TECHNICAL ARTICLE

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Key advice changes for 2022 and beyond

11 February 2022

Recent and prospective legislative changes have created advice opportunities to help you reconnect with clients in 2022 and beyond.

Note: For a more detailed discussion of the strategies below, please see the resources noted which are available in the Technical section of MLC AdviserOnline.

Super contribution changes

Change and status	Who is impacted?	Details	Tips and traps	Resources
Removal of the work test for NCCs and salary sacrifice ***Status:*** *Awaiting Royal Assent – (refer to **Appendix A**).* ***Effective:*** *1 July 2022*	Clients aged 67 to 74 with funds to contribute but do not meet the work test or work test exemption	Clients aged 67 to 74 will not need to meet a work test (or apply the work test exemption) to make: ▪ NCCs, and ▪ salary sacrifice contributions. The waiver of the work test will not apply to personal deductible contributions. Individuals aged 67 to 74 wishing to claim a tax deduction for personal contributions must still meet the work test (or be eligible to apply the work test exemption). All other eligibility criteria continue to apply, including the TSB limits and contribution caps. Contributions must also be received no later than 28 days after the month in which the member turns age 75.	The work test will be removed as a general condition for funds to accept personal contributions, with a specific work test requirement for personal deductible contributions only.	**Adviser resources** Super bill to provides super opportunities in 2022 Super contribution changes and opportunities – legislation passed Guide to non-concessional contributions Salary sacrifice vs PDCs

Change and status	Who is impacted?	Details	Tips and traps	Resources
Eligibility to make NCCs under bring-forward rule for clients aged 67 to 74 ***Status:*** *Awaiting Royal Assent – (refer to* ***Appendix A****).* ***Effective:*** *1 July 2022*	Clients aged 67 to 74 with large amounts to contribute into super	Clients aged 67 to 74 on 1 July of a financial year will be able to make NCCs using the bring-forward rule to make after-tax contributions greater than the annual NCC cap. All other eligibility criteria continue to apply, including the TSB limits and contribution caps (refer to **Appendix B** for current thresholds).	Treasury has clarified that clients who are nearing age 75 will be able to bring-forward up to $330,000, subject to meeting other eligibility criteria.	**Adviser resources** **Super bill provides super opportunities in 2022** **Super contribution changes and opportunities – legislation passed** **Guide to non-concessional contributions** **NCC advice opportunities** **Untangling the bring-forward rule**
Downsizer contributions eligibility age reducing to 60 ***Status:*** *Awaiting Royal Assent –(refer to* ***Appendix A****).* ***Effective:*** *1 July 2022*	Clients aged 60 to 64 who want to contribute the proceeds from the sale of an eligible property	The eligibility age for downsizer contributions will reduce from 65 to 60. This will allow eligible individuals to utilise proceeds from the sale of their home to boost retirement savings. If an individual exchanges contracts or sells their home at auction on or after 19 February 2022 with a standard 42-day settlement, they may be eligible to make a downsizer contribution on or after 1 July 2022. Downsizer rules require that contributions are made within 90 days of settlement, which means based on a commencement date for this measure of 1 July 2022, settlement must occur on or after 2 April for a contribution to be made on or after the following 1 July. Other eligibility criteria, including entitlement to the main residence exemption and 10-year ownership period remain unchanged.	Holding funds in super may be beneficial because: ▪ super in accumulation phase is an exempt asset for social security purposes until the person has reached Age Pension age, and ▪ savings can grow in a concessionally taxed environment – up to 15% in accumulation phase or 0% in retirement phase.	**Client resources** **Upsize your super with downsizer contributions** (article) **Upsize your super with downsizer contributions** (concept card) **Adviser resources** **Downsizer contributions** **Super bill provides super opportunities in 2022** **Super contribution changes and opportunities – legislation passed**

Change and status	Who is impacted?	Details	Tips and traps	Resources
First home super saver scheme changes ***Status:*** *Awaiting Royal Assent –(refer to **Appendix A**).* ***Effective:*** *1 July 2022*	Clients planning to purchase their first home and may benefit from making voluntary super contributions and later withdrawing under the FHSSS	The maximum amount that can be released under the First Home Super Saver Scheme (FHSSS) will increase from $30,000 to $50,000. This also results in a higher amount of calculated associated earnings, meaning the overall amount available to be released under the scheme is increased. The maximum amount of voluntary contributions in a financial year remains limited to $15,000. Contributions must be made within the person's contribution caps.	Given the annual limit is unchanged, a client would need to make voluntary contributions over a minimum of four financial years to reach the $50,000 limit.	**Client resources** **KnowHow - FHSS Scheme** **Adviser resources** **FHSSS explained** **Super bill provides super opportunities in 2022** **Super contribution changes and opportunities – legislation passed**
SG threshold of $450 per month abolished ***Status:*** *Awaiting Royal Assent – (refer to **Appendix A**).* ***Effective:*** *Start of quarter after Royal Assent received - 1 July 2022 at the earliest*	Clients who earn less than $450 per month and are not receiving SG payments from their employer	The minimum monthly income threshold that applies to determine eligibility for SG will be abolished. This means that eligible employees who earn less than $450 per month will receive SG from their employer if other eligibility requirements are satisfied. Currently, an employee who has monthly ordinary times earnings of up to $450 is not eligible for SG.	Employers will need to review business processes to ensure the appropriate amount of SG is paid to all eligible employees.	**Adviser resources** **Guide to SG** **Super contribution changes and opportunities – legislation passed**

Change and status	Who is impacted?	Details	Tips and traps	Resources
SG increasing to 10.5% ***Status:*** *Enacted* ***Effective:*** *1 July 2022*	Clients who: ▪ want to establish or have an existing salary sacrifice arrangement with their employer. ▪ are small business owners and need to ensure Superannuation Guarantee (SG) obligations are met	The SG contribution rate will increase to 10.5% from 1 July 2022. The annual concessional contribution (CC) cap is likely to remain unchanged at $27,500 (actual CC cap may be higher if eligible for catch-up contributions). Most employees will receive additional SG contributions, unless already receiving SG at or above 10.5%. Employees under a 'total employment cost' arrangement may have their cash salary reduced to offset the increase in SG payments. Small business owners should review their systems to ensure that they are meeting their obligations to their employees based on the new rate.	Clients with existing salary sacrifice arrangements or establishing one should review the amount to take into account the increase in their employer's obligation and ensure they don't exceed their CC cap. Clients who are employees of their own business entity need to ensure that SG is paid as certain payments are considered ordinary times earnings (eg directors fees).	**Client resources** **Sacrifice pre-tax salary into super** **Adviser resources** **Salary sacrifice vs PDCs** **Guide to SG**

Super income stream changes

Change and status	Who is impacted?	Details	Tips and traps	Resources
Temporary reduction to minimum pension payment rates ending in 2022/23 ***Status:*** *In force* ***Effective:*** *1 July 2022*	Clients with account-based, market-linked and transition-to-retirement pensions	The Government temporarily reduced the **minimum pension payments** by 50% for the 2019/20, 2020/21 and 2021/22 financial years. At the time of publication, there is no indication that the Government will extend this for another financial year. This means that, from 1 July 2022, the minimum drawdown payment factors will return to normal levels, and clients receiving a reduced amount (below the standard minimum rates) will receive a higher pension payment in 2022/23.	Approaching 30 June 2022, it is important to consider whether new instructions will be required for 2022/23 and what the client will receive from 1 July 2022.	**Adviser resources** **Extension of minimum pension payment rates for 2021/22** **Facts and figures (Minimum pension payment factors)**
Temporary option to exit legacy income stream products ***Status:*** *Unknown (Proposed in 2021/22 Federal Budget – not included in Super Bill currently before House)* ***Effective:*** *First 1 July after Royal Assent*	Clients with term allocated pensions, market-linked, life-expectancy and lifetime income streams which first commenced prior to 20 September 2007	The Government will provide a two-year window to exit certain legacy retirement products. All underlying capital and any associated reserve supporting the income stream must also be part of the amount paid upon exiting. The person may: ▪ rollover the super interest to an accumulation account ▪ commence a new superannuation income stream, such as an account based pension, or ▪ cash out of the super system. An exemption will apply to exclude the amount received from the reserve from the individual's CC cap, but it will be included in the assessable income of the super fund and taxed at up to 15%. If the amount is used to commence another retirement phase income stream, this is assessed against the individual's TBC. Some of these income streams may have received favourable social security and taxation treatment. Upon exiting the fund, any favourable treatment will be lost, and if a new income stream is commenced it will be assessed according to the ordinary rules (eg an account-based pension will be a financial asset and subject to deeming). However, there will be no historical re-assessment of the legacy income stream.	The proposal applies to term allocated pensions, market-linked, life-expectancy and lifetime income streams which first commenced prior to 20 September 2007. These income streams can be provided by any super fund including self-managed super funds (SMSF). However, flexi pension products and lifetime products from large-APRA funds or public sector defined benefit funds are specifically excluded.	

Change and status	Who is impacted?	Details	Tips and traps	Resources
Introduction of the retirement income covenant ***Status:*** *Awaiting Royal Assent –(refer to* ***Appendix A****).* ***Effective:*** *1 July 2022*	Clients with account-based, market-linked and transition-to-retirement pensions	With the introduction of the retirement income covenant, trustees will be required to prepare a retirement income strategy designed to assist their members, who are retired or approaching retirement, to achieve and balance the following objectives of: ▪ maximising their expected retirement income ▪ managing risks to the sustainability and stability of their expected retirement income, and ▪ having some flexible access to expected savings during retirement. Trustees will need to take reasonable steps to gather information to assist in formulating the strategy for its members. The steps taken to establish the strategy must be documented, which covers formulating, reviewing and giving effect to the strategy. A summarised version of the strategy will be made publicly available. Trustees are expected to have their strategy formulated in writing and a summary publicly available from 1 July 2022, though they are not required to give effect to all the components of their strategy on this date. Implementation of the strategy is an ongoing process that is required from 1 July 2022.	Funds excluded from this covenant include self-managed super funds and certain defined benefit funds where the member only holds a defined benefit interest in the fund and is unable to commute their interest to a lump sum.	

Social security and aged care

Change and status	Who is impacted?	Details	Tips and traps	Resources
Pension Loans Scheme renamed, interest rate reduced ***Status:*** *In force* ***Effective:*** *1 January 2022*	Clients considering borrowing against their home and receive lump sum instalments	The Pension Loans Scheme (PLS) was renamed and is now known as the **Home Equity Access Scheme** (HEAS) to place emphasis on the fact that the scheme is accessible for all Age Pension age retirees, whether self-funded or pensioners (subject to eligibility criteria). The Government also reduced the compound interest rate for the scheme to 3.95% per annum (from 4.50% per annum) on 1 January 2022. The interest rate reduction will apply to existing and new borrowings under the scheme.	Payments received from the HEAS are not assessed as income for social security and are not subject to tax.	**Adviser resources** Understanding home equity release loans Pension Loans Scheme – interest rate and name change
Home Equity Access Scheme (formerly PLS) changes ***Status:*** *Introduced to Parliament but not passed* ***Effective: 1*** *July 2022*	Clients considering borrowing against their home and receive lump sum instalments	Changes have been proposed to the Home Equity Access Scheme (HEAS) to enable payments to be received as lump sum instalments and also introduces a 'no negative equity guarantee'. Currently, the HEAS provides a loan in the form of fortnightly instalments. The payment options are proposed to be expanded to allow HEAS participants to receive up to 50% of the maximum annual rate of Age Pension ordinarily received over the course of the year (ie 26 fortnights) as lump sum advance payments. This amount will vary depending on whether the person is single or a member of a couple. The introduction of a no negative equity guarantee ensures that a person with an outstanding HEAS balance (on or after 1 July 2022) won't need to repay more than the market value of property used as security under the scheme. This applies to new and existing HEAS participants.	Lump sum advance payments received will be treated in the same manner as home equity release loans (eg reverse mortgages and home reversion schemes) for social security purposes. While the application of the no negative equity guarantee ensures no additional debt is outstanding, a debt may still arise in some cases.	**Adviser resources** Understanding home equity release loans Pension Loans Scheme changes – legislation introduced

Taxation

Change and status	Who is impacted?	Details	Tips and traps	Resources
Low and middle income tax offset (LMITO) ending from 2022/23 ***Status:*** *In force* ***Effective:*** *1 July 2022*	Clients with taxable income below $126,000 in 2022/23 and beyond	LMITO is scheduled to cease on 30 June 2022. It currently applies to individuals with taxable income up to $126,000 in the financial year. The amount of offset that applies (up to $1,080) varies depending on taxable income. Individuals who are currently eligible for the offset may see a reduction in net income 2022/23, depending on their circumstances.	Clients with existing salary sacrifice arrangements may need to adjust the amount to ensure they have sufficient income to meet their needs.	**Adviser resources** **LMITO and FBT exemption Bill passes**
Extension of temporary full expensing on depreciating assets ***Status:*** *Awaiting Royal Assent – (refer to* ***Appendix A****).* ***Effective:*** *1 July 2022*	Businesses with annual turnover of less than $5 billion	The provision to allow the temporary full expensing of depreciating assets will be extended for eligible businesses for a further 12 months. This means eligible businesses with annual turnover of less than $5 billion will be able to fully expense the cost of depreciable assets until 30 June 2023.	Assets must be first used or installed before 30 June 2023.	
Changes to employee share scheme criteria ***Status:*** *Awaiting Royal Assent –(refer to* ***Appendix A****).* ***Effective:*** *First 1 July after Royal Assent*	Clients with employee share scheme (ESS) entitlements with their current employer	Leaving an employer will no longer be a taxing point for ESS entitlements that are subject to deferred taxation. This means that tax deferral for ESS entitlements will continue until forfeiture conditions have passed and shares are held that are freely able to be sold, but still subject to the maximum 15-year tax deferral period. Currently forfeiture conditions and sales restrictions are often lifted at the time employments ends.	These amendments apply to ESS interests where the deferred taxing point occurs on or after the first 1 July after Royal Assent is received.	

Change and status	Who is impacted?	Details	Tips and traps	Resources
Extension of loss carry back provisions ***Status:*** *Awaiting Royal Assent- (refer to* ***Appendix A****).* ***Effective:*** *1 July 2022*	Corporate tax entities with an aggregated turnover of less than $5 billion	The temporary loss carry back rules allow eligible corporate tax entities to offset tax losses against previous income tax liabilities to generate a loss carry back tax offset. This currently applies to tax losses in the 2019/20, 2020/21 and 2021/22 income years. This measure will be extended for an additional 12 months, which means eligible companies will be able to carry back losses for the 2022/23 tax year and apply them against profits in any year from 1 July 2018.	Entities that do not apply carry back tax losses can still apply the normal rules to carry forward and deduct the tax loss against income derived in later income years.	

SMSFs

Change and status	Who is impacted?	Details	Tips and traps	Resources
Choice of method for determining exempt current pension income ***Status:*** *Awaiting Royal Assent –(refer to **Appendix A**).* ***Effective:*** *2021/22 financial year*	Clients with SMSFs where assets are held in retirement phase pensions only for part of that income year	This measure provides trustees the ability to choose their preferred method of calculating exempt current pension income (ECPI) when they have member interests in both accumulation and retirement phases at one time, and only retirement phase interests at another time during an income year. By choosing whether or not an asset is a segregated current pension asset, a trustee can decide whether the proportionate method or segregated method is applied to income derived from that asset when calculating funds exempt current pension income.	The choice of method is not formal and does not have to be submitted to the ATO. It is made when declaring the ECPI in the fund's income tax return. However, trustees should keep a record of any choice made and the details of the ECPI calculation.	**Client resources** Guide to running your own super fund 2021/22 **Adviser resources** SMSF fundamentals Administrative changes to ECPI calculation
Residency requirements for SMSFs and SAFs ***Status:*** *Unknown (Proposed in 2021/22 Federal Budget)* ***Effective:*** *1 July 2022*	Clients with SMSFs who will be moving, or are already, overseas	The Government will relax certain residency requirements that currently apply to SMSFs and small APRA funds (SAFs) to determine eligibility for tax concessions by: ▪ extending the central control and management test safe harbour from two years to five years, and ▪ removing the active member test. Extending the central control and management safe harbour to five years allows decisions to continue to be made while the trustees are temporarily outside of Australia for a longer period of time. The active member test can limit the ability for members temporarily overseas to contribute to the fund. The removal of the active member test will allow all members of SMSFs and SAFs to continue to make contributions to their fund while overseas.	Although the central control and management safe harbour will be extended to five years, trustees should consider whether it is appropriate to appoint an Enduring Power of Attorney during an absence overseas.	**Client resources** Guide to running your own super fund 2021/22 **Adviser resources** SMSF fundamentals SMSFs and overseas residency

Income protection changes

Change and status	Who is impacted?	Details	Tips and traps	Resources
APRA's changes to retail income protection (IP) policies ***Status:*** *Enacted* ***Effective:*** *1 October 2022*	Clients with existing or looking to purchase new guaranteed renewable income protection policies	From 1 October 2022, the **ability to offer guaranteed renewable policies for the life of the policy ceases**, limiting contract terms to 5 years (for retail IP, policies are generally currently guaranteed renewable through to an expiry date of age 65 or 70). This measure was intended to commence on 1 October 2021 but was postponed for 12 months to allow the industry time to prepare and adopt this change.	Other changes to IP policies were implemented previously on 1 October 2021 including limiting the: ▪ definition of pre-disability earnings, ▪ income replacement ratio available, and ▪ the risk associated with long-term benefit periods (such as to age 65).	**Adviser resources** **Indemnity IP changes are here**

Appendix A – Bills awaiting Royal Assent

On 10 February 2022, the Government passed the following legislation to give effect to some of the following key measures announced in the 2021 Federal Budget:

- 'Super Bill' – **Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Bill 2021**, and
- 'Tax Bill' – **Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021.**

Summary of measures

The Super Bill includes a raft of superannuation changes including:

- Removal of the $450 minimum wage threshold for SG.
- Increasing the maximum releasable amount under the First Home Super Saver Scheme to $50,000.
- Reducing the eligibility age for downsizer contributions to 60.
- Allowing the use of the non-concessional contributions bring-forward provisions up to age 74.
- Placing a work test in the Tax Act for those aged 67 to 75 making personal deductible contributions. The work test will be removed from the SIS Regulations.
- Allowing super funds to use the proportionate method for calculating exempt current pension income (ECPI) in a year where the fund is wholly in pension phase for part of the year.
- Extending the temporary full expensing of depreciating assets.

Note: The Bill does not include the change proposed in the Budget regarding the temporary opportunity to exit certain legacy pensions. This proposal has not been introduced to Parliament and is unlikely to be before the next Federal election.

The Tax Bill:

- Introduces the retirement income covenant to require trustees to develop a retirement income strategy for beneficiaries who are retired or are approaching retirement
- Extends the loss carry back provisions for some corporate tax entities.
- Changes employee share scheme rules to remove the taxing point of leaving employment.

When will the changes take effect?

The Bills are currently awaiting Royal Assent. The commencement date for the majority of these measures is from 1 July 2022 at the earliest. In addition to changes to the associated Superannuation and Tax Acts, changes will be made to associated regulations to give effect to the measures.

The Super Bill changes may provide new contribution opportunities for clients and will simplify some of the complexities associated with certain contribution eligibility rules.

Appendix B – TSB thresholds and NCC bring-forward caps

Table 1 – TSB thresholds and bring-forward caps from 2022/23	
TSB on 30 June 2022	**NCC cap**
$1.7m +	$0
$1.59m < $1.7m	$110,000
$1.48m < $1.59m	$220,000
< $1.48m	$330,000

Contact details

For further information, please contact MLC Technical Services on **1800 645 597.**