



Our Sydney personal wealth management team provides you with a simple solution for your personal wealth needs. We have specialists in wealth management, superannuation, self-managed superfunds, estate planning, debt advisory and insurance services.

THIS ISSUE ALSO INCLUDES ARTICLES ON:

- The three biggest inheritance hiccups - and how to avoid them
- Four tips to planning your retirement
- Executive to consultants - watch out for the tax rules
- Starting a pension at 65 will save you tax
- Invest, save or spend? 10 smart ways to use your year-end bonus
- Estate planning - Options available in relation to real estate
- Don't wish away market volatility

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MICHAEL HUTTON

Partner, Personal Wealth Management

THE THREE BIGGEST INHERITANCE HICCUPS - AND HOW TO AVOID THEM

With huge intergenerational wealth transfers coming up, good estate planning will keep the family together and maximise what is passed on.

With Baby Boomers well into retirement phase, now is the time to consider preparing a good estate plan to ensure a seamless transfer of wealth to the next generation.

There has been extensive commentary on the level of wealth to be transferred in coming years, with the Productivity Commission estimating a transfer in Australia of \$3.5 trillion in assets by 2050.

An appropriate level of estate planning is warranted to ensure the correct assets go to the intended beneficiaries seamlessly and tax effectively.

Notwithstanding complicated family circumstances such as blended families and the like, there are three key issues that often emerge when it comes to wealth transfer.

Equalisation between beneficiaries

Even with all the required estate documentation, arguments can still arise, particularly when it comes to the equalisation of wealth between beneficiaries.

If equalisation is the goal, keeping track of loans and gifts to family members can get messy and make equalisation upon death difficult.

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An example is when financial assistance has been provided. Is it to be treated as a gift or is it a loan? Is interest to be charged? Is it to be equalised upon death? It is worth having a method of keeping track of such loans and gifts. This can mitigate potential arguments in the future.

Wealthy parents often grapple with providing support as different family members require different levels of assistance at varying times, sometimes many years apart. What if some children do well financially and others don't? Should the wealth be left to the grandchildren, skipping the next generation partially or fully?

Sometimes a conscious decision is made to not assist the next generation financially as it "will all be yours in the future anyway". This makes equalisation simple, but with people living longer, the next generation may be old and have struggled financially by the time they inherit. On the other hand, parents passing wealth on early and being left short in their own retirement is also not a great strategy, so there needs to be a fine balance.

Managing family wealth as people get older

Another common issue with wealthy families is when the investment process that generated the wealth becomes compromised.

This happens when senior family members who have been investment savvy for many years and have generated much wealth through meticulous investment in property and shares start to lose interest or even capacity.

If a family business is involved as a driver of family wealth, this usually complicates the situation further. If the senior family members are starting to run out of stamina and the next generation is not stepping up or has varying levels of interest, the business may flounder.

Having a plan for the succession of the family business or the maintenance of family investment portfolios is important. It can be beneficial to involve the next generation and engage advisers to liaise with the family. This is usually preferable to a death or loss of capacity occurring and an intervention being forced.

Record keeping

To run good investment portfolios, there is a need for good record-keeping. Keeping track of the value of assets owned, the structure of ownership, the cost of those assets and income generated including any tax credits is critical. This enables regular reviews and helps ensure compliance is up to date and correct tax is paid.

Problems will emerge if the administration starts to drift as people age. It is surprisingly difficult to create records retrospectively once people have let them slip.

Well-managed and administered wealth all the way through to when it is to be passed on can help maximise

Michael Hutton has a bimonthly opinion piece in the Australian Financial Review. This article first appeared as part of this series on 20 November 2023.

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FOUR TIPS TO PLANNING YOUR RETIREMENT

Building a strong wealth position takes a long-term approach and getting the foundations right during the wealth building and pre-retirement years can lead to a more comfortable lifestyle in retirement.

Tip # 1 - Set your investment wealth goal

Firstly, determine the target balance between lifestyle and investment assets in retirement. Lifestyle assets include the family home, which is non-income producing. An allocation that is too far in favour of lifestyle assets in retirement years can lead to being asset rich and cash poor.

Investment assets, on the other hand, are income-producing and include investment properties, shares, managed funds, superannuation and so on. These are the assets that would be relied upon to meet income needs during the retirement years.

The portion in investment wealth should be enough to sustain living costs throughout retirement, which leads to a very common question; how much investment wealth do I need to be able to retire? The answer, of course, depends on your personal circumstances - how long you'll live, whether you want to preserve your wealth as a legacy to the next generation or use it all during your lifetime, how well invested your money is and how much you plan to spend.

For those wanting to preserve investment wealth, the five per cent rule can be a useful rule of thumb. Using this rule, annual withdrawals that represent a drawdown of five per cent or less of the invested capital tends to be sustainable over the long-term if the invested wealth produces an average annual return of five per cent after inflation. For example, to support an annual income of \$100,000 investment wealth of \$2,000,000 would be required.

Tip # 2 - Build wealth separate to the family home

Repaying the home mortgage during the wealth building years is usually a large focus and an important step toward securing a comfortable lifestyle in retirement. The goal should be for you to be debt free in retirement.

Once the mortgage is less than 50% of the value of the home, consideration could be given to building investment wealth to the target level. While it is important to continue the mortgage reduction strategy, as cashflow allows additional savings should be directed toward investment assets via extra super contributions, investing in a portfolio of shares or an investment property.

This approach should be regular and automated (if possible), tax effective and consider your investment time horizon. It's a good idea to seek advice on the best ownership structure and investment style.

Tip # 3 - Investment wealth should be diversified, liquid and accessible

Consider the return profile of investment assets. For instance, residential property typically provides long-term capital growth with a lower annual income yield. While this may be ok during wealth building years where employment or business income is meeting living costs it can create cashflow problems in retirement.

Diversified investment portfolios tend to be more liquid and accessible allowing for regular and consistent income withdrawals throughout the year. For instance, a \$2,000,000 residential property may produce an average rental yield of \$60,000 or 3% p.a. before costs and much less after costs. In contrast, a diversified investment portfolio of equities, listed property, fixed interest and cash assets invested with a balanced profile might provide an average annual return of \$80,000 or 4.0% p.a. after costs.

Tip # 4 - Maximise wealth in superannuation

Finally aim to maximise the amount of wealth in superannuation as it is the most tax effective place for wealth to be invested in retirement. Each individual can have up to \$1.9M in a tax-free pension account.

Building a \$1.9M super balance can be achieved by:

- maximising concessional contribution opportunities in wealth building years, and
- transitioning investment wealth held personally or in other structures to superannuation using non-concessional contributions in the lead up to retirement.

Those who have the ability to make maximum use of their allowable tax-free pension cap should not waste the contribution opportunities available to them, if cashflow permits.

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EXECUTIVE TO CONSULTANTS – WATCH OUT FOR THE TAX RULES

A growing trend in recent years has been for experienced senior executives to develop what is known as a “patchwork career”, where they take on a number of advisory roles – including non-executive directorships and consultancy work – as part of their transition to retirement.

This can be a very attractive option, allowing people to utilise their years of experience and knowledge but also provide more flexibility as they approach retirement than a more traditional full-time job.

However, there are some traps to be aware of, particularly when it comes to tax, and specifically the Personal Services Income (PSI) tax rules.

These tax rules apply to anyone who is being paid primarily for their personal skills, as a way of ensuring they are taxed in a way similar to an employee. The cut-off is that if 50 percent or more of a person’s income is generated from personal efforts or skill (rather than from the sale of goods, use of assets, or from a business structure) then it will be counted as PSI, and taxed accordingly.

The main intention behind the PSI rules is to prevent income splitting, or income being taxed at a lower rate (such as through a company) and also to prevent a consultant from claiming deductions that they would not otherwise have been able to claim as an employee.

For example, anyone receiving the majority of their income as a consultant based on their personal expertise is likely to be taxed at the marginal tax rate under PSI rules. It also applies to a contractor based on services, or a professional practitioner in a sole practice.

There are a number of tests to help people work out whether they fall within the PSI rules. Two of the most common are the results test and the unrelated clients test. If either of these tests can be satisfied, then people may be able to argue that the PSI rules don’t apply to them.

Results test

The results test has three key criteria, all of which must be met. They are: the consultant is being paid by a client to produce a specific result; they provide their own tools and equipment (where relevant); and are liable for rectifying any defects arising from their work. If all three rules can be satisfied, then the PSI rules don’t apply.

For example, if a consultant is paid based on the number of hours worked, rather than achieving specific deliverables or meeting certain performance targets, then they cannot use the results test to avoid application of the PSI rules.

Example 1 – Contract to develop an IT product – results test met

Mary is contracted to develop a specified IT system for use by a government department within a timeframe of 12 months, with instalment payments made on achievement of specific milestones. She generally uses her own equipment, is responsible for rectifying any defects if the system does not operate as intended or does not meet the required specifications and is liable to pay damages if she does not do so. The ATO would regard the results test as having been satisfied as all the required conditions are present.

Example 2 – Contract to provide engineering services – results test not met

Tim has a company Tim’s Contracting Pty Limited that contracts with a property developer to perform planning services in relation to various projects over an 18-month period, which is subsequently renewed for another 12 months. Under the contract Tim is required to carry out the work as assigned to him by the developer, mostly at their premises on or site. Tim is provided with administrative support and can use the developer’s equipment as required.

The fees paid to him are calculated at an hourly rate and Tim is paid following submission of timesheets, while he is not responsible to remedy defects at his own cost. While Tim is contracted to achieve the successful completion of the relevant contracts, the ATO would not accept that he satisfies all of the requirements to rely on the results test, making it more likely that Tim will be taxed personally on the income under the PSI rules.

Common situations where the results test might apply include where someone is contracted to oversee a specific project such as a marketing campaign to increase sales, or the successful sale of a business. Having specific outcomes that determine the consulting fees or receiving a success fee make the applicability of this test more likely.

Unrelated clients test

A consultant will often have multiple clients that are unrelated to each other. As long as no more than 80 per cent of their personal services income for a year is received from a single client, the PSI test may not apply.

However, a critical part of this test is that not only is the consultant offering their services to the public at large, but that consulting engagements are received from offers to the public or a section of the public.



The most common sources of work for many consultants are referrals from their existing contacts, word of mouth referrals or their strong personal reputation. The ATO's view as summarised in Taxation Ruling TR 2022/3 is that this is not sufficient to meet the unrelated clients test and the PSI tests may be failed, meaning, for example, that consulting income received through a company may be attributed under the PSI rules to the individual consultant, and some company deductions may be denied.

Another common approach is for people to use the fact that they have a website and a LinkedIn profile, and that they undertake promotional activities such as speaking at conferences and publishing articles in industry journals. However unless they can show that there is a direct connection between this promotion to the public and receiving the consulting engagements, it is not enough to pass the test.

In order to satisfy the unrelated client test, it is necessary to show that at least some of the consulting work was obtained from sources such as the website or LinkedIn enquiries, conference attendees or readers of published articles, or from direct advertising, sponsorship or other marketing activities, rather than simply from word of mouth or contact referrals.

Example 3 - making offers to provide services through a website and receiving referrals

The ATO gives the example of Deb, a graphic artist who works through her company Debart Pty Ltd. Deb is the sole director and shareholder of the company. Debart Pty Ltd advertises to provide services on a website and also through advertising in online industry newsletters. Sometimes work is referred to her by word of mouth from Deb's industry contacts.

Any clients that Debart Pty Ltd sources from the website or as a result of advertising in the industry newsletters would meet the requirements of the unrelated clients test for making offers or invitations to the public at large or a section of the public, as these forms of advertising are capable of reaching a wide audience.

As Debart Pty Ltd does not provide services in an industry that could be described as a niche industry, any clients obtained through the word-of-mouth referrals would not be counted for the purposes of the unrelated clients test.

Example 4 - word-of-mouth offers in a niche industry - unrelated clients test met

By contrast the ATO also gives the example of Mike who works as an undersea diver on offshore oil rigs. During the income year, he entered into two contracts with unrelated companies to provide his services. He heard about the availability of work from another diver and contacted the companies to offer his services.

Undersea diving on offshore oil rigs is a niche industry and the work he does is highly specialised. Because of this, there are only a very small number of potential clients for him to access. In cases where there is a niche market for highly specialised skills and only a very small number of potential clients to make offers of work, the unrelated clients test will be met when an offer is made through word-of-mouth referrals.

It is important for consultants to be aware of the risks of the PSI rules applying, especially where they want to split their income or work through a company. The risks will be reduced if they can clearly show that they have contracted to achieve a result, as none of the other PSI tests will have to be applied.

Failing that, if consultants seek to rely on the unrelated clients test it is critical that they take steps to show that they are offering their services to the public and that they are able to show that at least some of their consulting engagements were received directly through their own promotional activities.

Recent ATO guidance

To make matters even more complicated, on 28 August 2024 the ATO released a "practical compliance guideline" (PCG) on the PSI rules. While still in draft, the PCG makes it clear that the ATO is looking closely at anyone who claims exemption from the PSI tax regime.

If it believes people are using the exemptions to unfairly reduce their tax, the guidance explains that the ATO can still apply the Part IVA anti-avoidance rules. The PCG also outlines the type of arrangements the ATO considers to be high and low risk, although this is still highly subjective which makes it extremely hard for people to have certainty that their arrangements will be accepted by the ATO.

It is there more important than ever for people to ensure they are acting in good faith when it comes to their personal tax arrangements and to seek appropriate tax advice.



PRUE CHEESEMAN-GOODES
Director, Personal Wealth Management

INVEST, SAVE OR SPEND? 10 SMART WAYS TO USE YOUR YEAR-END BONUS

Receiving a bonus is a good time to assess your financial situation, goals, and priorities. It can provide the great opportunity to improve your current financial health or work toward long-term goals, if you:

- Don't spend it before it has been paid – and remember some tax will come off it before you receive it.
- Use it thoughtfully - but don't be paralysed looking for the perfect option

Here are 10 smart ways to make the most of your bonus:

1. Pay off high interest debt

Why High-interest debt, like credit cards or personal loans, can drain finances due to compounding interest.

Action Pay down or eliminate high-interest debt for immediate savings and relief from financial stress.

2. Build your emergency fund

Why An emergency fund protects you from financial shocks, like medical emergencies or car repairs.

Action Aim to save 3-6 months of living expenses in liquid, high-interest account for easy access.

3. Make a tax-deductible super contribution

Why If you haven't maximised your \$30,000 annual concessional contribution cap, contributing to super allows you to claim a tax deduction, reducing your taxable income whilst boosting retirement savings.

Action Check your employer contributions, contribute extra to your super and submit a Notice of Intent to Claim to get a personal tax deduction.

4. Make extra mortgage repayments

Why Paying down your non-deductible debt offers a return equal to your mortgage interest rate.

Action If you have a variable mortgage, you can make extra repayments or use an offset account. If you have a sufficient emergency fund and might be tempted to spend from your offset, it's best to pay the principal.

5. Invest for long-term goals

Why Investing in shares or other assets helps build wealth over time.

Action If your mortgage is under control and you have a solid emergency fund, consider investing in super (with non-concessional contributions), or other personal investments considering accessibility and flexibility.

6. Home improvements or major purchases

Why Home improvements or buying something practical or essential (e.g., new appliances) can enhance your living space.

Action Use your bonus to help cover the costs without taking on debt.

7. Make a tax-deductible donation

Why Supporting a cause can be personally fulfilling and provide a tax deduction if the charity is a deductible gift recipient (DGR).

Action Choose a DGR charity that aligns with your values and keep your receipts for tax time.

8. Save for a specific goal

Why A bonus can fast-track your financial goals, such as a home deposit, car, or holiday.

Action Deposit your bonus into a high-yield savings account, separate from your everyday savings.

9. Invest in yourself

Why Investing in your personal development can boost your career prospects and learning new skills can increase your mental wellbeing and in some instances be tax deductible.

Action Consider any courses, certifications, or conferences you are interested in.

10. Splurge responsibly

Why It's okay to reward yourself for your hard work if you do so in moderation.

Action Set aside a small portion of your bonus (e.g., 10-20%) for something fun or meaningful.

How to decide

To make the most out of your bonus, firstly consider your current financial health (high-interest debt, emergency fund needs), then your potential tax benefits (super contributions, donations) and long-term goals (retirement, home savings).

The key to making the most out of your bonus is to balance short-term enjoyment with your long-term financial goals.

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JULIA MONAHAN
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OPTIONS AVAILABLE IN RELATION TO REAL ESTATE

Types of ownership

When a person owns real estate, whether it is their home or an investment property, (“property”) in their sole name they are free to dispose of their interest in the property on their death by their Will to whoever they wish. This freedom is subject to any agreements which the owner may have entered into during their life in relation to the property, including a mortgage.

When two or more people own a property as joint tenants, the law provides that:

- each joint tenant has the same interest in the property; and
- upon the death of one joint tenant the property automatically passes to the other joint tenants who thereafter continue to own the property as joint tenants. It does not pass under the Will of the deceased joint tenant. If there are two joint tenants, on the death of one, the surviving joint tenant will own the property alone.

When people own a property as tenants-in-common they can own the property in equal or unequal shares. Upon the death of one owner their share of the property does pass under their Will.

It is possible to change the “tenancy” ownership of a property from joint tenants to tenants-in-common, and vice versa. The way in which a property is owned has significance in relation to the owner’s estate planning objectives.

Gift of interest in property

The sole owner of a property, or the owner of an interest in a property as a tenant-in-common is able to leave their interest in a property by their Will to one of more people as an absolute gift or in a trust structure.

- If it is an absolute gift, the beneficiary has the same interest in the property as the Will-maker.
- If a trust is used, the trust may be structured to take account of the will-maker’s wishes.

A trust is often used when a will-maker wants to achieve the following:

- The surviving spouse can be given an option to inherit the deceased’s share absolutely (without a trust) or via a trust.
- If the surviving spouse decides to use the trust structure, it can be used to minimise future income and capital gains tax.

Case study – Janice and Ian

Ian and Janice are aged in their early sixties and have two adult children and five young grandchildren. They own their own home and have two investment properties. All properties are owned as joint tenants.

The two investment properties provide a good level of income which is shared equally between Ian and Janice. They recently met with a close friend (Jane) who had recently lost her husband (Ray). Jane and Ray also owned two investment properties. As they were owned as joint tenants Jane now receives all the income which has placed her in a higher tax bracket, and Jane has been told that if she were to sell one of the properties, the capital gain would be taxed in her name, again increasing the level of tax. Jane was advised after Ray’s death that they could have minimised future tax by changing their ownership to tenants in common in equal shares and having a sophisticated Will with testamentary trusts. However, it was now too late as Ray had died.

Following discussions with their accountant and lawyer, Ian and Janice decided to change their ownership of the investment properties to tenants-in-common in equal shares and then in their respective wills they gave each other the option of inheriting the deceased’s half absolutely, or via a testamentary discretionary trust.

By structuring their ownership and Wills in this way, they were able to ensure the survivor could legally minimise future tax on the rental income or capital gain.

**EMMA HICKS**

Manager, Personal Wealth Management

STARTING A PENSION AT 65 WILL SAVE YOU TAX

Superannuation is the most tax effective place for wealth to be invested in retirement, yet half of Australians in retail super funds are not taking advantage of the tax savings available to them.

Money invested in the superannuation environment pays tax at the concessional low rate of 15% on earnings, contributions, and capital gains. This tax rate is then reduced to 0% once the member chooses to commence a tax-free pension account, representing a significant tax saving.

Eligibility

In order to commence a tax-free pension, a superannuation member must first meet a condition of release. The most common conditions are:

- Attaining age 65 (can be retired or still working)
- Ceasing an employment arrangement after age 60

Once a condition like this has been met, members can transfer up to \$1.9m of their superannuation savings from an accumulation account (paying 15% tax) to a pension account (paying 0% tax).

In 2021, approximately 619,000 older Australians (aged 65 and over) were employed in the labour force. However, in 2023, 49% of members in retail super funds over the age of 65 still had their entire balance in accumulation phase. You could assume a large portion of these people were still working and hence had no need to start drawing a pension. However, that's a lot of unnecessary tax being paid! Self-Managed Super Fund (SMSF) members commonly receive more advice in this area, with only 12% of members over 65 still having their balance in accumulation phase.

Tax saving

To put some context around this tax saving opportunity.

A superannuation balance of \$1.9m invested in an accumulation account pays 15% tax, which if taxable earnings are around 5% p.a, equates to a tax bill of approximately \$14,250 p.a. If the same balance of \$1.9m was invested in a tax-free pension account, the \$14,250 effectively becomes an annual tax saving.

Similarly, a lower superannuation balance of \$900,000 invested in an accumulation account paying 15% tax, with the same taxable earnings rate of 5% p.a, would be paying tax at around \$6,750 p.a. If the same balance of \$900,000 was invested in a tax-free pension account, the \$6,750 effectively becomes an annual tax saving.

What's the catch?

By definition, the word pension means a 'regular payment', so naturally a certain amount must be withdrawn from these tax-free pension accounts each year. The ATO stipulates the minimum pension requirements for each age group:

Minimum pension requirements for each age group:

AGE	MINIMUM ANNUAL WITHDRAWAL*
Under 65	4%
65-74	5%
75-79	6%
80-84	7%
85-89	9%
90-94	11%
95+	14%

**based on account balance at 1 July each year.*

These pension payments are received as tax-free income into the member's bank account. They can be used to cover cost-of-living expenses in retirement or to supplement employment income if working hours are being reduced.

Don't need the cash?

However, a proportion of people simply don't need the cash. If this is the case, pension payments can be effectively reinvested once withdrawn; either back into superannuation (if certain requirements are met), in your own name, or into another investment structure. This is where good advice comes into play.

Pension payments can be reinvested back into superannuation as a non-concessional contribution if the member is under age 75 and has a total superannuation balance under \$1.9m. It can also be reinvested back into super as a personally tax-deductible concessional contribution if the member is under age 67 or if they are under age 75 and meet a work-test. This is known as a pension-recontribution strategy.

So starting a pension isn't just for people who need the cash.

These reinvestment options allow members to get the best of both worlds; significant tax savings from the tax-free pension account, plus the ongoing benefits of investment growth and earnings.

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DON'T WISH AWAY MARKET VOLATILITY

Whenever share markets go through a 10 per cent fall – known as a share market ‘correction’ – most investors tend to worry something really big is going on in the world and their investments will never recover. Unfortunately, sometimes they panic and hit the “sell” button, thus locking in those negative returns.

There is no doubt a decline in portfolio value has a far bigger impact on the investor’s emotions (about twice the impact) than gains in the portfolio.

History shows that after every single market crisis that has ever occurred, the share market has recovered and gone onto new highs. These ups and downs are a normal part of markets. In fact, a decline of 10 per cent or more tends to occur within share markets every 18 months to 24 months. This is simply the market volatility that investors need to accept when they invest in the share market.

It’s important to keep in mind that every asset class has volatility in returns, and it’s not limited to share markets. For example, term deposits – perhaps one of the “safest” options – experience volatility. Back in 2011, people could invest in a one year term and receive about 6 per cent interest return; however 10 years later, that one year term deposit rate had fallen to less than 0.5 per cent. That is over a 90 per cent fall in investment returns and pushed many term deposit investors to look for alternative investments.

Interestingly, the Australian sharemarket dividend return is far less volatile than term deposit rates and tends to stay around a 4 per cent income return plus franking credits on top.

It is true that the share market is the most volatile of all the asset classes. However this is also the reason it produces the highest return of all the asset classes. There is a term known as the ‘risk premium’ which refers to the higher investment return expected from owning a ‘riskier’ asset, such as shares, compared to a risk free investment, such as a bank term deposit.

It is quite amazing that over long periods of time, the difference between Australian shares and the cash return tends to offer a 5 per cent a year risk premium. In fact, for the last 100 years, the Australian share market has averaged a 10 per cent per annum return while the cash rate has averaged 5 per cent.

If this volatility did not exist, the risk premium would

not exist, and returns would not be higher from the share market. As the saying goes “no risk, no reward”.

Perhaps the key to managing this volatility problem is to simply stay invested. On a one year investment time frame, investors have about a 75 per cent chance of a positive return from Australian shares (including dividends). But change this to a five year time frame and it is nearly impossible to have a negative return from the Australian share market. The old saying ‘time in the market, beats timing the market’ will forever hold true.

For those who have requirements for funds in a shorter timeframe – say within the next three years – it is usually best to invest the money in a high earning cash account or term deposit. For those with an investment period between three and five years, then perhaps having some allocation to shares will help increase the investment returns from the portfolio. But for many, the investment period is five years plus and so having a large allocation to the share market will provide the best opportunity to maximise returns.

Just don’t wish away market volatility as it will wish away higher returns.

Jonathan Philpot has a monthly article in Money Magazine. This article first appeared on 17 September 2024.

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Information based on historical performance is often not a reliable indicator of future performance. You should not rely solely on this material to make investment decisions.

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