DON'T FORGET YOUR (SUPERANNUATION) CAP

My coat stand at home has a lot of caps on it; baseball caps, old school caps, cricket caps, a momento of the Sydney Harbour Bridge Climb and the list goes on! There are also a lot of "caps" for superannuation funds, but they are not the sort you wear on your head.

In the context of superannuation, a "cap" is an upper annual limit or a ceiling that is permitted within the superannuation laws. The more important caps include:

1. **Concessional Contributions Cap** – this is the maximum "concessional" type contribution allowable for each member in a financial year. This cap is currently $25,000. Concessional contributions are taxable at 15% in the fund as the contributor has claimed a tax benefit and this type of contribution can include; employer contributions, salary sacrifice, self-employed and personal contributions. Note that as from 1/7/2018 there is an option available to carry forward unused concessional contribution limits for individuals who have less than $500,000 in superannuation. There is also an option available to those with Self Managed Superannuation Funds to claim up to 2 years contributions ($50,000) in the one financial year.
2. **Non-concessional Contribution Cap** – this is the maximum "non-concessional" type contribution that can be contributed personally by each member. These contributions types are not claimed for tax purposes and the fund does not have to pay any 15% contribution tax on the amounts received. The current cap is $100,000 pa but there is an option to "bring forward" up to 3 years contributions in one year (i.e. $300,000) for those individuals who are under 65 years of age (increasing to under 67 years of age from 1/7/2020).
3. **Total Superannuation Balance Cap**. Each member has a total superannuation balance cap of $1.6 Million. This refers to the total amount that a person has in all superannuation accounts. Once that cap is exceeded, no further **non-concessional** contributions are allowed for that individual unless this cap falls below the $1.6M (as measured at the start of each financial year). Note that concessional contributions can continue regardless of the total superannuation balance.
4. **Downsizer Contribution Cap** – this is available to those who are 65 or older using proceeds from the sale of their home. Subject to certain conditions, the maximum cap is $300,000 per individual. These contributions are not classed as non-concessional and are not limited by the Total Superannuation Balance Cap.
5. **Transfer Balance Cap**. This is the maximum amount that an individual can transfer to retirement phase pension accounts and is currently also $1.6 Million.

The income and capital gains derived from assets supporting retirement phase pension accounts are exempt from income tax and capital gains tax. This contrasts with other superannuation assets in "accumulation accounts" which are taxed at the rate of 15% on income and 10% on capital gains. The Transfer Balance Cap should not be confused with the Total Superannuation Balance Cap as it does not restrict the amount you can contribute to superannuation but rather how much of your superannuation you can move to the tax free retirement phase. To determine where an individual is relative to their Transfer Balance Cap, an account will be maintained that tracks all the relevant transactions that affect this balance. This account is referred to as the Transfer Balance Account ("TBA"). As an example, let's say Fred has an accumulated superannuation balance of $2 Million and upon retirement at age 65, decides to move the maximum $1.6 Million into a retirement phase pension account and leave the other $400,000 in an accumulation account.

6. **Division 293 Cap**. This is calculated as the personal income of a taxpayer plus concessional superannuation for that individual for a financial year. If this figure exceeds $250,000, the tax rate payable on the contributions if increased from the usual 15% to a penalty rate of 30%.
7. **CGT Concession Cap**. This refers to an additional contribution amount that is allowed from the sale of a small business. This cap is currently $1.515 Million per person and is in addition to the other contribution caps and is not constrained by the Total Superannuation Balance Cap.
8. **Low Rate Cap**. This is an amount up to which superannuation lump sum payments paid to individuals over preservation age but below 60, are not subject to tax. Lump sums above this cap paid to such individuals, attract a rate of 17% tax. The current low rate cap is $210,000.
9. **Pension Withdrawal Cap**. This refers to the maximum annual amount that can be withdrawn from a Transition to Retirement Pension Account. This is currently 10% of the balance of the account at the start of the financial year (or at pension commencement). Note that this should not be confused with the <u>minimum</u> pension withdrawal requirements which apply to all types of superannuation pension accounts.

Exceeding a superannuation cap can have serious consequences. This would generally include paying extra tax and charges and can be as high as 45% of the relevant amounts depending on the circumstances.

It is also important to effectively manage your superannuation caps. As an example of this, assume you start a retirement phase pension with $1.6 Million and start by withdrawing just the minimum required pension of $64,000 pa. A few years down the track, you decide to help out a family member with a loan of $250,000 and provide this by simply drawing an

additional pension amount. A year later, the loan is paid back and you go to contribute it back into your retirement phase superannuation account but to your horror, discover that this is not possible as your TBA is still at the cap amount of $1.6 Million! This could have been avoided by covering the $250,000 with a commutation of your pension account (back to accumulation phase and then paid as a lump sum amount) which would have reduced your TBA to $1.35 Million, thus allowing the $250,000 to be transferred back to pension phase later without exceeding your cap.

Timing can be important in the context of managing caps, particularly those relating to contributions. As a simple example, assume that a 66 year old person has an existing superannuation balance of $1.58 Million and has just sold a small business and wishes to contribute; $25,000 concessional contribution, $100,000 non-concessional and $1.515 Million CGT contribution. If the timing of these contributions is not handled correctly, it could result in the person not being able to contribute the $100,000 non-concessional amount.

Most of the superannuation caps are subject to some form of indexing. Therefore, over time we will expect to see the monetary amounts of the caps increase.

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