FIRSTTECH

2019 FEDERAL ELECTION – KEY LABOR POLICIES

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FirstTech Strategic Update – Tim Sanderson, Senior Technical Manager

This article outlines the key superannuation and tax changes the Australian Labor party (ALP) has proposed to make if elected to Government.

All changes discussed are proposed only at the time of writing, may change further in the future, and are contingent on the ALP forming Government at the next Federal election and successfully passing the proposed changes through Parliament.

Proposed superannuation changes[1]

Reducing non-concessional contributions cap to $75,000

The ALP has proposed reducing the non-concessional contributions cap from $100,000 to $75,000. Assuming that other existing rules remain the same, this would lead to:

- a bring forward cap of $225,000 over three years where an eligible client's total superannuation balance just prior to a financial year is less than $1.4 million, or
- a bring forward cap of $150,000 over two years where an eligible client's total superannuation balance just prior to a financial year is at least $1.4 million but less than $1.5 million.

Such a change would require some clients to start planning for their retirement earlier as they would need to start making non-concessional contributions further out from retirement.

Abolishing concessional contributions cap carry-forward

From 1 July 2018, the concessional contributions cap carry forward rules allow clients to carry forward unused concessional cap amounts for up to five financial years, provided their total superannuation balance just prior to the year in which they want to access the unused cap amounts is less than $500,000.

The ALP has proposed removing the ability for clients to carry forward unused concessional contributions cap amounts.

At this stage it is unclear whether eligible unused concessional cap amounts accrued under existing legislation would be retained or lost if the ALP's proposed change was legislated.

Re-establishing 10% test for personal tax-deductible contributions

Prior to 1 July 2017, clients wanting to make personal tax-deductible contributions to superannuation must:

- have not been an employee (as defined in SG law) during the income year, or
- have less than 10% of their assessable income (and reportable fringe benefits and reportable employer super contributions) attributable to employment.

With these conditions removed from 1 July 2017, most employees became eligible to make personal tax-deductible contributions for the first time.

The ALP has proposed reversing this change. This would result in most employees again becoming ineligible to make personal tax-deductible contributions, and being restricted to making any voluntary concessional contributions via increased employer contributions (eg, salary sacrifice).

Reducing Division 293 tax income threshold to $200,000

The income threshold above which Division 293 tax applies reduced from $300,000 to $250,000 on 1 July 2017. The ALP has proposed further reducing this income threshold from $250,000 to $200,000. While this threshold is still above the highest marginal income tax threshold, the change would make some clients liable to Division 293 tax for the first time.

From a strategic perspective, clients subject to Division 293 tax are still likely to benefit from using their full concessional contributions cap, as these contributions are effectively taxed at a maximum tax rate of 30% instead of the highest marginal rate (currently 45% plus applicable levies).

1 2018 ALP National Platform Constitution: *A Fair Go For Australia*.

Proposed changes to super guarantee

The ALP has proposed ending the existing temporary legislative freeze on the superannuation guarantee (SG) rate (currently 9.5%) and fast-tracking the increase in the SG rate to 12% as soon as practicable. Once the goal of 12% has been achieved, the ALP then proposes to set out a pathway to a 15% rate of SG.

The ALP proposes including SG as a national employment standard so that it is enforceable as an industrial entitlement.

The ALP has also proposed eliminating the $450 per month income threshold below which SG contributions are not required, and paying SG contributions on the Federal Government paid parental leave scheme.

Prospectively reintroducing ban on LRBAs

The ALP believes that limited recourse borrowing by SMSFs crowds-out first homebuyers, increases risks of financial system instability and threatens to undermine the integrity of the superannuation system. The ALP has proposed prospectively restoring the prohibition on direct borrowing by superannuation funds for housing investments.

While the proposal seems aimed at prospectively banning limited recourse borrowing (LRBA) arrangements involving residential property, at this stage it is unclear whether the ban would also apply to any other investment types (eg, commercial property).

Proposed tax changes

Excess imputations credits to be non-refundable: 1 July 2019

On 13 March 2018 the ALP announced that it will amend the imputation system to make excess imputation credits non-refundable from 1 July 2019, with an exemption for ATO endorsed income tax exempt charities and not-for-profit institutions with deductible gift recipient status.

On 27 March 2018 the ALP then announced an amendment to the original policy to provide an additional 'Pensioner Guarantee' to extend the exemption to:

- individuals that are 'pension or allowance recipients', and
- Self-managed superannuation funds (SMSFs) with at least one 'pensioner or allowance recipient' before 28 March 2018.

For detailed analysis of this announcement, and its potential impact on individual clients and superannuation funds, refer to FirstTech's article about Labor's dividend imputation announcement.

Limiting negative gearing to new housing investments[1, 2]

From 1 January 2020, the ALP has proposed prospectively limiting negative gearing to new housing investments. Negative gearing will not be allowed in respect of other investment assets purchased from that date.

Under this policy:

- Taxpayers can continue to deduct net rental losses against their wage and other non-investment income, providing the losses come from newly constructed housing
- Losses from investments made on or after that date in other investment assets (including existing housing) cannot be deducted against non-investment income. However, such losses can still be used to offset investment income tax liabilities, and unused losses can be carried forward to offset the final capital gain on the investment.

Importantly, this proposal applies to not just residential property, but all asset types (eg, shares, managed funds, commercial property, etc).

Existing investments made before 1 January 2020 are unaffected by this change and can continue to be negatively geared.

Halving the 50% CGT discount[1, 2]

The ALP has proposed halving the 50% general CGT discount to 25% for all assets purchased on or after 1 January 2020.

Like the proposed negative gearing reforms, this proposal does not only apply to residential property, but all asset types (eg, shares, managed funds, commercial property, etc). However, under this reform there is no exemption for investment in new housing.

Assets purchased prior to 1 January 2020 are unaffected by this change and can continue to receive a 50% general CGT discount, including where the disposal for CGT purposes occurs after this date.

The ALP has confirmed that this reform will not impact assets held by complying superannuation funds (whose 33.33% CGT discount will remain unchanged) or small business assets.

30% minimum tax rate on discretionary trust distributions[3]

There are existing tax measures in place to prevent income splitting (including via discretionary trusts) to minor beneficiaries, with substantial tax rates generally applying to their unearned income.

To further tackle the use of income splitting to minimise tax, the ALP has proposed introducing a 30% minimum tax rate on discretionary trust distributions to beneficiaries aged 18 or over.

1 2018 ALP National Platform Constitution: *A Fair Go For Australia*.

2 ALP, *A Positive Plan for Help Housing Affordability*, https://www.alp.org.au/negativegearing.

3 ALP Factsheet, *A Fairer Tax System: Discretionary Trusts Reform*, https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/7652/attachments/original/1501324995/170729_Shorten_Trusts_Fact_Sheet_FINAL.PDF?1501324995

Under the proposal, distributions made to adult beneficiaries from 1 July 2019 will be taxed at the greater of the beneficiary's marginal income tax rate/s and 30%. It is unclear at this stage whether the 30% rate will only apply to distributions of assessable income or all distributions.

This proposed change will not apply to:

- Special disability trusts
- Testamentary trusts
- Fixed trusts
- Cash management unit trusts
- Fixed unit trusts
- Public unit trusts (listed and unlisted)
- Farm trusts
- Charitable and philanthropic trusts.

$3,000 maximum deduction for cost of managing tax affairs[4]

A tax-deduction is generally available for the costs of managing a person's tax affairs, which can include expenses relating to preparing and lodging tax returns and activity statements, obtaining tax advice from a recognised tax adviser, appealing to the Administrative Appeals Tribunal or courts in relation to tax affairs, interest charges by the ATO and dealing with the ATO about tax affairs.

From 1 July 2019, the ALP has proposed limiting the tax-deduction available for these costs to $3,000 per financial year.

This proposal will apply to individuals and businesses that are taxed as individuals (eg, trusts and partnerships) but will not impact companies. The cap will also not apply to individual small businesses with positive business income and annual turnover up to $2 million.

At this stage the ALP has not confirmed that any exemptions apply to superannuation funds. This means that the tax-deductible costs that SMSFs can incur in seeking advice to assist with obtaining private rulings or otherwise complying with their tax obligations, may be restricted.

4 ALP Factsheet, *A Fairer Tax System*, https://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/7652/attachments/original/1494489451/170511_A_fairer_tax_system_Fact_Sheet.pdf?1494489451

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