

# Practice Update

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April 2018

## New superannuation rates and thresholds released

The ATO has published the key superannuation rates and thresholds for the 2018/19 income year.

- ❑ The **Non-Concessional Contributions cap** will remain at \$100,000 (although transitional arrangements may apply), and the **Concessional Contributions cap** will remain at \$25,000.
- ❑ The **CGT cap amount** will be \$1,480,000.
- ❑ The **Division 293 tax threshold** will be \$250,000.
- ❑ The **maximum super contribution base** for superannuation guarantee purposes will be \$54,030 per quarter.
- ❑ The **maximum superannuation co-contribution entitlement** for the 2018/19 income year will remain at \$500 (with the lower income threshold increasing to \$37,697 and the higher income threshold increasing to \$52,697).

The superannuation benefit caps for the 2018/19 income year include:

- a **low rate cap amount** of \$205,000;
- an **untaxed plan cap amount** of \$1,480,000;
- a **general transfer balance cap** of \$1.6m;
- a **defined benefit income cap** of \$100,000;
- an **ETP cap amount** for life benefit termination payments and death benefit termination payments of \$205,000; and
- the **tax-free part of genuine redundancy payments** and **early retirement scheme payments** comprising a **base limit of** \$10,399 and for each complete year of service an additional \$5,200.

## Super guarantee payable on 'public holidays' and 'additional hours'!

The Federal Court has held that superannuation guarantee contributions were payable with respect to the 'additional hours' and 'public holidays' component of annualised salaries paid by BlueScope Steel, on the basis that these particular components formed part of ordinary time earnings ('OTE').

Under an enterprise agreement, primarily due to the specific working environment, the employees in question were required to be available (at short notice) 365 days per year and 24 hours per day, including a requirement to work additional hours and public holidays.

As such, the employees were paid an annualised salary, which was made up of a base rate, as well as a component which absorbed all additional payments, such as penalty rates, allowances, public holiday loadings and pay-outs, and payment for additional hours worked outside the normal rostered hours.

However, when paying superannuation, adjustments were made to the annualised salary, so that the additional hours and public holiday components were **not included** by BlueScope Steel as OTE for superannuation guarantee purposes.

### Decision

The Federal Court did not agree with the employer's adjustments, instead finding that, under the circumstances, the 'additional hours' and 'public holidays' formed part of an employee's 'ordinary hours of work' and, therefore, were considered OTE for superannuation guarantee purposes.

This remained the case whether or not the employee *actually* worked the additional hours or the public holidays.

That is, the ordinary conditions of the employee's work required them to be available outside their rostered shifts and on public holidays (on short notice) and, as this was factored into their annual salary, they were considered ordinary hours for **these particular employees**.

## Inactive ABNs will be cancelled by the ATO

The ATO has recently advised that, in an effort to maintain accurate data, the Australian Business Register (or 'ABR') periodically checks its records for Australian Business Numbers ('ABNs') and automatically cancels those that appear inactive.

Ultimately, a taxpayer's ABN may be cancelled if they:

- ◆ have told the ATO they stopped their business activity;
- ◆ declared no business income in the last two years; or
- ◆ have not lodged a BAS or an income tax return in more than two years.

To avoid cancellation, the ATO has reminded taxpayers that they need to bring their lodgments up to date, and have reminded sole traders that, regardless of their income, they need to lodge the individual tax return with the supplementary section, as well as the business and professional items schedule.

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## Commissioner's speech highlights ATO's focus areas

Recently, the Commissioner of Taxation highlighted the areas in which the ATO has recently increased its focus, including:

- ❑ undeclared income;
- ❑ individuals' unexplained wealth or lifestyle;
- ❑ incorrectly claimed private expenses;
- ❑ unpaid superannuation guarantee; and
- ❑ cash-only businesses and those with low usage of merchant banking facilities, with black economy visits to over 2,600 businesses across 8 locations in 2017.

The Commissioner also highlighted ongoing ATO concern with respect to the predicted 'work-related expense claim gap', which (at least by the ATO's estimates) could amount to being greater than the 'large corporate tax gap' of \$2.5 billion of lost revenue.

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## No need to actually 'downsize' for 'downsizer contributions'

From **1 July 2018**, individuals aged 65 or over may use the proceeds from the sale of an eligible dwelling that was their main residence to make superannuation contributions (referred to as '**downsizer contributions**'), up to a maximum of \$300,000 per person (i.e., up to \$600,000 per couple), without having to satisfy the age or gainful employment tests that usually apply.

This measure was announced in the 2017/18 Federal Budget, and aims to provide an incentive for older Australians to 'downsize' their home.

This, in turn, is expected to reduce pressure on housing affordability by freeing up stocks of larger homes for growing families.

Importantly, it should be noted that there is no requirement for an individual **to actually 'downsize'** by acquiring a smaller property, or to even acquire another property at all.

In this regard, all that is required is that the individual (or their spouse) 'downsized' by selling their 'main residence'.

The individual can then move into any living situation that suits them, such as aged care, a retirement village, a bigger or smaller dwelling than the one sold, a rental property, or living with family.

Also, the property sold does **not** need to have been the individual's (or their spouse's) main residence during their *entire* ownership of it, provided the property was owned for at least 10 years and was their main residence at **some time** during the ownership period. Therefore, the sale of an investment property that at one stage was their main residence may enable an individual (or their spouse) to make downsizer contributions.