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NEWS UPDATE

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Why the ATO is targeting babyboomer wealth

"Succession planning, and the tax risks associated with it, is our number one focus in 2025. In recent years we've observed an increase in reorganisations that appear to be connected to succession planning."
ATO Private Wealth Deputy Commissioner Louise Clarke

The Australian Taxation Office (ATO) thinks that wealthy babyboomer Australians, particularly those with successful family-controlled businesses, are planning and structuring to dispose of assets in a way in which the tax outcomes might not be in accord with the ATO's expectations.

If you are within the ATO's Top 500 (Australia's largest and wealthiest private groups) or Next 5,000 (Australian residents who, together with their associates, *control* a net wealth of over $50 million) programs, expect the ATO to be paying close attention to how money flows through the entities you control.

A critical issue for many business owners is how to effectively (and compliantly) benefit from a successful business. In many cases, the owners have spent years building the business and the business has become not only a substantial asset, but a lucrative source of income either through salary and wages, dividends, or through the sale of shares or assets. Generally, under tax law, you can legitimately

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structure assets if there is a good reason to do so - like for asset protection, but if you tip across the line and the only viable reason for a structure is to reduce tax, then you risk the ATO taking a very close look at your operations or worse, denying any tax benefits under the general anti-avoidance rules in Part IVA of the tax rules, designed to combat "blatant, artificial or contrived" tax avoidance activities.

"We're seeing that succession planning behaviour is primarily done by group heads who are approaching retirement. They typically own groups that family members are a part of, and wealth is transferred to the next generation to keep it within the family (via trusts and other means)," ATO Private Wealth Deputy Commissioner Louise Clarke said in a recent update.

Key areas of concern include:

- **Division 7A loans** being settled. That is, a company has been paying money to a shareholder or an associate under a loan account. The 'loan' is quickly settled, often via a distribution, to remove it from the accounts.
- **Assets moving around the group** (often the true value of an asset is not recognised raising the question, why the change if not to avoid capital gains tax on disposal or for some other benefit).
- **Family member interests being restructured**.
- **Trust deeds being amended.**
- A restructure is cited as a reason for **late lodgment.**

Use of trusts

Trusts are also a key area of concern in 2025. Where a trust which has made a family trust election (FTE) or interposed entity election (IEE) makes a distribution outside of the family group, a 47% Family Trust Distribution Tax applies (tax at the top marginal tax rate plus Medicare).

In addition, the ATO has recently tightened its approach to trust tax returns for closely held trusts to ensure that trustee beneficiary (TB) statements are being completed. These are required when a trust makes a distribution of income or assets to the trustee of another trust, unless an exclusion applies.

For example, a trust which has made an FTE or IEE doesn't need to make a TB statement. The TB statement will then be used to cross reference against what the beneficiary has declared in its tax return. Where a valid TB statement is not made on time this can trigger a hefty 47% Trustee Beneficiary Non-Disclosure Tax.

Reducing risk

Where you or your family have control over multiple entities, particularly where the value of these entities is significant, it is important that the connections between these - be it in Australia or overseas - are looked at closely to avoid any nasty surprises or lost opportunities.

Transferring control of your business may involve restructuring your business operations – changes to share structures, changes to the trustee and appointor of a trust, changes to partnership structures – or transferring assets to family members via the creation of trusts or other entities. All these events have legal and tax implications that need to be carefully considered. **End.**

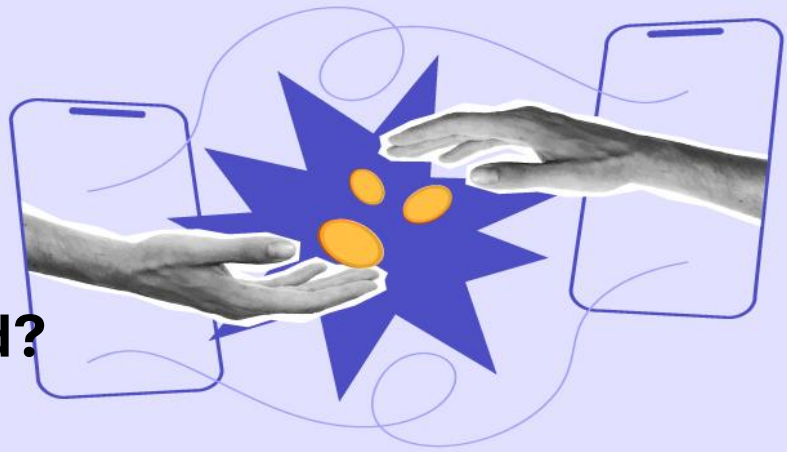
Contact us to assist you with your succession and tax planning.

Quote of the month

"To the man who only has a hammer, everything he encounters begins to look like a nail."

US psychologist Abraham Maslow

Will credit card surcharges be banned?



If credit card surcharges are banned in other countries, why not Australia? We look at the surcharge debate and the payment system complexity that has brought us to this point.

In the United Kingdom, consumer credit and debit card surcharges have been banned since 2018. In Europe, all except American Express and Diners Club consumer surcharges are banned. And in Australia, there is a push to follow suit. But, is the issue as simple as it seems?

The push for change

The Reserve Bank of Australia (RBA) launched a review in October 2024 of Merchant Card Payment Costs and Surcharging. The review explores whether existing regulatory frameworks are still fit for purpose given the rate of technological change and complexity, and if there is a need for greater transparency – surcharges, transaction fees, and the way in which payments are regulated, are all up for review. Ultimately, the review is about reducing costs to merchants and consumers.

In general, customers dislike surcharges and would be happy to see them go – they represent a personal loss of value in much the same way a discount is seen as a personal gain. And, they have support for a ban from the large credit card providers and financial institutions with the Australian Banking Association's (ABA) submission to the RBA review saying, "The current surcharging framework is clearly not working and requires targeted reform. Consumers should never be surcharged for bundled costs like POS systems, business software products or other business incentives." The reference to "business incentives" is where a higher fee is charged by the payment service provider to provide the merchant with reward points and other incentives.

The push for a ban accelerated when the government announced that it would ban debit card surcharges from 1 January 2026, subject to the outcome of the RBA review later this year.

If surcharges are banned for some or all payment methods, businesses currently charging surcharges will need to either absorb the cost of merchant fees or increase prices. The issue for many businesses is not whether to charge a fee, but the costs of accepting what is now the most common payment method – cash is free to transact, cards are a facility to transact legal tender, not legal tender in and of themselves.

Small business pays 3 times more

While the average card payment fee in Australia is lower than the United States (which is close to double Australia's rates), we pay a higher rate than in some other jurisdictions such as Europe. The RBA have flagged there might be room to improve this by capping interchange fees and/or introducing competition into how debit card payments are routed (allowing systems to default to the 'least cost' option available).

In Australia, it is not a level playing field when it comes to card transaction fees with a large disparity between fees paid by small and large merchants – small merchants pay around three times the average per transaction fee than larger merchants (large merchants are able to secure wholesale fees or utilise 'strategic' interchange rates). But even within the small business sector, fees vary dramatically with

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the cost of accepting card payments ranging from less than 1% to well over 2% of the transaction value.

How we use cards and digital transactions

The RBA are generally in favour of allowing surcharges, pointing out that they signal to consumers which payment methods offer better value and enable market forces to determine the dominant payment providers. And, this might be true for large purchases, but do we really notice when we're tapping our phones or watches to grab that morning coffee?

Cards (including debit, prepaid, credit and charge cards) are the most frequently used payment method in Australia, accounting for three-quarters of all consumer payments in 2022.

According to the Australian Banking Association:

- Contactless payments now account for 95% of in-person card transactions, compared to less than 8% in 2010.
- Online payments, as a share of retail payments, have grown from 7% in 2010 to 18% in 2022.
- Mobile wallet (Apple Pay, Google Pay, etc.,) usage has grown from 1% of point-of-sale payments in 2016 to 44% in October 2024.
- Buy Now, Pay Later (BNPL) services, virtually unknown 8 years ago, are now used by nearly a third of Australians.

When are surcharges allowed

In the days before the RBA's surcharge standard, it was not uncommon for businesses to apply a flat 3% surcharge.

The surcharge rules enable merchants to surcharge consumers for the "reasonable cost of accepting card payments".

This means:

- A business can only charge a surcharge for paying by card/digital wallet, but the **surcharge must not be more than what it costs the business to use that payment type**. These costs, measured over a 12 month period, can include gateway costs, terminal costs paid to a provider, and fraud prevention etc., if they relate directly to the card type being surcharged.
    - Payment suppliers must provide merchants with a statement at least every 12 months that includes the business's average percentage cost of accepting each payment type.
- If a business charges a payment surcharge, it must be able to justify how the surcharge fee was calculated.
- If the surcharge applies to all payment types regardless of type, it must not be more than the lowest surcharge set for a single payment type.
- If there is no way for a customer to pay without incurring a surcharge, the business must include the surcharge in the displayed price. That is, if your customer cannot use cash or another payment method that does not incur a surcharge, then the price displayed must include the surcharge.

The RBA estimates that, on average, card fees cost:

Card type	Fee
Eftpos	less than 0.5%
Visa and Mastercard debit	between 0.5% and 1%
Visa and Mastercard credit	between 1% and 1.5%.

Source: RBA

Excessive surcharging is banned on eftpos, Debit Mastercard, Mastercard Credit, Visa Debit and Visa Credit. The Australian Competition and Consumer Commission (ACCC) reportedly stated that excessive surcharge complaints increased to close to 2,500 in the 18 months from the start of 2023.

Tax on surcharges

If your business charges goods and services tax (GST) on goods or services, then GST should also apply to any surcharge payments made. **End.**

Is there a problem paying your super when you die?

The Government has announced its intention to introduce mandatory standards for large superannuation funds to, amongst other things, deliver timely and compassionate handling of death benefits. Do we have a problem with paying out super when a member dies?

The value of superannuation in Australia is now around $4.1 trillion. When you die, your super does not automatically form part of your estate but instead, is paid to your eligible beneficiaries by the fund trustee according to the fund rules, superannuation law, and any death benefit nomination you made.

Complaints to the Australian Financial Complaints Authority (AFCA) about the handling of death benefits surged sevenfold between 2021 and 2023. The critical issue was delays in payments. While most super death benefits are paid within 3 months, for others it can take well over a year. The super laws do not specify a time period only that super needs to be paid to beneficiaries "as soon as practicable" after the death of the member.

How to make sure your super goes to the right place

Death benefits are a complex area. The superannuation fund trustee has discretion over who gets your super benefits *unless* you have made a valid death nomination. If you don't make a decision, or let your nomination lapse, then the fund has the discretion to pay your super to any of your dependants or your estate.

There are four types of death nominations:

1. **Binding death benefit nomination**
   Directs your super to your nominated eligible beneficiary, the trustee is bound by law to pay your super to that person as soon as practicable after your death. Generally, death benefit nominations lapse after 3 years unless it is a non-lapsing binding death nomination.
2. **Non-lapsing binding death benefit nomination**
   If permitted by your trust deed, a non-lapsing binding death benefit nomination will remain in place unless you cancel or replace it. When you die, your super is directed to the person you nominate.
3. **Non-binding death nomination**
   A guide for trustees as to who should receive your super when you die but the trustee retains control over who the benefits are paid to. This might be the person you nominate but the trustees can use their discretion to pay your super to someone else or to your estate.
4. **Reversionary beneficiary**
   If you are taking an income stream from your superannuation at the time of your death (pension), the payments can revert to your nominated beneficiary at the time of your death and the pension will be automatically paid to that person. Only certain dependants can receive reversionary pensions, generally a spouse or child under 18 years.

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Who is eligible to receive your super?

Your super can be paid to a dependant, your legal representative (for example, the executor of your will), or someone who has an interdependency relationship with you. A dependant for superannuation purposes is "the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship". An interdependency relationship is where someone depends on you for financial support or care.

What happens if I don't make a nomination?

If you have not made a death benefit nomination, the trustees will decide who to pay your superannuation to according to state or territory laws. This will be a superannuation dependant or the legal representative of your estate to then be distributed according to your Will.

Where it can go wrong

There have been a number of court cases over the years that have successfully contested the validity of death nominations. For a death nomination to be valid it must be in writing, signed and dated by you, and witnessed. The wording of your nomination also needs to be clear and legally binding. If you nominate a person, ensure you use their legal name. If your super is to be directed to your estate, ensure the wording uses the correct legal terminology.

One of the reasons for delays in paying death benefit nominations cited by the funds is where there is no nomination (or it is expired or invalid), there are multiple potential claimants, and the trustee needs to work through sometimes complex family scenarios.

The bottom line is, young or old, check your nominations with your superannuation fund and make sure you have the right type of nomination in place, and it is valid and correct. While there still might be a delay in getting your super where it needs to go if you die, the process will be a lot quicker and less onerous for your loved ones. **End.**

Threshold for tax-free retirement super increases

The amount of money that can be transferred to a tax-free retirement account will increase to $2m on 1 July 2025.

The transfer balance cap - the amount that can be transferred to a tax-free retirement account – is indexed to the Consumer Price Index (CPI) released each December. If inflation goes up, the general transfer balance cap (TBC) is indexed in increments of $100,000 at the start of the financial year.

In December 2024, the inflation rate triggered an increase in the cap from $1.9m to $2m.

Everyone has an individual transfer balance cap. If you have started a retirement income stream, when indexation occurs, any increase only applies to your unused transfer balance cap.

If you are considering retiring, either fully or partially, indexation of the transfer balance cap provides a one-off opportunity to increase the amount of money you can transfer to your tax-free retirement account. That is, if you start taking a retirement income stream for the first time in June 2025, your transfer balance cap will be $1.9m but if you wait until July 2025 your transfer balance cap will be $2m, an extra $100,000 tax-free.

If you are already taking a retirement income stream, indexation applies to your unused TBC - so, you might not benefit from the full $100,000 increase on 1 July 2025.

Where can I see what my cap is?

Your superannuation fund reports the value of your superannuation interests to the Australian Taxation Office (ATO). You can view your personal transfer balance cap, available cap space, and transfer balance account transactions online through the ATO link in myGov. **End.**