



TAX MATTERS FOR MEDICAL & DENTAL PRACTITIONERS

2021 WINTER EDITION

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We are an accounting firm specialising in providing accounting, taxation and advisory services to medical and dental professionals. As a result of our many years of experience, we have a comprehensive understanding of the needs, issues and concerns that are unique to medical and dental professionals. Please refer to our website for further details, including client testimonials.
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Welcome to our Winter Edition Contents:

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- Will the decision in the case of Dental Corporation Pty Ltd v's Moffet, impact your clinic?
- Warning - Additional tax on excess concessional superannuation contributions.
- Should you make a 'Binding Death Benefit Nomination' in respect of your superannuation benefits?

Superannuation contribution caps set to increase from 1 July 2021

Commencing from the 1 July 2021 the superannuation contribution caps will increase as follows:

- The **concession contribution** cap will increase by \$2,500 from \$25,000 to \$27,500;
- The **non-concessional contribution** cap will increase by \$10,000 from \$100,000 to \$110,000; and
- The **three year bring forward non-concessional contribution** cap will increase from \$300,000 to \$330,000.

A concessional contribution is an amount you have made to a complying superannuation fund which you are able to claim a tax deduction, and which will be taxed in the receiving super fund at the rate of 15%.

A non-concessional contribution is an amount you have made to a complying superannuation fund which you are not claiming a tax deduction for. No tax is payable by the receiving super fund on the non-concessional amount received.

If you are under the age of 65 years at the beginning of the financial year, you are eligible (subject to the other criteria being satisfied) to utilise the 3 year bring forward rule. Enabling you to contribute up to the bring forward non-concessional contribution cap limit (\$330,000 from 1 July 2021) in the year you utilise the rule.





Will the decision in the case of Dental Corporation Pty Ltd v Moffit, impact your clinic?

The decision highlights the potential risks, in respect of superannuation, for dental practices engaging independent dental contractors.

The Federal court held that a dentist under a service agreement was an “employee” within the extended meaning of the Superannuation Guarantee (Administration) Act 1992. It found that the dentist was working “under a contract that was wholly or principally for the labour of the person”. The decision was appealed to the Full Federal Court, who supported the decision of the Federal Court judge. *The decision was further appealed to the High Court, but the appeal was refused, so the decision stands.*

Whether the decision impacts your clinic, will depend on the arrangement you have with your dental contractors, as well as the reality of the situation. It is important to note that the case dealt with the service agreement arrangement between the dentist and the dental clinic. This arrangement is different to a ‘Services and Facilities’ agreement, where the clinic provides services to the dentist for an agreed fee.

As is said in the legal world...‘every case turns on its own facts’.

Although the case was in respect of a dental clinic, the decision could potentially impact arrangements medical clinics have with their contract doctors.

Warning - Additional tax on excess concessional superannuation contributions

Where an individual’s concessional superannuation contributions (including employer contributions, salary sacrifice contributions and personal contributions where a deduction is claimed) for a year exceeds the permitted threshold, additional tax will apply to the excess. The threshold is currently \$25,000, but may be higher if the individual has a carried forward concessional contribution amount. The additional tax amount will be included in the individual’s notice of tax assessment for the year the excess contribution was made. The additional tax amount is calculated as follows:

- The excess contribution amount is brought to account as additional taxable income in the individual’s tax return and taxed at the individual’s marginal tax rate, plus the medicare levy;
- A tax credit of 15% of the excess contribution amount is applied against the additional tax amount;
- In addition, an excess concessional contribution charge (ECC) will be imposed. The ECC charge is to reflect the income earning and tax benefit of the excess contribution in the individual’s super fund. The ECC charge is a percentage rate (currently 3.02% and updated quarterly) applied to the excess amount.

Example:

Sarah had concessional super contributions for the 2019/2020 year of \$28,900 and had no carried forward concessional contribution amount. Her excess contribution amount would be \$3,900 (i.e. \$28,900 less \$25,000). If Sarah was in the top marginal tax bracket of 47% (including the 2% medicare levy) the additional tax payable would be \$1,248 (calculated as \$3,900 x 47% less \$3,900 x 15%). In addition, there would be the ECC charge.



Should you make a 'Binding Death Benefit Nomination' in respect of your superannuation benefits?

A person's Will does not govern how their superannuation benefits are paid on death. This is because a Will can only deal with the assets owned by the deceased at the time of death. Superannuation death benefits do not form part of a deceased estate, unless the trustee of the fund pays the superannuation death benefits to the deceased's estate.

In accordance with the superannuation legislation and the super funds trust deed, the **trustee** of the super fund has the discretion to decide whether, the death benefit payment is paid to the member's estate or to the member's dependents and in what proportions.

Following a member's death, the trustee of the deceased super fund may decide not to pay the member benefits to the beneficiaries detailed in the deceased Will, or in the proportions intended. This has the potential to cause significant family conflict, especially for blended families. Unfortunately, there is very little the courts can do to change the outcome.

If you are a member of a superfund and you want to have certainty as to who will receive your member benefits on your death, the tool to use to give you that certainty, is a **Binding Death Benefit Nomination (BDBN)**.

A BDBN is a written direction to the trustee, that directs the trustee to pay a member's death benefits to certain dependents or the legal personal representative, in the proportions set out in the written direction.

If the BDBN is valid and in effect at the date of the member's death, the trustee must pay the member's death benefits to the dependents or legal personal representative in the proportions set out in the nomination.

If you decide to make a BDBN, it is important that you note the following:

- You can amend or revoke a BDBN at any time by giving written notice to the trustee;
- Some Trust Deeds make BDBN's non enduring, meaning they may need to be renewed ever 3 year to remain valid (check the trust deed).
- A dependent is:
 - A spouse (including de facto and same sex)
 - Any child of the member

- Any person (whether related to the person or not) who is financially dependent on the member
- Any person who has an interdependency relationship with the member



If you have any questions on the topics covered please contact Peter Roberson by email at peter@accrue.com.au or phone (02) 62854441

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