Did you know?

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Total Care Plan Super (TCPS): contributions and tax deductions

What are the types of superannuation contributions that can be made to TCPS and who can claim the tax deduction?

Holding life insurance in a superannuation environment can be a strategy for a couple of reasons. Premiums may be paid from accumulated superannuation balances or employer contributions, thus providing cash-flow benefits to many individuals. In accordance with super deductibility rules, up to 100% of the contribution may be claimed as a tax deduction in the year of income it was made by employers and eligible persons.

TCPS is designed for both employed and self-employed persons. While it can accept personal and employer contributions, they can only be used to pay insurance premiums. TCPS cannot accept government co-contributions. For this reason, persons making personal undeducted (non-concessional) contributions to TCPS for co-contribution purposes need to nominate to the Australian Taxation Office (ATO) another super fund that can accept co-contribution payments.

Contributions

To take out a TCPS policy, individuals must be eligible to contribute to superannuation. Contributions are used by the trustee to pay insurance premiums. As these premiums are a tax deduction to the fund, there is no 15% contributions tax payable. For those under 65 years of age, the TCPS trustee may accept compulsory (mandated) employer contributions (i.e. superannuation guarantee (SG) or award) and other, voluntary employer contributions (such as salary sacrifice and voluntary contributions in excess of an employer's SG obligations), as well as personal (deductible or non-deductible) contributions. If a taxpayer is aged 65 or more but under 75, he or she must satisfy the work test in order for TCPS to accept the contribution. Only compulsory employer contributions can be accepted at age of 75 and over. If an individual ceases to be eligible to contribute to super after joining TCPS, insurance cover under the policy will lapse.

In the case of salary sacrifice arrangements, it is important to note that these need to be effective arrangements (i.e. they must operate prospectively and not retrospectively) and they are voluntary employer contributions. Provided they are made to complying super funds, they will not be subject to fringe benefits tax (FBT).

Tax deductions: personal contributions

Under certain conditions, a person may claim a deduction for 100% of personal contributions made to super. These contributions, where a tax deduction is claimed, are concessional contributions, and are subject to an individual's concessional contributions cap. This cap is $25,000 for the 2009/10 income year. Between 1 July 2007 and 30 June 2012, a transitional cap of $50,000 applies for persons aged 50 or over. The conditions for claiming a tax deduction for personal super contributions are as follows:

- the taxpayer makes a personal contribution to a complying super fund or a retirement savings account (RSA) for the purpose of providing super benefits for himself/herself or for dependants in the event of death (such as TCPS)
- the taxpayer must meet the age-related conditions (see above)
- the taxpayer satisfies the 'maximum earnings as an employee' condition. If a person is an employee at any time during the income year, the 10% rule must be met for the person to be eligible to claim a tax deduction for personal super contributions. This rule only has to be met if the taxpayer is treated as an employee for SG purposes in the income year in which the contribution is made. Someone who is totally self employed, unemployed or living off investment earnings only would not have to meet the 10% rule which is no more than 10% of the following must be attributable to employment:
    - the total of assessable income for the income year, plus

- reportable fringe benefits for the income year, plus
- reportable employer superannuation contributions for the income year.

- the taxpayer must give the trustee of the super fund a valid notice of his or her intention to claim a tax deduction, and the trustee must have given the taxpayer an acknowledgment of the receipt of the notice. A valid notice, the approved form NAT 71121 can be found at www.ato.gov.au. The form sets out the minimum data requirements, but use of this form is not compulsory and funds may create their own form
- additional conditions must be met only if the taxpayer is under 18 or the contribution is sourced from the sale of an active asset, where the small business CGT concessions apply.

Tax deductions: employer contributions

From 1 July 2007, employers may claim a tax deduction for 100% of super contributions made on behalf of employees to a complying super fund, either on or before the day that is 28 days after the end of the month in which the employee turns 75, or where the employer was required to make the contribution by an industrial award or similar agreement. For an employer to deduct a contribution, the employee must be:

- engaged in producing the assessable income of the employer, or
- an Australian resident who is engaged in the employer's business, or
- an employee within the expanded definition of employee in section 12 of the Superannuation Guarantee (Administration) Act 1992.

Individuals: An individual may claim a deduction for contributions made by the individual for employees of:

- the individual
- an employer in which the individual has a controlling interest, or
- an employer in which the individual owns shares (provided the Tax Office is satisfied that there is an arm's length business relationship between that individual and the employee).

Partners or partnership: If you are a partner of a partnership and you make a contribution for an employee of the partnership, you can deduct the contribution against your own income. A partnership can claim a tax deduction when it makes a super contribution on behalf of an employee. However, a partner and the partnership cannot claim a tax deduction for the same contribution.

Companies: It should be noted that company directors who receive salary, wages, or directors' fees are entitled to SG contributions. In certain circumstances, the tax deduction may be claimed by the person who personally makes the contribution for employees of the company. This can happen if the person:

- has a controlling interest, or
- owns shares in the company, provided that there is an arm's length business relationship between the person and the employee of the company.

Trusts: A trustee may claim a tax deduction for contributions made for employees of:

- the trustee
- an employer that the trustee has a controlling interest of, or
- an employer that that the trustee owns shares in, provided that the ATO is satisfied that there is an arm's length business relationship between that trustee and the employee.

No double deductions: If an individual claims a personal deduction for super contributions to, say, his or her Self Managed Super Fund (SMSF), the SMSF would not then claim a separate deduction for life insurance premiums. In this case, the contribution would be seen as an income receipt by the fund, which would then be offset by the tax deduction.

Summary

Superannuation contributions and tax deductions to individuals and super funds are subject to a number of complex legislative provisions and regulations. This includes risk-only funds, such as TCPS. Clients and advisers should be mindful of these provisions and any associated pitfalls.

Important information

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