partner is still living in it. Where it is counted, the value of the house is capped at $144 500 and is only included in determining the ability to pay.

Grandfathering provisions apply for individuals who enter into a care facility prior to 1 July 2014. Residents will be subject to the new rules if their care needs change, for example if they move from low-level to high-level care.

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New penalties for SMSF's

A new range of administrative penalties is now available to the ATO. These penalties can be imposed on self managed fund trustees for a range of breaches of the law.

These can include breaches that are inadvertent and/or accidental. The new penalties are available to the ATO for breaches that occur on or after 1 July 2014.

These new penalties have been designed to allow the ATO to impose a monetary penalty easily on trustees who breach the law. The penalties range from $850 to $10 200, depending on the breach that occurred.

The monetary penalty will apply to the trustee personally and cannot be paid directly from the super fund's assets.

An example of a breach of the law includes:

- loan to a member of the fund
- super fund borrowing
- breach of prescribed standards
- failure to prepare accounts and statements in a year of income
- failure to keep minutes and records

The new penalties represent a significant change for SMSF trustees. In the past, the ATO's ability to issue monetary penalties has been restricted due to the severity of the penalties available to them.

The new penalties also increase the risk that trustees will be exposed to financial penalties if a breach of the law should occur. Under these new rules, it is expected that the ATO will adopt a standard practice of first imposing administrative penalties and then requiring trustees to demonstrate that the imposition of the penalty is unwarranted or unjust. It will be the trustee's responsibility to lodge an objection for a penalty decision to be reviewed.

The new rules will also provide the ATO with:

- the power to issue rectification directions mandating certain actions trustees must take to resolve breaches of the law
- the power to issue education directions requiring trustees to complete specified training/education courses

Temporary Budget Repair Levy

The Government has introduced a three-year Temporary Budget Repair Levy on individuals who have a taxable income in excess of $180,000.

The levy is payable at a rate of 2 per cent of each dollar of a taxpayer's annual taxable income over $180,000. No levy is payable where the taxpayer has a taxable income of $180,000 or less.

The levy will apply from 1 July 2014 and apply to the 2014–15, 2015–16 and 2016–17 financial years. It is expected to raise around $3 billion.

The introduction of this levy means that individuals with taxable incomes exceeding $180,000, and who are liable for the Medicare levy surcharge, will be subject to the top marginal rate of 50.5 per cent of income. Non residents are also expected to bear the burden of the Temporary Budget Repair Levy.

Work test for over 65's

The work-test provisions stipulate an individual's eligibility to make personal contributions if they are aged between 65 and 75, and working.

At the time an individual is contributing, they must have been gainfully employed during the financial year for at least 40 hours, over a period of no more than 30 consecutive days.

The 30 days can be any 30 consecutive days within the financial year; they do not have to be in one particular month.

To be gainfully employed means that the individual is employed or self-employed for gain or reward in any business trade, profession, vocation, calling, occupation or employment.

The work test only stipulates the minimum requirements; there are no upper limits to how often an individual can work. The government co-contribution scheme and the spouse contribution scheme are also subject to this work test.

From age 65 and onwards, if an individual is employed but does not meet the work test their employer is still able to make compulsory contributions on their behalf, however, the individual is unable to make personal contributions.

According to The Australian Prudential Regulation Authority, an individual cannot take prospective employment into account.

To satisfy the work test, the individual must have worked at least 40 hours in the financial year before the trustee can accept contributions.

However, when it comes to the spouse contributions there are age restrictions. The recipient spouse can be no older than 70 years and if between 65 and 70, they must have worked 40 hours within 30 consecutive days to be eligible.

Retirement & super planning 2014

In the 2014 Federal Budget, the Government has proposed some relatively conservative changes to Australia's superannuation and retirement system.

Excess non-concessional contributions

The government has announced that any super contributions made by an individual that breached the non concessional (after-tax) contributions cap could be withdrawn without penalty.

The refunded earnings will be taxed at the individual's marginal rate of tax. If an individual does not choose to exercise this choice, the excess non-concessional contributions will be subject to the excess non-concessional contribution tax at the top marginal rate.

It is yet to be determined if a timeline will exist for an individual to exercise their choice, or if a process will be used in determining how the contributions will be returned. The Government has indicated that it will be consulting with industry to finalise these details.

Changes to the age pension

The 2014 Budget has brought about a number of changes to the age pension in Australia.

Australians born after 1965 will now have to work until they are 70 before they are eligible for the age pension. No existing recipient of the aged pension would have their access reduced, effectively excluding the baby boomers from the cuts.

This change has occurred to ensure that the cost of the age pension remains sustainable and affordable, as well as being targeted to those in genuine need.

The age pension will also be linked to the consumer price index (CPI) rather than the average male weekly earnings from 1 September 2017. Other welfare benefits such as the Disability Support Pension, the carer payment and veterans' affairs pensions will also be linked.

The CPI is typically lower than the average male weekly earnings which will mean that the value of the age pension will fall over time.

Superannuation Guarantee

The Government has announced that it will change the timetable for increasing the superannuation guarantee rate to 12 per cent.

The rate will increase from 9.25 per cent to 9.5 per cent from 1 July 2014 as currently legislated. The rate will then remain at 9.5 per cent until 30 June 2018, for a four year period, and then increase by 0.5 percentage points each year until it reaches 12 per cent.

The danger of a DIY Will

A Will is one of the most important documents an individual will make in their lifetime.

Despite this, many individuals choose to create homemade Wills or use a 'DIY Will' kit, in order to save money. However, a DIY Will can end up costing an individual a lot more money than it is worth because the Will was not drafted or executed properly.

The following is just a couple of the issues that can occur if a Will is not correctly drafted:

Will not properly executed

DIY Wills are often not properly drafted and/or witnessed. This can increase the costs of obtaining probate, or it can lead to the Will being invalid.

Estate not disposed of properly

Care needs to be taken in drafting a Will to ensure that the individual's estate is disposed of properly. This can be a difficult step even when concerning a simple estate.

A common error with DIY Wills is that they will refer to assets which the deceased no longer owns, or which do not form part of the deceased estate such as superannuation, trust assets and property owned jointly with another individual.

Another common error is where the residuary estate has not been effectively disposed of which leads to a partial intestacy.

Terms of Will uncertain

It is important that the terms of a Will be certain to avoid the need to apply for declarations from the Supreme Court. Inadequately describing either the beneficiaries or the gifts to them can lead to confusion and additional costs.

DIY Wills can often contain unusual or uncertain considerations being places on certain gifts, which are often against public policy or difficult to interpret.

Non-estate assets not effectively dealt with

There are many assets that a Will cannot always effectively deal with. For example:

- life insurance will pass to the beneficiary under the policy
- superannuation proceeds will be paid in the discretion of the trustee, or alternatively in accordance with a valid and current binding death nomination
- control of family trusts will pass in accordance with the Trust Deed

It is important that all estate and non-estate assets are dealt with carefully and correctly and that the asset is passed to the correct person.

SuperStream changes for SMSF

Self managed super fund (SMSF) trustees should be aware of the changes to the way they receive super contributions.

From 3 November 2014, employers will begin using the new Data and Payment Standard, also known as SuperStream, to make superannuation contributions to their employees.

This means that SMSF trustees will be required to receive contributions electronically from their employers.

Employers will have a year to make this change so SMSF trustees should check with their employers about their start date.

To assist their employers, SMSF trustees will need to obtain an electronic service address for the delivery of contribution messages. SMSF will also need to provide their employer with their ABN, bank account details and electronic service address to their employer.

The changes will result in a more timely and reliable flow of contributions and make it easier for employers. Funds do not need to upgrade their reporting software to comply with the changes.

Tips for rental property investors

The ATO has constructed a checklist of tips to help investment property owners correctly claim rental property deductions at this year-end.

Claiming property deductions is often a complex and complicated process. Every rental property is different, so it is always a good idea to seek the help of a tax professional for specialised advice.

Immediate deductions

Some expenses may be immediately deductible in the income year in which they are incurred. For example, taxpayers may be able to claim an immediate deduction for interest on a loan used to:

- purchase a rental property
- purchase land to build a rental property
- purchase a depreciating asset for the property, such as an air conditioner
- to finance renovations or home improvements

Taxpayers can claim a deduction for the costs paid to repair and maintain their rental property. For example, replacing part of the guttering or windows damaged in a storm or repairing an electrical appliance.

Tenancy costs such as the preparation of a lease agreement, or costs associated with evicting a tenant are also immediately deductible expenses.

Deductions over a number of years

Other expenses can be claimed over a number of years, including the cost of depreciating assets, structural improvements and most borrowing costs.

Assets that are part of the property such as stoves, air conditioning and hot water systems can be claimed over a number of years as a 'decline in value' deduction.

Taxpayers are also able to claim the cost of building, construction and structural improvements made by the current or previous owner as a capital works deduction. For example, adding a room or constructing a retaining wall or fence.

Another example of expenses that need to be claimed over a number of years is borrowing costs such as stamp duty charged on a mortgage, loan establishment fees and title search fees charged by the lender.

If these amounts are less than $100 in total they can be deducted immediately, otherwise they are generally deductible over five years or over the term of the loan, whichever is less.

Deductions that cannot be claimed

Taxpayers are unable to claim deductions for the following expenses:

- acquisition and disposal costs of the property
- expenses not actually incurred by the taxpayer, such as water or electricity charges borne by the tenant
- expenses that are not related to the rental of a property, such as expenses connected to the private use of a holiday home that is rented out for part of the year

Keeping it in the family: succession planning

Succession planning is rarely high on the priority list for a family business; however a successful succession plan can ensure that the business will continue to grow and develop when the current owner leaves.

There are four vital factors to consider when passing a family business onto the next generation.

1. Starting early

Businesses should have a plan in place before transferring ownership of the business. This will help to ensure that the past owner can reap the maximum benefits of the transfer and not lose money due to the unforeseen taxes.

The idea of a succession plan might sound simple, however, in reality it can take years to implement and involves coordination across multiple areas of a business.

Succession planning should not be seen as a single event but as a process that takes place over time. A succession plan needs to well thought out – and it takes time.

It is important to have the right people in the right jobs and with responsibilities that accord with their capabilities and experience.

2. Having a documented plan

This outlines the finer details of the succession arrangement and should initially be set out in broad terms by the business founder and key family members. The plan should eventually become the blueprint for a harmonious and profitable transfer of ownership of the business.

It should also address family assets outside the business, such as the owner's superannuation and/or trusts.

3. Make it open

Family businesses often have family members working full time, part time and some not at all. It is important that the succession planning process be open and transparent with all family members involved and informed.

Having 'closed' or secret meetings can create speculation and rumours. This can lead to disharmony as those excluded members may feel overlooked.

4. Seek external input

A vital component of a successful succession plan includes the input of a qualified and experienced advisor. Many business owners will require expert help to assist them in navigating the myriad of issues that arise with succession planning.

These issues can vary from capital gains tax, estate planning, retirement planning and stamp duty. The advisor can also assist in documenting the succession plan, as well as establishing a clear business strategy.

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