

## 14 tax tactics for SMEs

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End-of-year tax strategies for SME owners are

**dominated by the imminent halving of the annual caps on concessional super contributions, expectations for trading conditions to worsen and the showering of short-term boosts to business investment allowances.**

In short, this is a time for business owners to move quickly, yet with extreme care, with their business and personal tax planning.

Our top strategies have been prepared with the assistance of leading tax, business and superannuation advisers:

### **1) Maximise super contributions**

This is a no-brainer. As announced in the Federal Budget, the Government proposes to halve the annual caps on concessional super contributions - these are salary-sacrificed, superannuation guarantee and tax-deductible contributions by the self-employed and eligible investors - from July 1.

This means that maximum concessional contributions for members over 50 will drop from \$100,000 to \$50,000 from the beginning of the new financial year. (And then again drop to an indexed \$25,000 in three years time when special transitional treatment for this age group end.)

From July 1, the cap on concessional contributions for members under 50 will drop from \$50,000 to an indexed \$25,000.

Higher-income earners, in particular, will lose much of this lower-risk way of neatly cutting much of their taxable income.

"Making maximum concessional contributions was the low-hanging fruit of tax planning," says Paul Banister, director of taxation services for accountants and business advisers Grant Thornton in Brisbane.

The halving of concessional contributions from 2009-10 is a powerful reason to "supercharge" your contributions by June 30 within the current caps, Banister suggests.

## **2) Watch for excess super contributions**

Depending upon the circumstances, overshooting contribution caps could end up with certain excess contributions being taxed at a staggering 93%.

Although the likelihood of excess contributions is magnified from July, when the concessional contribution caps are halved, it is already a danger.

Excess concessional contributions are subject to extra tax of 31.5% - in addition to the standard 15% contributions tax paid upon entering the fund, bringing the total tax immediately payable to 46.5%.

But wait! Excess concessional contributions automatically count towards the limit on non-concessional (after-tax) contributions of \$450,000 averaged, over three-year periods.

Stuart Jones, author of the Australian Superannuation Handbook 2008-09, published by Thomson Reuters, points out that a fund member who contributes a \$450,000 inheritance or a family law settlement, for instance, into super as a non-concessional contribution will pay a high price with any excess concessional contributions being taxed at 93%.

## **3) Don't be too clever with sharemarket losses**

In an effort to reduce the impact of the sharemarket downturn, some long-term investors may falsely maintain that they are share traders, not investors, and claim 'trading' losses against their ordinary income. Be warned, the tax office intends to closely scrutinise such claims. (See [here](#).)

## **4) Consider transferring quality shares into your DIY super fund**

The transfer will trigger CGT on past capital gains (or possibly capital losses) but any tax payable will be at a longtime low because the market has suffered so much. And as Sue Prestney, a Senior Partner with accountants and business advisers MGI in Melbourne stresses: "once in your concessional-tax super fund, future capital gains - which will come when the market eventually recovers - will be taxed at a maximum of 10%."

This could be a particularly smart strategy if you believe the market is already in its recovery phase.

## **5) Quickly write-off bad debts**

If you think your business will experience a sharp downturn in coming months, Sydney tax lawyer Robert Richards suggests that you maximise the writing-off of bad debts before June 30.

This is because your business may not have enough income next financial year to offset its losses. "There is a big difference [from a tax perspective] between writing-off a debt before or after June 30," he says. This strategy involves really examining your debts.

"A bad debt is not deductible just because it is bad," Richards adds. "It must be written off.

## **6) Check personal use of company assets**

Under another Budget measure, deemed dividends will arise from July 1 for the personal use of private company assets for free or below-market rates by shareholders or their associates.

Prestney, who is a family business specialist, suggests that if shareholders are using personal assets, you should consider before the end of the financial year what strategies to adopt in response to the Budget measure. She says one strategy, depending upon the circumstances, is to transfer ownership of, say, a company-owned boat to a shareholder before June 30 in lieu of a cash dividend. This could neatly remove one problem.

And Banister adds: "Companies should now start assessing the risks they face under the tightening of the provisions relating to the personal use of company assets. And they should be thinking about what a 'safe-harbour' rent would be for their personal use of those assets."

Banister says the provisions will also apply to trusts with unpaid distributions to family companies.

## **7) Consider quickly settling intended sales of investment real estate, and contributing proceeds to super**

Generally, the self-employed (and eligible investors) without employer super support can claim personal tax deductions on concessional contributions to super within the annual caps. In this way, many people can minimise or even eliminate CGT on the sale of their investments.

And by contributing the amount to super by June 30, you will beat the halving of the annual cap on concessional contributions (see Strategy One).

## **8) Beware of high-risk tax schemes or excessive gearing**

The collapse of financial planning group Storm Financial emphasises the perils of excessive gearing. Storm Financial encouraged clients to borrow against their homes to finance share portfolios that were in turn heavily geared.

Gearing is rife at the end of a financial year to prepay interest in order to immediately reduce tax liabilities.

And the collapses of Great South Plantations and Timbercorp managed investment agribusinesses - two year-end favourites to quickly cut tax - starkly illustrates the importance of looking beyond possible tax breaks to the quality of an investment.

"I have always hated tax shelters," Richards says. "In 25 years of tax practice, I cannot recall seeing one good tax shelter - other than do-it-yourself tax structures. They either have had commercial problems or tax problems, or both. Something always goes wrong."

An unfortunate factor is that the severe cutback in concessional contribution limits to super will tempt many taxpayers to take higher risks next financial year in an attempt to minimise tax.

## **9) Take advantage of boost for investment allowances**

This is another no-brainer.

Prestney describes these boosted investment allowances as the "big one" for year-end tax planning by businesses.

These extra investment allowances for the purchase of eligible business assets are divided into two categories:

- Small businesses with turnovers of up to \$2 million a year can claim a bonus 50% tax deduction - up from 30% previously - for eligible assets costing \$1,000 or more, acquired between December 13, 2008 and December 31, 2009. And the assets must be installed and ready for use by December 1, 2010.
- Other businesses can claim a bonus 30% deduction for eligible assets costing \$10,000 or more, acquired between December 13, 2008 and June 30, 2009. And the assets must be installed and ready for use by June 30.

Prestney emphasises that the pressure is on non-small businesses to make the June 30 deadline.

## **10) Don't ignore extra incentives to defer income and accelerate deductions this year**

The further personal tax cuts from July 1 announced in the Budget, should give businesses operating as either sole traders, or through partnerships or trusts, a strong motive to defer income until the new financial year and maximise deductions by June 30, suggests Banister.

This strategy will mean that less tax is paid on the deferred income, and accelerated tax deductions are worth more in the current financial year than next year.

Methods to defer tax liabilities include putting off the issuing of invoices, delaying the sale of assets - if also appropriate for non-tax reasons - and not chasing up unpaid bills for a few weeks. And private companies can defer the payment of dividends.

Ways to bring forward deductions include prepaying deductible interest, carrying out last-minute deductible repairs and maintenance on business / investment properties, and prepaying your income-protection insurance.

## **11) Begin planning how to compensate for cutback of super tax breaks**

Strategies may include more income-splitting with family members and increasing the level of gearing in your investment portfolio - if appropriate to your personal circumstances, including your age and years until retirement.

Robert Richards believes that some fund members, particularly those with DIY funds, will look for ways to try to increase the earnings of their super funds, including by acquiring assets using installment warrants or similar arrangements, now allowable under superannuation law. This is effectively gearing under strict legal restrictions.

A strategy that is likely to gain popularity next financial year is income-splitting through family trusts or by simply holding more assets in the names of lower-earning spouses.

"Look at the way that you are holding your [investment] assets and consider whether to restructure," Banister suggests. He says the prevailing lower asset prices may provide an ideal opportunity for moving, say, listed shares from your own name into your concessional-tax, self-managed super before the market recovers. (Prestney discusses this approach in Strategy Four.)

Don't overlook non-concessional super contributions. Banister emphasises that although non-concessional contributions are not nearly as tax-effective as concessional contributions, they benefit from the long-term advantages of the concessional-tax super system.

Stuart Jones of Thomson Reuters suspects that some DIY fund trustees will now be tempted to take more risks with gearing using installment warrants, as mentioned by Richards, or by arranging for their funds to invest in internally geared share funds. He stresses the additional risks involved.

## **12) Revamp your salary package**

Given the severe cutback in concessional contributions (which include salary-sacrificed contributions) Banister says one of the first tasks is to immediately inform your pay office if you intend to reduce your salary-packaged contributions from July 1.

## **13) Keep a close watch on cashed-up ATO**

The Budget has announced more money for the tax office to conduct audits and investigations. "This means the ATO will play a bigger part in our lives," warns Banister. "People need to be ATO-ready."

This includes ensuring that your business and personal tax records are in order, and that you have a "supporting position" if something is contentious.

"Just because a person has a clean state of affairs, it won't stop the ATO raising an inquiry or audit," Banister warns. He says audit insurance is worth considering.

## **14) Adjust your transition-to-retirement strategies**

The reduced cap on concessional contributions is likely to have a large impact on one of the most-popular strategies of the baby boomers. This involves taking a transition-to-retirement pension while simultaneously salary-sacrificing as much as possible into super.

The cutting of the concessional contribution cap means that many people will reduce their salary-sacrificed contributions and, in turn, their transition-to-retirement pensions in order to keep their super savings intact.

Without a doubt, certain tax strategies for the wrap-up to 2008-09 and going into 2009-10 are fraught with danger. Some taxpayers will fall into the temptation of trying too hard to claim income or capital tax losses. And many taxpayers will inevitably take excessive risks in an attempt to make up for the shaving of superannuation tax benefits from next financial year.

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