YOUR KNOWLEDGE

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Payday super: the details

'Payday super' will overhaul the way in which superannuation guarantee is administered. We look at the first details and the impending obligations on employers.

From 1 July 2026, employers will be obligated to pay superannuation guarantee (SG) on behalf of their employees on the same day as salary and wages instead of the current quarterly payment sequence.

The rationale is that speeding up the payment sequence for SG will not only help reduce the estimated $3.4 billion gap between what is owed to employees and what has been paid, but will also improve outcomes for employees – the Government estimates that a 25-year-old median income earner currently receiving super quarterly and wages fortnightly could be around 1.5% better off at retirement.

Announced in the 2023-24 Federal Budget, payday super is not yet law. However, given the structural changes required to administer the new law, Treasury has released a fact sheet to help employers better understand the implications of the impending change.

How will payday super work?

Under payday super, the due date for SG payments will be seven days from when an ordinary times earning* payment is made.

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That is, employers have seven days from an employee's payday for their SG to be received by their super fund. The only exceptions are for new employees whose due date will be after their first two weeks of employment, and for small and irregular payments that occur outside the employee's ordinary pay cycle.

Over the last few years, employers have moved to single touch payroll (STP) reporting for employee salary and wages. It is expected that payday super will fold into the existing electronic systems and some changes will be made to STP to collect ordinary times earning data.

The impact for some employers however will not be the compliance cost of administering the regular SG payments, but the cashflow. Employers will not be holding what will be 12% of their payroll until 28 days after the end of the quarter, but instead paying this amount out on the employee's payday. The upside is that where an employer has either fallen behind or not paying SG, particularly when the business is insolvent, the damage is contained.

What happens if SG is paid late?

The penalties for underpaying or not paying SG are deliberately punitive and this approach will continue under payday super.

Currently, a super guarantee charge (SGC) applies to late SG payments - comprised of the employee's superannuation guarantee shortfall amount, interest of 10% per annum from the start of the quarter the SG payment was due, and an administration fee of $20 for each employee with a shortfall per quarter. And, unlike normal superannuation guarantee contributions, SGC amounts are not deductible to the employer, even when the liability has been satisfied.

Under payday super, employees are fully compensated for delays in receiving SG amounts and larger penalties apply for employers that repeatedly fail to comply with their obligations. If you make a payment late, the SGC is made up of:

Outstanding SG shortfall	Calculated based on OTE, rather than total salaries and wages as it is currently.
Notional earnings	Daily interest on the shortfall amount from the day after the due date, calculated at the general interest charge rate on a compounding basis.
Administrative uplift	An additional charge levied to reflect the cost of enforcement and calculated as an uplift of the SG shortfall component of up to 60%, subject to reduction where employers voluntarily disclose their failure to comply.
General interest charge	Interest will accrue on any outstanding SG shortfall and notional earnings amounts, as well as any outstanding administrative uplift penalty.
SG charge penalty	Additional penalties of up to 50% of the outstanding unpaid SG charge, that apply where amounts are not paid in full within 28 days of the notice of assessment.

As you can see, if the proposed SGC becomes law, late SG payments can spiral out of control quickly. This will be a particular issue for employers that pay employees less than their entitlements over time, or have misclassified employees as contractors and have an outstanding SG obligation.

But, unlike the current SGC, the new SGC will be tax deductible (excluding penalties and interest that accrue if the SG charge amount is not paid within 28 days).

Payday super is not yet law. We will keep you up to date as change occurs and work with you to get it right once the details have been confirmed.

**Ordinary time earnings are the gross amount your employees earn for their ordinary hours of work including over-award payments, commissions, shift loading, annual leave loading and some allowances and bonuses.*

The ban on genetic test insurance discrimination

The ability for life insurers to discriminate based on adverse predictive genetic test results will be banned under a new Government proposal.

Predictive genetic tests detect gene variants associated with heritable disorders that appear after birth, often later in life, but are not clinically detectable at the time of testing.

To overcome concerns about discrimination by life insurers, the Government has announced a total ban on predictive genetic testing.

Life insurance and genetic testing

Voluntary insurance, including life insurance is individually underwritten and 'risk-rated'. The cost of premiums is proportionate to the unique risks of the person seeking the cover. Most of us would be familiar with the questions about family history, personal medical history and habits.

As life insurance is a guaranteed renewable product, once a policy has been underwritten and commenced, the life insurer cannot change or cancel a person's cover, provided they pay all future premiums when due – premium prices will change across a risk pool, for example based on age. This is why it's important to carefully assess changing life insurance policies if health issues or conditions have arisen since you put the original policy in place.

In 2019, Australia's life insurance industry introduced a partial moratorium on the requirement to disclose genetic test results. The moratorium, which is in place for life insurance applications received from 1 July 2019, prevents genetic results being used for certain types of insurance cover below certain thresholds. However, using APRA data, when compared to the average sum insured, the moratorium coverage thresholds are well below par:

Policy cover	Moratorium limit	APRA average
Death	$500,000	$713,959
Total permanent disability	$500,000	$849,128
Trauma and/or critical illness	$200,000	$207,414
Disability income insurance	$4,000* a month	$7,706 a month

** any combination of income protection, salary continuance or business expenses cover.*

Genetic test discrimination

Despite the moratorium, there is evidence that people are not undertaking genetic tests or participating in scientific research because of concerns about obtaining affordable life insurance. And, discrimination still exists.

The *Australian Genetics and Life Insurance Moratorium: Monitoring the Effectiveness and Response Report* by Monash University found that of the consumers surveyed who had undertaken a genetic test, 35% reported difficulties obtaining life insurance including insurers rejecting life insurance applications, financial advisers advising participants that their applications would be rejected, and insurers placing conditions on insurance policies or charging higher premiums. Alarmingly, a 43 year old

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woman with a BRCA2 variant and no personal history of cancer, was denied life cover outright despite having her ovaries and fallopian tubes removed, and regular intensive breast imaging.

The Government response

The Government has stepped in and announced a total ban on the use of genetic testing in life insurance underwriting. The ban will be subject to a 5 year review. However, the Government has not introduced legislation enabling the reforms nor has it announced the date that the ban will take effect.

And, the total ban impacts *predictive* genetic testing only – it does not cover clinical diagnostic genetic testing to confirm a suspected condition based on signs or symptoms.

A global issue

Australia is not the first country to grapple with the issue of adapting to the increase in available genetic data.

In the UK, insurers cannot use predictive genetic test results unless the result is favourable, or the result has been given to the insurer (voluntarily or accidently). Huntington's disease is a specific exception for life cover worth more than £500,000.

Canada's *Genetic Non-Discrimination Act* prohibits any entity (including insurers) from requesting or using genetic test results. The exception is for individuals to voluntarily disclosure a test result showing they do not have a genetic change that runs in the family.

In the USA, the *Genetic Information Nondiscrimination Act* (GINA), prevents genetic test results being used in health insurance and employment contexts but not life insurance. The US state of Florida however introduced a law prohibiting life insurers from using predictive genetic test results in underwriting.

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More women using 'downsizer' contributions to boost super

If you are aged 55 years or older, the downsizer contribution rules enable you to contribute up to $300,000 from the proceeds of the sale of your home to your superannuation fund (eligibility criteria applies).

In 2023-24, over 57% of people making a 'downsizer' contribution to super were women. And, the average value of the contribution was marginally higher at $262,000 versus $259,000 contributed by men.

The most likely age someone makes a downsizer contribution is between 65 and 69. From age 65, a downsizer contribution can be withdrawn from super if your circumstances change, even if you are still working. Those aged 55 to 64 generally won't have access to these funds until they are at least 60 and retired.

Downsizer contributions are excluded from the existing upper age test, work test, and the total super balance rules (but the amount that can be moved to a retirement pension is limited by your transfer balance cap).

For couples, both members of a couple can take advantage of the concession for the same home. That is, if you or your spouse meet the other criteria, both of you can contribute up to $300,000 ($600,000 per couple). This is the case even if one of you did not have an ownership interest in the property that was sold (assuming they meet the other criteria).

To be eligible to make a downsizer contribution you do not have to buy another home once you have sold your existing home, and you are not required to buy a smaller home - you could buy a larger and more expensive one and make a downsizer contribution if you have access to other funds.

Please contact us if you would like the facts about downsizer contributions, or speak to your financial adviser for advice on your personal scenario.

01 Succession: the series

Ok, not *that* Succession series. Each month we'll bring you a new perspective on transferring property. Be it estate planning, managing an inheritance, or the various forms of business succession. This month, we look at the tax consequences of inheriting property.

Beyond the difficult task of dividing up your assets and determining who should get what, it's essential to look at the tax consequences of how your assets will flow through to your beneficiaries.

When assets pass from a deceased individual to a beneficiary of the estate, the tax impact will generally depend on the nature of the asset and the tax characteristics of the beneficiary, such as their residency status.

Inheriting cash

When cash passes from a deceased individual to their estate and then to a beneficiary, generally, there should not be any direct tax issues to deal with, assuming that the cash is denominated in AUD.

Inheriting assets

Death is a taxing event. When a change of ownership of an asset occurs, generally, a capital gains tax event (CGT) is triggered. However, the tax rules provide some relief from CGT when someone dies. The basic rule is that a capital gain or loss triggered by a death is disregarded unless the asset is transferred to one of the following:

- An exempt entity (although there are some exceptions to this where the entity is a charity with deductible gift recipient status);
- The trustee of a complying superannuation fund; or
- A foreign entity and the asset is not classified as taxable Australian property.

The exemption applies if the asset passes to the deceased's legal personal representative (i.e., executor) or to a beneficiary of the estate, which is not one of the entities listed above.

Once the asset has been transferred to the beneficiary, the beneficiary will need to manage the tax impact when they sell the asset.

Inheriting shares

Let's assume you inherit an ASX listed share portfolio under your mother's will. The tax outcome will depend on whether your mother was an Australian resident for tax purposes when she died, and whether the shares were acquired by your mother before or after 20 September 1985 (i.e., pre-CGT or post-CGT).

If your mother was an Australian resident for tax purposes when she died, and the shares were acquired post-CGT, then the cost base of the shares is normally based on the original purchase price. That is, the tax rules treat the inherited shares as if you purchased them. For example, if your mother purchased BHP shares for $17.82 on 2 January 1997, when you sell the shares, the gain is calculated based on your mother's purchase price of $17.82.

If your mother was a resident of Australia when she died, and the shares were acquired pre-CGT, then the cost base of the shares is normally reset to their market value at the date of death. That is, if your

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mother passed away on 1 October 2024, the share price at close was $45.96. If you subsequently sold the shares in three years, the gain or loss is calculated using this value.

If your mother was a non-resident when she died, then the cost base of the shares is normally based on their market value at the date of death.

But it's not all about the tax. Managing shares in your will can be difficult as prices and allocations change over time, and the companies you are invested in evolve. A portfolio that was once worth a small amount 20 years ago, might be worth significantly more when you die.

Inheriting property

Let's assume you inherit an Australian residential property from your father under his will. For certain tax purposes, you are taken to have acquired the property at the date of his death.

The general rule is that the executor and/or beneficiaries of the estate inherit the cost base and reduced cost base of the CGT assets (the house) owned by the deceased just before their death, but this isn't always the case, especially when it comes to pre-CGT properties and a property that was the main residence of the deceased individual just before they died.

Special rules exist that enable some beneficiaries or estates to access a full or partial main residence exemption on the inherited property. If the house was your father's main residence before he died, he did not use the home to produce income (did not rent it out or use it as a place of business) and he was a resident of Australia for tax purposes, then a full CGT exemption might be available to the executor or beneficiary if either (or both) of the following conditions are met:

- The house is disposed of within two years of the date of death; or
- The dwelling was the main residence of one or more of the following people from the date of death until the dwelling has been disposed of:
    - The spouse of the deceased (unless they were separated);
    - An individual who had a right to occupy the dwelling under the deceased's will; or
    - The beneficiary who is disposing of the dwelling.

For example, if the house was your father's main residence and was eligible for the full main residence exemption when he died, if you sell the house within the 2 year period, no CGT will apply. However, if you sell the house 10 years later, the CGT impact will depend on how the property has been used since the date of your father's death.

An extension to the two year period can apply in limited certain circumstances, for example when the will is contested or is complex.

If your father did not live in the property just before he died, it still might be possible to apply the full exemption if your father chose to continue treating the home as his main residence under the 'absence rule'. For example, if he was living in a retirement village for a few years but maintained the property as his main residence for CGT purposes (even if it was rented out).

If your father was not an Australian resident for tax purposes when he died, the cost base for CGT purposes will normally be based on the purchase price paid by your father if he acquired it post-CGT.

Inheriting foreign property

If you are an Australian resident who has inherited a foreign property or asset from an individual who was a non-resident just before they died, the cost base is normally taken to be the market value at the time of death. For example, if you inherited a house from your uncle in the UK, the cost base is likely to be the value of the house at the date of his death.

If a taxable gain arises on sale, then it is necessary to consider whether the CGT discount can apply, but the discount will sometimes be less than 50%. If the gain is also taxed overseas, then a tax offset can sometimes apply to reduce the amount of tax payable in Australia.

Managing an inheritance can become complex. For assistance with estate planning, or to understand the tax implications of an inheritance, please contact us.