INSIDE

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FINANCIAL MATTERS AFFECTING YOUR LIFESTYLE

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Tax and the kid's savings

If a child is under the age of 18, and they earn income on their savings account, remember that the ATO considers that the person who "OWNS" the Interest depends on who uses the funds of that account (no matter what type of account it is or the name of the account holder).

The ATO says you need to consider who provides the money, such as the initial and ongoing deposits into the account, and who decides how the money is spent, regardless of who it is spent on. In other words, if you provide the money and spend it as you like, you must include the interest in your own tax return.

If the person who owns or uses the funds is the parent, and so acts as a trustee for the child but theirs actually no formal trust arrangement in place, the ATO will expect that parents TFN should be used. But if a formal trust exists, you should quote the trust's TFN.

If you hold a joint account, interest earned Is divided equally among all account holders who each declare their share of the income in their tax return.

TAX RATES

Residents under the age of 18 pay tax at different rates to adults. The tax free threshold is only $416. Between that and $1,307 the rate is 66%, and over $1,307 it is 45%. These higher rates are there to discourage adults from splitting their own income and diverting some of it to a child's account.

Note however that those rates mostly apply to non-PAYG income. If the minor concerned is an "excepted' person, all income is taxed at the same rate as if they were an adult. This may apply if the minor:

- Has finished full time study and is working full time
- Has disabilities
- Is entitled to double orphan pension.

AGE AND TFNS

A child can apply for a tax file number (TFN) – there is no minimum age. Children are not exempt from quoting a TFN. When deciding whether to quote a TFN, you need to

consider your child's age and the amount of interest they receive.

If your child is less than 16 years old, special rules apply to their income from a savings account. (And just so you know, the ATO treats a child as being under 16 years old until the end of the calendar year in which they turn 16).

If your child is:

- Any age and they can earn less than $120. per year from savings accounts, their financial institution will not withhold tax.
- Less than 16 years old and earns between $120 and $420 from savings accounts per year and
- Provides either their date of birth or tax file number TFN, the financial institution will not withhold tax and they don't need to lodge a tax return.
- Doesn't provide either date their date of birth or TFN, the financial institution will withhold PAYG tax at 47% and they will need to lodge a tax return if they want a refund.
- Less than 16 years old and earns $420 or more form savings accounts per year and
- Provides their TFN, the financial institution will withhold PAYG tax at 47% and they need to lodge a tax return if they want a refund.
- 16 or 17 years old, earns $120.00 or more from their savings account per year and
- Provides their TFN, the financial institution will not withhold tax
- Doesn't provide their TFN the financial institution will withhold PAYG tax at 47% and they need to lodge a tax return if they want a refund.
- 16 or 17 years old, earns $120 or more from their savings account per year end
- provides their TFN, the financial institution will withhold tax
- doesn't provide their TFN, the financial institution will withhold PAYG tax at 47% and they need to lodge a tax return if they want a refund.

  If you have a joint account between an adult and a child aged under 16 years, the same rules apply as those for a 16 or 17 year old.

AMOUNT OF INTEREST EARNED

The amount of interest applies to the total interest earned – not just the amount above the threshold ($420 or $120, depending on their circumstances). Where a deposit has a term of less than one year, or where interest is paid more than once per year, the ATO applies a daily pro – rata calculation of the threshold ($420 or $120 depending on their circumstances).

LODGING A TAX RETURN

If your child has had PAYG tax deducted, you will need to lodge a tax return on their behalf if they wish to claim any refund owed. If your child does not have a TFN, you will need to get one before you can lodge a tax return on their behalf.

Does the downsizer contribution have any appeal?

As one of a number of "housing affordability" measures where superannuation is seeking to encourage housing affordability, downsizer contributions were introduced for July 2018 to allow those aged 65 or over to sell their main residence and make up to a $300,000 contribution to superannuation or $600,000 for a couple provided the relevant legislative criteria is satisfied.

How do downsizer contributions work?

There are three broad steps, as outlined below, that need to be followed for a member to be eligible to make downsizer contributions. The down sizer contribution criteria are largely contained in section 292-102 of the Income Tax Assessment Act 1997 (Cth) (ITAA 1997).

Step 1: Eligibility

The first step the member needs to take is to confirm that the amount they wish to contribute will constitute eligible downsizer contributions. Broadly, an eligible downsizer contribution is where:

1. the contribution is made to a complying super fund by a member aged 65 years or older;
2. the amount is equal to all or part of the "capital proceeds" received from the disposal of an ownership interest in a dwelling that qualifies as a main residence in Australia, under the downsizer provisions;
3. the member or the member's spouse had an interest in the main residence before the disposal;
4. the interest in the main residence was held by the member, the member's spouse, the member's former spouse or a trustee of the estate of the member's deceased spouse during the 10 years prior to the disposal; and
5. the member has not previously made downsizer contributions in relation to an earlier disposal or a main residence.

A member's ownership interest in a dwelling must be held by the individual or their spouse. The ownership interest in the dwelling being sold (i.e. broadly, a legal or equitable interest, or a right or licence to occupy the dwelling) must be held by the individual (in respect of whom a downsizer contribution is being made) and/or their spouse, just before the disposal.

The member should determine whether they are eligible to make downsizer contributions and whether their main residence satisfies the above criteria prior to the disposing of their main residence in order to make a downsizer contribution.

Note that a caravan, houseboat or other mobile home does not qualify as a main residence for these purposes. Thus, the grey nomads travelling around Australia in their luxury motor homes, caravans, houseboats or yachts will not be eligible.

Step 2: Contributions

Upon the sale or disposal of a main residence, a member can make up to a maximum of $300,000 in contributions to their super fund above their usual concessional and non-concessional contribution caps in the relevant financial year. A downsizer contribution must not exceed the lesser of $300,000, or the total capital proceeds that the individual, their spouse, or they both receive from disposing of their ownership interest in the dwelling.

Further, there is no age limit or gainful employment test that needs to be satisfied (however, many SMSF deeds, prepared prior to 30 June 2018 preclude such contributions and an SMSF deed update may be required).

Moreover, downsizer contributions are not counted towards the relevant member's contributions caps or total superannuation balance (TSB) in the financial year a downsizer contribution is made. The $1.6 million (indexed) total superannuation balance restriction (which applies to, among other things, determine an individual's eligibility for non-concessional contributions) does not apply in respect of downsizer contributions in the financial year the downsizer contribution is made. Thus, a member could have, say, $2 million in super and still make a downsizer contribution.

Once a member sells their main residence, they are required to make downsizer contributions to their super fund within 90 days after the day the ownership changed (typically 90 days from settlement).

Given the 90-day time frame, a member cannot make downsizer contributions if settlement is, for instance, on vendor terms or a settlement date that goes beyond the 90-day period unless they have been granted an extension from the ATO.

While multiple downsizer contribution in respect of the sale of the same residence can be made, as noted above, the total amount of downsizer contributions made by each member cannot exceed the lesser of the total capital proceed or $300,000. This total amount includes the amount of all downsizer contributions a member makes in respect of all of their superannuation funds.

It is important to note that the maximum $300,000 downsizer contribution cap is for only one member, and therefore, this allows for a couple to contribute up to $600,000 (i.e. 2 x $300,000).

Step 3: Reporting and verification

Upon the super fund's receipt of the downsizer contribution form, the super fund must inform the ATO during the super fund's annual reporting. The ATO will then run verification checks on the amount and may contact the member for further information.

An approved form should be completed by the contributing member(s) and given to the trustee of the super fund detailing the amount that is to be attributed to downsizer contributions.

If the ATO has verified that the member has made eligible downsizer contributions, no further action is taken.

However, if the contribution does not qualify as a downsizer contribution, the ATO notifies the superannuation provider. The amount will then either be allocated as a non-concessional contribution – if permitted by superannuation law and may result in the member exceeding their cap – or refunded to the member in due course.

Expert advice should be obtained if the contribution fails to satisfy the downsizer criteria, as there are special rules for dealing with excess contributions and a hasty withdrawal of the contribution may give rise to further consequences.
Source: Daniel Butler

Businesses get increased access to losses

In the first quarter of this calendar year, legislation was passed that will supplement the ATO's current "same business test" for losses with a more flexible "similar business test". The new test will expand access to past year losses when companies enter into new transactions or business activities.

The similar business test allows a company (and certain trusts) to access losses following a change in ownership where its business, while not the same, is similar, having regard to:

- the extent to which the assets that are used in its current business to generate assessable income were also used in its former business to generate assessable income.
- The extent to which the activities and operations from which its current business is generating assessable income were also the activities and operations from which its former business generated assessable income.

- The identity of its current business and the identity of its former business
- The extent to which any changes to the former business resulted from the development or commercialisation of assets, products, processes, services or marketing or organisational methods of the former business.

As a test for accessing past year losses, the similar business test will only be available for losses made in income years starting on or after 1 July 2015.

The ATO has announced that same business test and similar business test will be collectively known as the "business continuity test".

We are always available to discuss any questions or concerns you may have.

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