

Borrowing through your super fund

If you have a self managed superannuation fund (SMSF) you may have heard about recent legislative amendments that allow superannuation funds to borrow in certain circumstances. This is not for everyone but in certain situations can be a very effective planning option and may provide your fund with much greater flexibility than was previously available.

“While the legislation is titled instalment warrant arrangements, it is not limited to this.”

Historically superannuation funds have been able to borrow limited amounts, for limited purposes and for limited timeframes (e.g., up to 90 days in order to pay out a beneficiary). New legislation, S67(4A) – instalment warrant arrangements, now extend the borrowing capability of a superannuation fund. While the

legislation is titled instalment warrant arrangements, it is not limited to this form of borrowing. Providing the borrowing follows the requirements of the legislation then borrowing is permissible.

The key requirements of the borrowing are that:

- it is applied to the acquisition of an asset
- the fund must be permitted to acquire the asset
- the fund has the right to acquire legal ownership of the asset by making one or more payments
- the asset must be held on trust
- the fund must have a beneficial interest in the asset
- the loan is limited in recourse to the asset only
- the asset would not be an in house asset

A common example of where these provisions could prove beneficial is for the acquisition of commercial premises by a superannuation fund. The legislation requirements though are quite specific and the devil is in the detail. This type of arrangement will require a trust deed to be drawn and the borrowings will need to comply with all aspects of the legislation. The limited recourse requirement means that any borrowing can only be secured against the asset being acquired. It cannot be secured against other assets of the fund. At this stage, only a limited number of financiers have loan products which satisfy these requirements.

Because of the requirements, these arrangements require time and planning. There are also a number of costs involved which means that in some cases it may not be a viable proposition. If you think you might be able to take advantage of these new provisions it is a good idea to talk to us as soon as possible. We need to ensure that what you are looking to do is permissible under the legislation and then that there is a real benefit for you and your superannuation fund.

Maternity leave: Where to now for small business?

Myers hit the headlines last month for introducing six weeks paid maternity leave. A few hours later, grocery chain Aldi announced an even more generous maternity payment. This month, we explore the future of maternity leave in Australia and ask ‘where to now’ for small business facing stiff corporate competition in the labour market.

From April 1, staff at Myers with 18 months or more permanent full time or permanent part time service will be entitled to six weeks paid maternity leave. This is in addition to the 2 year’s unpaid maternity leave provided by the store. Casual staff are not eligible for paid maternity leave. Myers introduced the move to enhance return rates of female employees after child birth and in a competitive employment market, become an employer of choice.

Hours after the Myer announcement, Aldi announced an offer of 14 weeks’ pay at 50% of the employee’s wage while on maternity leave for permanent staff. The incentive is available to staff who have 12 months or more service with the grocery chain.

For most employers, the success of maternity leave programs come down to the issues of who pays and what the impact of forced flexibility will be. At present many Australian businesses simply cannot offer the flexibility so desperately needed by working parents. The danger of the brewing maternity leave debate for many small businesses is that they simply will not be able to compete with their larger corporate cousins.

In Australia, women have the right to 12 months unpaid maternity leave if they have 12 months continuous service or more with the employer. *Continued over*

Maternity leave: Where to now for small business? *continued*

For casuals, there needs to be a regular and consistent pattern of work for at least 12 months with a reasonable expectation of ongoing employment.

During the election, the Labor Party flagged an extension of unpaid parental leave entitlements to two years (with mothers and fathers given the option of splitting that time) along with the right for parents to request flexible work arrangements until their child reaches school age. In many circumstances, small business would be exempted where the policies are not sustainable.

The paid maternity leave debate however is yet to be had with the Federal Government waiting for the release of a Productivity Commission report in February next year before committing to any policy changes. Amongst other things, the Commission is tasked with taking stock of maternity leave in Australia including maternity leave patterns and needs, international paid maternity leave models across all types of employment, and cost effectiveness.

Australia and the US are the only OECD countries without government funded paid maternity leave. Many families currently use annual leave entitlements to fund maternity leave. In the UK, British mothers receive 39 weeks' paid leave. Generally, the employee is paid 90% of average weekly earnings for the first six weeks then up to £112.75 for the remaining 33 weeks. Paid leave is available where the employee has been working for the employer for 26 weeks or more. While employers generally pay the benefit, they are able to claim up to 92% of the statutory payments (small business entities can claim 100% plus up to 5.5% for administrative costs). Survey's in the UK show that in almost all cases, the length of time taken on maternity leave is determined by the duration of maternity leave payments. Few appear to have the luxury of choice.

Similarly, in New Zealand, publicly funded paid parental leave of up to NZ\$ 391.28 per week is available for 14 weeks for those with 6 months or more service with their employer. Special leave is also available (up to 10 days) for pregnancy related issues such as antenatal check-ups. Last year, the New Zealand government extended paid leave to the self employed.

In Australia, approximately one third of women receive some form of paid leave; mostly in the public service, health care sectors or large corporations. Large corporate employers such as Westpac offer 12 weeks paid maternity leave (reporting an increase in the return to work rate of 70% with the introduction of the measure).

For small business, a uniform system of publicly funded maternity leave will go some way towards closing the gap in maternity leave incentives. Without it, small businesses are likely to come off second best in the competitive labour market. When faced with security over uncertainty, few working families can afford uncertainty.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Confusion over treatment of late payment of super guarantee

Last month, the Government introduced amending legislation to remove the double superannuation guarantee (SG) charge burden on employers who make late payments to their employee's super funds.

The amendment will extend the late payment offset for employers so late contributions will count towards reducing the SG charge. The net effect is that employers will no longer have to pay twice.

The amendment will apply to employers who have been assessed with the SG charge before the date of Royal Assent if their SG charge **remains unpaid**.

Employers who fall behind with their quarterly superannuation guarantee (SG) obligations are liable for the SG charge. The SG charge generally includes the amount of the late contribution even where the employer has paid the amount into a superannuation fund, albeit late. In other words, employers are often paying their SG obligations twice under the current system.

The amendment had previously been announced by the former Government in October 2007 but no legislation was available nor introduced prior to the election lock down.

Quote of the month

Ability is of little account without opportunity.

Lucille Ball

