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[Insert Client Name]

[Insert Client Position]

[Insert Company Name]

[Insert Company Address]

[Suburb State Postcode]

Dear [Insert Client Name]

**Re: Tax treatment of superannuation contributions**

We are writing to inform you of the current tax treatment of superannuation contributions made to a complying superannuation fund for the year ended 30 June 2021. The rules are very complex and it is strongly recommended that an individual seek advice from an appropriately licensed financial adviser to fully understand their impact on retirement income strategies.

**Executive Summary**

Superannuation contributions are divided into two categories, being concessional and non-concessional contributions.

* Concessional contributions are essentially contributions made to a complying superannuation fund which are included in the assessable income of that fund. Such contributions include employer contributions (including salary sacrificed contributions) and any personal contributions made by an individual (whether employed, self-employed or a combination thereof) which are eligible to be claimed as a tax deduction.
* Non-concessional contributions consist of contributions made to a complying superannuation fund in respect of a person which are not included in the assessable income of the fund. Such non-concessional contributions include personal contributions which are not deductible to the contributor (e.g. a contribution made from an individual’s after-tax salary as well as government co-contributions and contributions made on behalf of a spouse).

**Current treatment of contributions into superannuation**

**Concessional Contributions**

An employer is eligible to claim a full tax deduction for all superannuation contributions made on behalf of an employee to a complying superannuation fund (subject to certain contribution rules being satisfied).

Furthermore, an individual will be entitled to a deduction for personal superannuation contributions made to a complying superannuation fund or retirement savings account (RSA) in the year ended 30 June 2021 where the following conditions are met.

* The contributions must be made by a person aged 18 or over (unless a person aged under 18 as at 30 June 2021 earned salary or wages or income in return for the provision of personal labour and skills or from carrying on a business) and cannot be made more than 28 days after the end of the month in which the individual turns 75 years of age.
* If the individual is aged between 67 and 74 years of age at the end of the income year in which the contribution is made, they must satisfy a work test or meet the work test exemption criteria in each financial year a contribution is made in order to be able to claim a deduction. The work test requires that the individual works for at least 40 hours during a consecutive 30 day period each financial year a contribution is made. To meet the work test exemption criteria, the individual must have satisfied the work test in the preceding financial year, have a total superannuation balance of less than $300,000 at the end of the previous financial year, and not previously utilised the work test exemption. The work test exemption applies from 1 July 2019.
* The individual must give a valid written notice of an intention to claim a deduction to the complying superannuation fund or RSA in respect of the personal superannuation contribution made during the 2021 year. Such a notice must be provided by the earlier of the date on which the individual lodges their 2021 income tax return or 30 June 2022. In addition, the trustee of the fund or RSA must provide the individual with a written acknowledgement in respect of the notice received.
* The fund must not be a Commonwealth public sector defined benefit fund, a constitutionally protected fund or other untaxed fund, or a fund that has notified the Commissioner before the start of the 2021 year that they have elected to treat all member contributions as being non-deductible.

*Concessional contributions cap*

The amount of concessional contributions is subject to a general cap to limit the amount of concessional contributions that can be made by or on behalf of a person.

A standard concessional contributions cap of $25,000 applies to all individuals regardless of age. This will increase to $27,500 from 1 July 2021.

Contributions made to a complying superannuation fund in respect of a person that exceed the annual concessional contribution caps are not subject to excess contributions tax. The individual is instead required to include the excess amount in his or her assessable income to be taxed at the marginal tax rate but will be entitled to an offset equal to the 15% tax paid on the contribution by the superannuation fund.

In addition, the excess contributions will attract the Excess Concessional Contribution (**ECC**) charge to recognise that the tax is collected at a time later than normal income tax. The ECC charge is payable on the increase in tax liability in the year the excess concessional contributions are made. The ECC charge is calculated from the start of the income year in which the excess contributions were made until the day prior to the date that the tax is due to be paid under the tax assessment for the year that includes the excess concessional contributions. The rate of the ECC charge for the quarters ended 31 March 2021 and 30 June 2021 is 3.02% and 3.01% respectively.

Individuals may also elect to withdraw up to 85% of their excess concessional contributions from their superannuation fund. Any excess concessional contributions withdrawn from their fund will not count towards their non-concessional contributions cap.

*Carried forward unused concessional contribution cap amounts*

From 1 July 2018, assuming certain requirements are met, it is possible to make “catch up” concessional contributions. This allows those who are eligible who do not use their full concessional contributions cap to “carry forward” the unused part of their cap for up to five years. This effectively allows an individual to make up to $150,000 of concessional contributions in a single financial year by utilising unapplied unused concessional contribution caps from the previous five years.

To be able to make catch up contributions an individual must:

* have made or received concessional contributions of less than the concessional contributions cap of $25,000 per annum over the five year period
* have a total superannuation balance of less than $500,000 at 30 June in the year before the catch up contribution is to be made.

For the year ended 30 June 2021, only the unused caps from the 2019 and 2020 income years can be applied. In the year ended 30 June 2022, unused caps from 2019 to 2021 income years will be able to be applied.

*Division 293 tax*

Careful consideration should also be given to individuals whose ‘adjusted taxable income’ and concessional contributions, when added together, exceed $250,000 in which case the provisions of Division 293 will apply for the year ended 30 June 2021.

For these purposes adjusted taxable income is a taxpayer’s income for Medicare levy surcharge purposes (excluding reportable superannuation contributions).

In these situations, the amount of the concessional contributions made in respect of an individual to the superannuation fund, which is in excess of the Division 293 threshold of $250,000 will be subject to a further 15% tax. Accordingly, such contributions are effectively subject to tax at a rate of 30%, being the 15% tax levied under Division 293 as well as the standard 15% tax on concessional contributions.

**Non-concessional contributions**

*Non-concessional contributions cap*

Non-concessional contributions are also capped to limit the amount of superannuation contributions that can be paid to a complying superannuation fund including any contributions made from after-tax salary.

For the year ended 30 June 2021 the annual cap on non-concessional contributions is $100,000. From 1 July 2021 the annual cap will increase to $110,000.

However, only an individual who has a total superannuation balance which is less than the general transfer balance cap at 30 June of the preceding year will be eligible to make non-concessional contributions.

An individual’s total superannuation balance comprises an individual‘s accumulation and retirement phase interests in all their superannuation funds reduced by any personal injury structured settlement amounts contributed to a superannuation fund. The general transfer balance cap for the year ended 30 June 2020 is $1.6 million, and will be indexed to $1.7 million on 1 July 2021.

Accordingly, where a person’s total superannuation balance is in excess of their general transfer balance cap of $1.6 million as at 30 June 2020, that person will not be able to make any non-concessional contributions in the year ended 30 June 2021. Alternatively, where the total superannuation balance is less than the general transfer balance cap of $1.6 million as at 30 June 2020, the amount of any non-concessional contributions will be capped to the extent of that shortfall and the prevailing non-concessional contributions cap.

An individual aged under 65 may also bring forward amounts allowed for non-concessional contributions in the succeeding two years under the three-year brought forward rule. This will enable an eligible individual to apply the bring forward rule to make total non-concessional contributions of up to $300,000 for the year ended 30 June 2021. The $300,000 threshold increases to $330,000 from 1 July 2021.

However, the maximum amount of non-concessional contributions that can be brought forward in such circumstances is also limited to the extent to which that individual’s total superannuation balance is less than the general transfer balance cap of $1.6 million as at 30 June 2020. As mentioned above, the total superannuation balance cap is being indexed to $1.7 million from 1 July 2021, however individuals will have different caps depending on their own circumstances.

It should be noted that the government is planning to abolish the work test for non-concessional contributions and salary sacrifice contributions for anyone aged between 67 and 74 years of age from 1 July 2022. This will also apply to contributions made for a person's spouse.

*Excess non-concessional contributions*

It should also be noted that under the existing rules an individual may elect to withdraw any excess non-concessional contributions made and 85% of any associated earnings from their superannuation fund. The full amount of these earnings will instead be included in the individual’s assessable income and taxed at the individual’s marginal tax rate (but are subject to a non-refundable 15% tax offset). Where excess non-concessional contributions are not withdrawn from the fund the individual will be subject to tax on that excess at 47% for the year ended 30 June 2021.

*CGT cap*

Note that in addition to the above, where an entity is eligible to apply the Small Business 15-year exemption or the Small Business CGT retirement exemption, the entity will be eligible to rollover up to an additional $1,565,000 for the year ended 30 June 2021 (being the applicable CGT cap amount) into the complying superannuation fund of a ‘significant individual’ of the entity. The $1,565,000 amount will not count toward either the concessional contribution cap or the non-concessional contribution cap. However, any contribution is included in an individual’s total superannuation balance where it is rolled over into superannuation in which case it may be prudent to seek advice from an appropriately licensed financial adviser.

**First Home Super Saver Scheme (FHSS)**

The FHSS scheme allows an individual to make additional voluntary superannuation contributions to a complying superannuation fund from 1 July 2017 up to a maximum amount of $30,000 which from 1 July 2018 can be withdrawn to help finance a first home deposit. From 1 July 2022, the maximum amount will be increased to $50,000.

Under the scheme an individual can make additional ‘voluntary’ concessional contributions of up to $15,000 each year from 1 July 2017 to a complying superannuation fund subject to meeting the prevailing concessional contribution cap which is $25,000 for the year ended

30 June 2021.

The FHSS scheme provides that 85% of concessional contributions can be withdrawn together with any associated earnings as a FHSS released amount which is then in aggregate included in the individual’s assessable income and subject to a 30% non-refundable tax offset.

The associated earnings are calculated on a daily compounding basis at the shortfall interest charge rate from the date such contributions are made up until the date the FHSS released amount is determined.

To be eligible to use the FHSS scheme a person must be aged 18 years or over, have never used the FHSS scheme before and never owned real property in Australia. In addition, such a person has 12 months after the release of the FHSS amount to sign a contract to purchase or construct residential premises, and that person must also occupy those premises for at least six months of the first 12 months after it is practicable for those premises to be occupied. Moreover, if that person does not buy such a home they will be required to pay an additional 20% FHSS tax on any assessable released amount.

**Downsizer contributions**

An individual aged 65 or over is able to make additional non-concessional contributions of up to $300,000 from the capital proceeds on the sale of an ownership interest in a main residence held by the individual (or their spouse or former spouse) where a contract for the disposal of the property is entered into on or after 1 July 2018.

This measure allows an eligible individual an additional superannuation ‘downsizer’ contribution cap of $300,000 which will be excluded from the broader non-concessional contributions cap.

Such a contribution will also be exempt from the contribution rules for people aged 65 and older including the need to satisfy the work test, and the above restrictions on making non-concessional contributions. However, if a downsizer contribution is made, it will increase an individual’s total superannuation balance for the purposes of that test.

The eligibility conditions which must be satisfied in order to make a downsizer contribution are as follows:

* the contribution must be made to a complying superannuation fund when the person making the contribution is aged 65 years or over
* the contribution must be for an amount equal to all or part of the capital proceeds received from the disposal of an ownership interest in a dwelling which was held by the individual or spouse just before the disposal of the dwelling, and the capital proceeds must relate to a contract of sale of a main residence that was entered into on or after 1 July 2018 where any capital gain would have been wholly or partially exempt under the CGT main residence exemption, or would be entitled to such exemption if the home was a CGT asset rather than a pre-CGT asset (i.e. acquired before 20 September 1985)
* the dwelling must be located in Australia, and not be a caravan, houseboat or other mobile home
* the contribution must be made within 90 days after the time at which the residence changes ownership, and the individual making the contribution must notify their fund in the approved form of this choice at the time the contribution is made. For these purposes, the time of the change in ownership is usually the settlement date as it is when the balance of the purchase price is paid
* either the individual or their spouse (or former spouse) must have owned the ownership interest in the main residence at all times for a minimum of 10 years from the date that ownership of the dwelling commenced to the date such ownership ceased
* the maximum downsizing contribution is a capped to $300,000 per contributor (or $600,000 for a couple) provided the contribution comes from the capital proceeds received on the sale of the property. Where the capital proceeds are less than this maximum amount the amount of the downsizing contribution will be proportionally capped to that lesser amount.

It was announced in the 2021-22 Federal Budget that the relevant age for the downsizer contribution will decrease from 65 years to 60 years. It is expected that this change will apply from 1 July 2022.

To arrange a meeting to further discuss the superannuation regime with our licensed financial planner, please do not hesitate to contact me on [insert telephone number of partner].

Yours faithfully

**[insert name of partner]**