Superannuation contribution and access (cashing) rules

By John Ciacciarelli

Following finalisation of legislation to implement the government’s “a more flexible and adaptable retirement income system” policy initiatives first announced in February 2004, the superannuation industry is now in its first financial year of working with new contribution and access rules. These rules have:

- Abolished “work tests” for making superannuation contributions for anyone under age 65.
- Replaced a “10-hour every week” contribution work test with an “annual” work test for people aged 65 to under 75.
- Introduced an “annual” work test for retention of benefits within superannuation’s accumulation phase for people aged 65 to under 75 (this annual retention test is different to the annual test referred to above for contribution purposes).
- Required benefits (subject to a transitional rule) to be accessed once the person has attained age 75 (by being cashed to a lump sum and/or to commence an income stream(s)).

The original amendments to the Superannuation Industry (SuperVision) Regulations 1994 (SR No. 148 of 2004) and the RSA Regulations (SR No. 147 of 2004) to implement the new rules subsequently required some technical corrections. Modification Declaration (No. 24) has also recently been issued allowing trustees to effectively delay application of the annual retention test until 1 July 2005. It is also understood that clarification is being sought by industry bodies from APRA concerning the practical application of the new regulations in certain circumstances.

It is accordingly opportune to review the new rules and highlight some of the issues and implications that have arisen since their commencement on 1 July 2004.

SUPERANNUATION CONTRIBUTION ELIGIBILITY RULES

1. Under age 65

Contributions from 1 July 2004 can be made by or for a person under age 65 without restriction (ie no work test has to be satisfied). A modified work test will, however, apply if an individual is under 18 at the end of a financial year and wants to also claim a tax deduction for any personal contributions they have made during the financial year.

Apart from satisfying all the usual personal contribution deductibility rules (including, in broad terms, the “eligible person rule” whereby one is either not in receipt of employer superannuation support or is substantially unsupported, and not entitled to any government co-contribution in that year), the under 18 year old wanting to claim a tax deduction will also be required to have derived during the year either eligible employment income (ie income from being an employee as defined for Superannuation Guarantee (SG) purposes) or income from carrying on a business.
2. Age 65 and under 70
The contributions that can be made in this age group are:
- mandated employer (ie SG, certified agreement and award) contributions, or
- contributions made by or for the person (as well as being the recipient of “eligible spouse” contributions) where at the time of contributing the person had already been gainfully employed on at least a “part-time basis during the financial year.”

For this purpose, a person is gainfully employed “on a part-time basis during the financial year” if the person has by the time of making the contributions already undertaken gainful employment for at least 40 hours in a period of not more than 30 consecutive days in that financial year. For example, once a person has worked 40 hours in a fortnight at the start of the year, they will be able to make contributions (or have contributions made on their behalf) after that time for the rest of the financial year, whether or not they engage in any further gainful employment.

3. Age 70 and under age 75
The contributions that can be made in this age group are mandated employer contributions (see 2 above). An individual can also personally contribute (generally undeducted contributions only) where by the time of contributing the person had already undertaken gainful employment on at least a part-time basis during the financial year (as described in 2 above).

4. Age 75 and over
Only contributions made to satisfy award or certified agreement contributions by an employer of the person can be made.

The table below provides a broad summary of the new contribution rules:

**SUPERANNUATION CONTRIBUTION ACCEPTANCE RULES (from 1 July 2004)**

When can an individual personally contribute to a complying superannuation fund, or have some other person or entity (e.g. an employer) contribute for them?

<table>
<thead>
<tr>
<th>Contribution category</th>
<th>Mandated employer (eg SG/Award etc)</th>
<th>Other employer (eg salary sacrifice)</th>
<th>Personal</th>
<th>Other (eg eligible spouse)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>18 to under 65</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>65 to under 70</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>70 to under 75</td>
<td>✓/1</td>
<td>✓/1</td>
<td>✓/2</td>
<td>✓/1</td>
</tr>
<tr>
<td>75 and over</td>
<td>✓/1</td>
<td>✓/1</td>
<td>✓/2</td>
<td>✓/1</td>
</tr>
</tbody>
</table>

Notes:
1. 60 hours to be payable for individuals aged 70 or over, but award or industrial agreement obligations could continue.
2. Once age 65 is attained, contributions in this category can only be accepted once the individual has already undertaken gainful employment on a part-time basis in the financial year, ie it has already worked for at least 40 hours in a period of no more than 30 consecutive days in that financial year.
3. The formal concept of “child contributions” has effectively become irrelevant. However, contributions by another person (other than by the employer) for a person under age 18 of whatever amount can technically be made and will not attract “contributions” tax (ie can it be claimed as a tax deduction, or attract any other tax offset).
4. To qualify as “spouse contributions” the “contributing” spouse (which includes a de facto) is not required to satisfy any work or age tests. They must, however, be a taxpayer (be derives at least $1 of assessable income) and must not otherwise be entitled to a tax deduction for the contribution. The recipient spouse does not have to be gainfully employed unless aged 65 and under 75, in which case the recipient spouse must have already undertaken gainful employment on a part-time basis in that financial year as described in 2 above.

A superannuation fund’s governing rules may prescribe more restrictive rules than those allowed by legislation.

** Limited scope exists for contributions to be accepted after the relevant age has been attained if the trustee is reasonably satisfied that the contributions relate to an earlier period.

---

**COMPULSORY ACCESS (CASHING) RULES**

Apart from the “transition to retirement” measure (allowing individuals from 1 July 2005 to access, from preservation age, superannuation benefits in certain non-commutable income stream forms without retiring or ceasing employment) the circumstances under which superannuation benefits can be accessed when one is under age 65 have not altered (eg “retirement” condition of release etc).

However, a new annual work test (different to the work test for making contributions outlined above) applies where it is desired to retain benefits (other than the member’s mandated post-65 employer financed benefits) in the accumulation phase of superannuation after attaining age 65. Furthermore, apart from a transitional provision applying to those who had attained age 75 prior to 1 July 2004 (see table below) benefits must be accessed from the accumulation phase of superannuation once age 75 is attained.

The compulsory access (cashing) rules from age 65 are as follows:

1. Age 65 and under age 75

Once an individual attains age 65 and is not gainfully employed on at least “a part-time equivalent level”, the person must access* their benefits. For the purposes of this rule, one needs to understand the definition of the new term “a part-time equivalent level.”

It provides that a person who has, or who subsequently attains age 65, can maintain their benefits in the accumulation phase of superannuation up until the end of the financial year if the person had been gainfully employed at least 240 hours during the previous financial year.

This test was to be applied from 1 July 2004, but as a transitional measure Modification Declaration 24 now removes the require-
ment for trustees to compulsorily cash benefits during the period from 1 July 2004 to 30 June 2005. There is therefore no requirement for compulsory cashing based on work tests for individuals aged 65 to under 75 in 2004-05.

The following examples outline the application of the rule from 1 July 2005:

**Example 1**
Jack attains age 65 on 2 July 2005, decides to retire and ends all gainful employment. In the previous financial year ending 30 June 2005 he had been gainfully employed at least 240 hours. Accordingly, Jack can retain his benefits in the accumulation phase of superannuation until 30 June 2006 (at which time, if he has not already done so, he must access his benefits as soon as practicable).

Alternatively, if Jack had retired later in the financial year (say at the end of August 2005) after already having completed 240 hours of gainful employment in the 2005-06 financial year, his benefits could remain in superannuation’s accumulation phase until 30 June 2007.

**Example 2**
Bob retired at age 60 on 20 July 2000 and ceased all gainful employment on that date. He has been able to retain his superannuation benefits intact in the accumulation phase of superannuation.

On 20 July 2005 when he turns 65 he must as soon as practicable access his benefits from the accumulation phase as he was not gainfully employed on at least “a part-time equivalent level” as outlined above (ie in the year ended 30 June 2005 he was not gainfully employed for the required 240 hours).

While the above examples provide a reasonably straightforward analysis, it is likely that this rule will cause anomalous situations to arise – in particular where contributions from age 65 are recommenced and the individual had not been gainfully employed for at least 240 hours in the previous financial year. One expects APRA will clarify practical applications of the new access rules when it next updates Circular I.C.2 Payment Standards for Regulated Superannuation Funds. It would also be expected that the ATO will adopt a similar approach for self-managed superannuation funds.

2. Age 75 and over
Once an individual attains age 75 (after 30 June 2004) their benefits must be accessed*. As a transitional provision, individuals who had attained age 75 on or before 30 June 2004 can maintain their superannuation benefits in the accumulation phase provided they remain continuously gainfully employed at least 30 hours each week.

---

**PLANNING IMPLICATIONS/OPPORTUNITIES – SOME INITIAL THOUGHTS**

The abandoning of any work test requirements for individuals under age 65 will enable many more people to contribute to superannuation who otherwise would not have been able to.

Many of these people may also be able to potentially claim a tax deduction for their contributions. If they can satisfy the other deductibility requirements, it should be a relatively simple matter to satisfy the “eligible person” conditions where they are not working.

While each case requires specific analysis, it is accordingly likely that these individuals will, especially if they are on higher marginal tax rates and within reasonable benefit limits, consider making greater use of potentially deductible superannuation contributions, and as a consequence offset assessable income from investments and capital gains.

Such arrangements were often considered by under 65 aged retirees who were able to contribute using the previous work test rule (ie 10 hours in any one week in the last two years). Now, not only will it not be necessary to go and find work (as it often was) for 10 hours in a week, but the arrangements can be adopted over a much longer period of years.

One matter worth remembering is that the access rules for those aged under 65 have not altered, apart from the “transition to retirement” measure. For example, in the unlikely event that a person contributes to superannuation but has never been employed, they would not be able to access their benefits on “retirement condition of release” grounds and would generally need to wait until age 65 to access their benefits in lump sum form.

The careful coordination of the test for making contributions after attaining age 65 and the new test for retaining benefits in the accumulation phase should now provide more certainty. Under the previous rules, as soon as gainful employment for at least 10 hours each week ended, one technically faced a compulsory cashing requirement forcing the person to access their benefits even though their intention was to find further part-time work later on.

The new rules are also likely to encourage more efficient business succession planning strategies. Business owners for example, can progressively reduce their involvement in the business while the future generation settles into it, without having to access their superannuation benefits at, or shortly after, attaining age 65.

---

* One should note the continuing retention of the existing exception to the above compulsory access rules applying to benefits from any mandated employer contributions the individual is continuing to receive from age 65.