Collins XPRESS

ISSUE 17 2015 | FAST TRACKING YOUR BUSINESS SUCCESS

Annual Leave Overhaul

The Full Bench of the Fair Work Commission reached a crucial verdict for employees covered by modern awards that will change annual leave entitlements.

The ruling will be inserted into all modern awards, giving employers important new rights and more flexible leave arrangements with their employees.

Annual leave overview

All full-time and part-time employees are entitled to four weeks of annual leave in a 12 month cycle. Accrued annual leave is based on their ordinary hours of work during the year. Because there is no minimum or maximum amount of annual leave that can be taken at a time, employees can hoard their leave entitlements.

Direction to take leave

Under the new rule, businesses with employees covered by modern awards can now direct their staff to take time off from work once they have accumulated eight weeks of leave. The decision provides welcome relief to employers who have long dealt with the detrimental effects of accrued annual leave. Before making a direction, the employer and the employee must reach an agreement on how to reduce or eliminate excessive annual leave. In situations where both parties cannot find a suitable solution, an employer can give their employee a written direction to take leave.

Collins&Co
CERTIFIED PRACTISING ACCOUNTANTS

PARTNERS

Ivan Anzanello
Fabio Cammarano
Michael Hollowood
Paul Kelly

SERVICES

Tax Advice
Superannuation
Business Advisory
Audit
Succession Planning
Business Valuations
Estate Planning
Wealth Creation

CONTENTS

Annual Leave Overhaul	1
Tax Debts and Payment Plans	2
ATO Focuses On Rental Property Deductions	3
Reducing Holiday House CGT	4
Work-Related Expenses On ATO Hitlist	4
Early Access To The Rescue	5
Super Contribution For Over 65's	6
House Prices	7
Carmen Vassallo Introduction	8
The Running Cam	8

The direction must be in writing, and meet the following requirements:

- The direction must not leave the employee with less than six weeks of paid annual leave after the directed annual leave is taken.
- The employee cannot be directed to take off a period of leave of less than one week.
- The employee cannot be directed to take leave less than eight weeks or more than one year after the date of the direction.
- The direction cannot be contradictory to any leave arrangements already in place.

Cashing out of annual leave

A further ruling enables employees covered by modern awards to cash out a portion of their annual leave, rather than taking their leave. Employees who elect to receive cash instead of taking leave, should their employer agree, must satisfy the following conditions:

- The cash-out agreement must be in writing and signed by both parties. The agreement must be retained by the employer.
- The agreement must state the amount of leave to be cashed out, the payment to be made to the employee, and when it will be made.
- Annual leave cannot be cashed out if it results in the employee's remaining entitlement being less than four weeks.
- Employees are not allowed to cash out more than two weeks of accrued annual leave in a 12 month period.

Tax Debts and Payment Plans

Making a request to the ATO for a repayment arrangement does not necessarily guarantee that one will be granted.

While a repayment arrangement can be a cost-effective way to obtain a release from tax liabilities, the ATO should not be considered a credit provider and expects taxpayers to pay in full and on time.

Where taxpayers are having difficulty paying, the ATO will assess certain factors that help to determine the taxpayer's ability to meet their obligations (pay their debts). These factors include, but are not limited to:

- Availability of access to alternate funding.
- Gross margin.
- Ability to change fixed assets to cash.
- Cash flow.

The tax office will also consider whether the taxpayer was compliant with other tax debts and obligations to gauge whether a repayment arrangement is sustainable. They will not approve a payment arrangement where tax lodgments are not up-to-date.

Included within the assessment will be the taxpayer's ability to make repayments outlined in the proposal, as well as their willingness to enter into a direct debit arrangement and any other conditions the ATO may impose.

The determination substantially draws from whether a taxpayer is genuinely suffering from serious hardship and has exhausted all other options.

A carefully prepared submission is crucial for the approval of a payment arrangement. Taxpayers need to ensure they provide the ATO within the agreed timeframe:

- Details on how the debt arose.
- Steps taken to alleviate the debt.
- Recent bank statements and annual financial statements.
- A proposal to repay all debts within a short timeframe.

Taxpayers must be aware that the ATO will take immediate debt recovery action if they miss a payment on their plan. Default can also cause problems with the application of future payment plans.

ATO Focuses on Rental Property Deductions

This tax season will see the ATO specifically targeting extreme or inappropriate deductions made by rental property owners.

While it is not uncommon to make some mistakes when claiming rental deductions, it is necessary for tax-payers with rental property interests to get their deductions and expense claims right to avoid facing harsh and costly penalties. Last year, the ATO contacted more than 350,000 taxpayers about omissions and errors in their returns.

This 2015-16 financial year will see the ATO increasing its focus on four main problem areas where rental property owners are incorrectly, whether by error or design, claiming deductions that don't necessarily suit their circumstances.

These include:

Claiming excessive deductions

The ATO recently amended deductions claimed for a holiday home. Deductions may only be claimed for the periods when the holiday house property was rented out, or when it was genuinely available for rent. Deductions should also be limited to the amount of income earned by the property owner when the property is rented out below the market rate to family or friends.

Partners splitting income and deductions

Husbands and wives who own property together, but divide the income and deductions unequally to receive a tax advantage for the higher income earner, will be heavily penalized by the tax office. These kinds of arrangements will attract higher penalties if the ATO believes that they are carried out deliberately.

Repairs or maintenance claims

The ATO will carefully examine any repair and maintenance costs incurred by a property owner after a property is bought. These 'initial repairs and improvements' costs to a property are generally not deductible, but can be added to the capital cost of the property.

Claiming for interest deductions

Interest expenses incurred for a rental property are only deductible when the property is used to produce rental income. For example, those who own a two-storey house and live privately in the bottom storey but lease out the top storey can only claim 50% of the interest expenses. Property owners must be aware that any interest expense incurred from the private use of a property is non-deductible.

Reducing Holiday House CGT

Keeping valid and accurate records from the time you purchase your holiday retreat can pay off when it comes to selling the property and calculating CGT.

Owners should not forget to take into account the capital gains that may arise when they eventually sell their holiday house.

Since only an individual's family home or 'main residence' is exempt from capital gains tax (CGT), owning other property, such as a holiday house, will put CGT squarely on the table. But there is a way an individual can reduce their capital gain.

Where the property was bought after August 20 1991 and used only for private purposes, its cost base can be increased by including expenses, such as interest, rates and taxes.

Capital gains are calculated by subtracting (from the property's sale price) the cost base plus certain eligible expenses that were incurred as a consequence of owning the property.

If the property is owned for at least 12 months, then 50% of the capital gain is added to the landlord's taxable income for the year in which they sell the second property. This is taxed at the landlord's marginal tax rate.

When making the CGT liability calculation, some common expenses that may qualify as part of the cost base of the holiday retreat include:

- Legal fees or stamp duty on the purchase.
- Sales commissions and legal expenses.
- Specific capital improvement costs.
- "Holding costs", such as water or council rates.
- Mortgage interest.
- Repairs, maintenance, gardening and cleaning.

Any property additions or improvements can be included in a property's cost base, but it is always a good idea to seek professional advice regarding this. Owners need to keep in mind that they must keep accurate records throughout their time of ownership, as it is almost impossible to substantiate claims without proper records.

Those who have owned the holiday house since before September 20 1985 do not need to worry about CGT.

Work-Related Expenses on ATO Hitlist

Don't get caught out by the ATO when lodging work—related expense claims this financial year.

Unusually high work-related expense claims from any industry or occupation in the country are on the ATO's hit list this year. The tax office has stated that it will be paying particular attention to claims that have already been reimbursed by employers or made for private purposes, such as travel from home to work.

Taking such a broad approach and using technology that can spot unusual or excessive claims will increase the ATO's chances of picking up on those who make incorrect claims.

While there are some exceptions that allow taxpayers to claim travel from home to work, they are often taken advantage of by people who stretch the rules or simply do not understand them. These are the kind of taxpayers who run the risk of being picked up by the tax office when lodging a return with an incorrect claim.

It is vital for taxpayers who are unsure to seek professional advice regarding what they can claim and how much they can claim. It is also important that they keep a record of what they spend on work-related items throughout the year in order to substantiate what is claimed through their tax return.

Early Access to the Rescue

Accessing your superannuation early is a short-term strategy Australians facing financial troubles can use to buy some temporary financial protection.

Withdrawing superannuation to buy some temporary financial protection is an option some individuals may turn to when faced with overwhelming financial burdens. However, there are limited circumstances when individuals can access their super savings early, and in most cases, individuals cannot withdraw their superannuation until they reach their preservation age and retire.

To access super early, Australians must first satisfy a condition of release, which allows immediate access to an individual's preserved benefits, provided the rules of their fund allow early super withdrawals. Some conditions of release include, but are not limited to:

Retirement

This is the most common condition of release. Super funds usually require a retirement declaration verifying that an individual has retired and the individual must have reached their preservation age.

Reaching the age of 65

As soon as an individual turns 65 they can withdraw their entire superannuation benefit, even if they haven't retired (and don't plan to retire) from the workplace.

Start a transition-to-retirement pension

Individuals can access a portion of their benefit each year by starting a super pension without retiring. This only works, however, if an individual has reached their preservation age and withdraws less than 10 percent of the account balance each year.

Severe financial hardship

Individuals can get some of their superannuation back if they satisfy the conditions that constitute the government's view of 'severe financial hardship'.

Compassionate grounds

If an individual suffers from a life-threatening illness or has fallen behind in overdue loan repayments before retiring, their super fund can release part or all of their preserved benefits. Individuals can also apply for early release of superannuation on compassionate grounds to pay for funeral or medical expenses, or palliative care. However, the conditions for release are limited and professional advice should always be sought if these options are being considered.

Permanent disability or incapacity

If an individual suffers from a chronic illness or serious disability, they may be able to claim on a total and permanent disability insurance policy. Individuals should check with their super fund first for the terms and conditions of insurance policies. Individuals may also access benefits early if they suffer 'permanent incapacity'.

Temporary incapacity

An individual's super fund may automatically provide protection insurance, or an individual may be able to apply for such insurance via the superannuation fund. Those who suffer from prolonged illness or disability can access this insurance cover and receive a regular income for up to two years.

Super Contribution for Over 65's

A common issue that arises when an individual turns 65 is working out how much concessional and non-concessional amounts they can contribute to their super fund.

Generally, individuals can make voluntary concessional (before-tax) or non-concessional (after-tax) superannuation contributions up to the age of 74. Those who are aged 65 or over need to satisfy a work test if they intend to make super contributions. Anyone aged under 65 can make super contributions without needing to satisfy a work test.

If you're turning 65 soon, or are already in the 65-74 age bracket, here are some key points to keep in mind when contributing to your super.

Over 65's must satisfy a work test

Upon turning 65, individuals must satisfy a work test before they continue contributing to their super. Those aged between 65 and 74 can make super contributions if they are employed on a part-time basis. Individuals need to work for at least 40 hours in a period of 30 consecutive days in the financial year in which they plan to make a super contribution.

No more contributions after 74

Individuals who are aged 75 or over cannot contribute to a super fund. However, if an employee is still eligible, their employer must continue to contribute Superannuation Guarantee Contributions beyond the age of 70 and over.

Tax deductions need taxable income

Individuals who intend to claim a tax deduction for concessional super contributions need to have an assessable income to justify the tax deductions. Assessable incomes include employment income, business income, or net rental income.

The 15% marginal tax rate

All tax-deductible super contributions and other concessional contributions are subject to 15% tax within a super fund. Therefore, claiming a tax deduction for super contributions may not be tax-effective if you are an individual who pays less than 15 cents in the dollar tax on your personal income.

Individual must be 'gainfully employed'

A key term in the work test an individual aged 65 years or over must satisfy to make super contributions, is that they must be gainfully employed. This means an individual must be employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. Gain or reward involves receiving a payment that is considered to be a salary, wage, fee, business income, commission or bonus in return for personal exertion.

The work test involves any paid endeavour

The work test for over 65's is satisfied when an individual's employment involves any endeavour where they receive remuneration for their efforts. Individuals will need to confirm with the tax office whether their arrangements satisfy the work test rules.

Documenting gainful employment

Any income that an individual receives for gainful employment must be fully documented and declared for tax purposes.

The bring-forward rule

65's and over cannot take advantage of the bring-forward rule. The bring-forward rule allows individuals to make contributions representing both the current year non-concessional cap, and the next two years cap, in a single year.

House Prices

What is driving them up?

The 2008 global financial crisis was widely expected to end the housing boom. But prices have continued to rise—not only in the amount, but also when measured against both incomes and rents. Why?

It's due to a factor taught in economics 101, if the demand for property outstrips supply the price will increase. So what drives supply and demand?

DEMAND

Demographic Shifts

Urbanisation—Movement of people to urban areas, especially major cities. **Aging**—Number of newly generated families and the retention of assets by parents. **Immigration and Overseas Investors**—The number of people arriving from overseas and the attractiveness of Australian property for not only Chinese, but Canadian, European and other Asian nationals.

Regional Economic Growth / Decline

With the move from the mining boom many workers are moving back to the cities from regional centres creating greater demand.

Low Interest Rates / Lower Risk Assets for Banks

We are economically at record low interest rates. The reason for this generates from economic conditions rather than being purely property driven. The banks also see property as a less risky loan than commercial lending, making it attractive to them to pursue.

Tax Break

The old chestnut of negative gearing making it attractive to reduce tax payable.

Perception that it is a Hedge Against Wider Investment Uncertainty

Australians and newly arrived immigrants see property as a less risky and more stable investment than any other risk category. In recent times this has proven correct but it is not a universal law, some of the oldies may remember the stagnation of property prices in the late 80's and early 90's. Historically the property increases only occurred from the 1960's onwards. From the 1890's to the 1950's general property prices barely kept pace with inflation.

Psychological Legacy of 1/4 Acre Block

Australian's have a strong psychological or philosophical desire to own their own land and building. This may be historical in content but it is real and although changing, has a strong pull on demand.

SUPPLY

Lack of Land Release-Transport Infrastructure

A number of factors come into play as to why there is not more land being released for housing; these include environmental concerns, transport infrastructure, access to educational institutions, location of employment and amenities. These are all issues that need to be addressed by various levels of Government.

Restricted Funding for Development

Although banks see property as less risky than commercial loans, they see the most risky commercial loans as being in property development. This is a structural problem with the development industry.

We have what could almost be called a perfect storm where many issues driving supply and demand are working in one direction, increasing prices.

As you can see demand plays a disproportionate driver of prices. Much of the commentary and initiatives by Governments and economic players are aimed at effecting one or a number of the drivers.

What will happen? What we do know is house prices are being driven up and at some time will ease off when these drivers reverse or cease to be an influence. When? Who knows, all we do know is that some 'Black Swan' event will occur at some stage.

Introducing Carmen Vassallo, Special Tax Counsel

We are delighted to welcome Carmen Vassallo to the Collins & Co team in a newly created role as Special Tax Counsel.

The appointment is part of our strategic commitment to enhancing our specialist tax advice capability for individuals as well as small and medium sized businesses.

Carmen brings to the role over 10 years of experience working in mid-tier chartered accounting firms. Her technical knowledge and commercial focus will enable us to provide you with expert tax advice in-house as well as regular information and comments about the current tax system and how impending changes may affect you.

Carmen's area of expertise includes:

- Business succession planning.
- Trusts and estates.
- Corporate Tax.
- Division 7A.
- Small business CGT concession.

Carmen is a member of the Institute of Chartered Accountants Australia and New Zealand and a Chartered Tax Advisor with the Tax Institute. In her spare time she enjoys cooking, watching movies and most sports, including tennis, soccer and basketball.

The Running Cam

Congratulations to "The Running Cam" on completing the Melbourne Marathon and raising funds for Dementia Research.

We would like to congratulate one of our clients, Cameron "The Running Cam" Jones, on his great effort in completing the recent Melbourne Marathon in under 4 hours. Cam dedicated the last six months to train for this event so that he could raise both awareness of and funding for Dementia Research, raising over $20,000 so far. Collins & Co has been proud to support Cam in this and donate to the cause, and you can view more details on Cam's Melbourne Marathon website: http://melbournemarathon2015.gofundraise.com.au/page/JonesCameron

If you would like to receive the Collins Xpress newsletter via email instead of hard copy please email partner@collinsco.com.au

Collins & Co
127 Paisley Street,
Footscray VIC 3011
T: (03) 9680 1000 | **F:** (03) 9689 6605
E: partner@collinsco.com.au

Visit us on the web at **www.collinsco.com.au/**
CollinsCoCPA CollinsCoCPA company/collins-&-co

Collins & Co
CERTIFIED PRACTISING ACCOUNTANTS