



Super Tax News

As at 30 April 2017



Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements made as at 31 December 2016.

Please contact us if you would like to discuss or have any questions in respect of the items included in this edition of *Super Tax News*.

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1. Superannuation Reform Package – Exposure Draft Regulations

Overview

On 12 April 2017, the Government released exposure draft legislation along with explanatory material for public consultation in respect of minor and technical amendments to resolve a number of issues identified subsequent to the passage of the legislation for the 2016 Superannuation tax reforms.

The draft legislation amends aspects of the following measures:

- The transfer balance cap;
- The changes to the concessional contributions rules;
- The objective of superannuation; and
- The changes to the transition to retirement income stream (TRIS) rules.

Of particular note, the amendments, once legislated, will ensure that a TRIS will continue to be treated as eligible for the 0% tax rate on earnings if the member has satisfied a further condition of release, such as:

- Attaining age 65;
- Retiring fully from the workforce prior to age 65;
- Being diagnosed with a terminal medical condition; or
- Suffering a total and permanent disability.

KPMG comments

The proposed changes to TRISs are important, as they will ensure that funds can more clearly identify the population of TRIS members affected by the changes.

We had been aware that many funds could not identify which current pensions were originally commenced as TRISs without extensive work such as extracting the original application forms from the member.

In addition, in the absence of the proposed change, members that had met a further condition of release, and that wished to continue to access the 0% tax rate on earnings, may have needed to commute the TRIS and commence a new income stream, which could have had significant Centrelink and broader implications.

Unsegregated funds should take the opportunity arising from the greater certainty as to the extent of their affected TRIS members (and thus, the extent to which the present pension percentage will reduce on 1 July 2017), to prioritise their analysis as to whether or not to apply the CGT uplift relief.

References

[Exposure draft legislation](#)

2. ATO Guidance on Superannuation Tax Reforms

Overview

During March 2017, the Australian Taxation Office (ATO) released finalised versions of a number of Law Companion Guidelines (LCGs) in respect of the application of aspects of the superannuation tax reforms that will apply from 1 July 2017, including:

- LCG 2016/12, which provides guidance on how an individual's **total superannuation balance** will be calculated from 30 June 2017. This is relevant to a number of the reforms, including determining whether a member's balance is below \$1.6 million for the purposes of eligibility to make non-concessional contributions.

The guidance sets out a number of examples to illustrate how an individual's total superannuation balance is calculated in various scenarios.

- LCG 2016/8, which provides guidance on the CGT transitional relief that is available to superannuation funds that need to either reallocate or reapportion assets from the retirement to the accumulation phase before 1 July 2017 in order to comply with the transfer balance cap for superannuation balances in the retirement phase (including transition to retirement income streams (TRISs)).

The operation of this relief can be complex in many situations, and the guidance provides information on a number of practical aspects of the relief.

- LCG 2016/9, which provides guidance on the operation of the transfer balance cap for account based income stream products. The guidance provides information on new concepts that underpin the cap, such as the "transfer balance account", the "general transfer balance cap", and the "personal transfer balance cap".

The guidance also covers credits and debits to an individual's transfer balance cap and the consequences of exceeding the cap, such as being liable to pay "excess transfer balance tax".

- LCG 2016/10, which clarifies how the defined benefit income cap applies to superannuation income stream benefits that are paid from a non-commutable, lifetime pension annuity. The guidance confirms the calculation of the "special value" of a lifetime pension or annuity which results in a credit to a members transfer balance account as well as the calculation of the "defined benefit income cap threshold" and the consequences of exceeding this cap, which may result in additional assessable income.

- LCG 2017/1, which provides additional guidance on aspects of the interaction between defined benefit income streams and other superannuation interests that may be held by members for the purposes of the \$1.6 million transfer cap.

KPMG comments

Many aspects of the operation of the superannuation tax reforms from 1 July 2017 are complex, and give rise to significant operational issues.

The LCGs provide helpful and complimentary guidance to the legislation.

The transfer balance cap, for example, is proving an operational challenge for funds as they consider whether or not to apply the transitional CGT relief to assets that support TRISs or retirement income streams in excess of the \$1.6m cap.

LCG 2016/12 also provides a useful summary of which superannuation income streams are included as being in retirement phase (including those deferred superannuation income streams not yet payable where a member has satisfied a condition of release) and which superannuation income streams are excluded from being in retirement phase.

The LCGs have been written with accountants and advisers in mind, however they are also a useful educational tool for individuals interested in understanding how the recent superannuation changes may affect them.

References

[LCG 2016/12](#), [LCG 2016/8](#), [LCG 2016/9](#), [LCG 2016/10](#), [LCG 2017/1](#)

3. Innovative Superannuation Income Streams Regulations

Overview

On 21 March 2017 the Minister for Revenue and Financial Services, the Hon. Kelly O'Dwyer MP released draft superannuation income stream regulations and a draft explanatory statement for public consultation.

The regulations provide continuing legislative backing to the implementation of the Government's superannuation reforms and follow on from the Government's discussion paper on Comprehensive Income Products for Retirement (CIPRs) released for public consultation / discussion in December 2016.

The regulations introduce a new set of design rules for lifetime superannuation income stream products which are aimed at assisting retirees with their superannuation interest balances with an aim to better manage longevity risk and increase standards of living.

The regulations are intended to cover a range of innovative income stream products including:

- Deferred products;
- Investment-linked pensions and annuities;
- Group self-annuitisation products

Superannuation funds (and life companies) will receive a tax exemption on income from assets supporting these new income stream products provided they are currently payable (or in the case of deferred products held for an individual that has reached retirement).

The Regulations insert a new set of income stream standards into the SIS Regulations 1994. Income streams that meet these standards will be taken to be pensions or annuities for the purposes of the SIS Act 1993 and will also fall within the definition of a 'superannuation income stream' for the purposes of the Tax Act. The new standards are intended to cover a range of lifetime products that do not meet the existing annuity and pension standards.

The new regulations specify that a benefit provided by a life insurance company will be taken to be an annuity or a pension benefit if four key are met, being:

- benefit payments do not commence until a primary beneficiary has retired, has a terminal medical condition, is permanently incapacitated or has attained the age of 65;
- benefit payments, of at least annual frequency, be made throughout a beneficiary's lifetime following the cessation of any payment deferral period;
- after benefit payments start, there is no unreasonable deferral of payments from the income stream; and
- amounts that can be commuted to a lump sum or for rollover purposes are based on a declining capital access schedule commencing from the retirement phase.

KPMG comments

The introduction of the draft regulations are an important progression of the Government's superannuation reform agenda. The regulations are welcome in an environment where superannuation funds are seeking to develop products and solutions for retiring members and will likely foster the development of better retirement products.

Continuing legislation with regards to innovative income stream products will instil greater confidence in trustees of superannuation funds to be able to offer a greater range of products to members and assist in facilitating the take up of these products.

References

[Treasury consultation](#)

4. Material increase in penalties for Significant Global Entities

Overview

Recently, there have been a number of legislative changes aimed at Significant Global Entities (SGEs). These measures include the Multinational Anti Avoidance Legislation, the Diverted Profits Tax, Country by Country ("C by C") Reporting and General Purpose Financial Statements.

Broadly, the legislation defines an entity as an SGE where its annual global turnover is \$A1billion or more or it is part of a group with an annual global turnover of AU\$1 billion or more.

The legislative changes have materially increased:

- The administrative penalties imposed on SGEs in respect of "failure to lodge on time". The new penalties will apply to all lodgements due after 30 June 2017 and will apply to income tax returns, activity statements, notices, country by country reporting and general purpose financial statements (amongst approved forms).
- The 'culpable behaviour' penalties that the ATO may apply in respect of incorrect statements or returns. The penalties have increased both where the statements are associated with a tax shortfall, and otherwise. For statements resulting in a shortfall amount, the maximum base penalty has doubled (to be up to 150% of the shortfall amount).

KPMG comments

These penalties represent a significant increase in the amount of penalties previously imposed both for late lodgements and culpable behaviour.

The calculation of annual global turnover is based on accounting concepts, and the removal of contributions from funds' operating statements as a result of AASB 1056 will mean that fewer superannuation funds will now be SGEs.

However, as many superannuation funds will be SGEs (particularly in years of strong market performance), the increase in penalties for incorrect or late reporting is a timely reminder to funds to apply for any exemptions from reporting (for example, C by C reporting) to which they may be entitled.

References

[Significant global entities- Increased penalties](#)

5. Practical Compliance Guidance PCG 2017/3

Overview

On 30 March 2017, the ATO released a Practical Compliance Guidance PCG 2017/3 to assist the implementation of the tax charges for transition to retirement income streams (TRIS) products as part of the super reforms. These guidelines aim to clarify the ATO's compliance approach for certain APRA regulated superannuation funds, pooled superannuation trusts and life insurance companies in respect of the recent legislative amendments affecting TRIS products.

Broadly, from 1 July 2017 superannuation funds will no longer be entitled to a tax exemption on the income attributable to their assets supporting the payment of TRIS. As a result of these amendments, difficulty is placed upon superannuation funds to distinguish assets which support TRIS payments and other retirement phase assets and implement appropriate administrative and IT systems prior to 1 July 2017.

In this regard, PCG 2017/3 recognises these practical and administrative compliance difficulties and aims assist those impacted superannuation funds by allowing funds to adopt an interim solution in respect of those products or platforms which will not be ready for full implementation and deployment by 1 July 2017. This interim solution will allow a fund to use a proportionate method to calculate the income from segregated pension assets that is attributable to TRIS pension assets.

Where PCG 2017/3 is applicable, it provides that for calculating assessable income for the 2017/18 year, a fund may have an 'interim period' and a 'remainder period' as follows:

The interim period –

This is from the commencement of the Fund's 2017-18 income year to the time which the Fund arranges a full solution (which must not be later than 30 June 2018).

The remainder period –

This is from the arrangement of a full solution system to 30 June 2018, where assessable income and tax on earnings from assets that support payment of TRIS is calculated normally

The ATO realises that in some cases a fund may not have a remainder period because the full solution is not deployed until 30 June 2018.

KPMG comments

The PCG is primarily relevant to funds in the retail sector, as few industry or corporate funds hold separate segregated pools of assets for their accumulation and pension members. For these retail and other segregated funds, there was a risk that, in the absence of the ATO's approach in the PCG, the inability of funds to identify the affected TRISs prior to 1 July 2017 could have jeopardised the pension exemption for funds' broader pension members. The PCG follows extensive consultation with the industry.

References

[PCG 2017/3](#)

6. Other Superannuation Matters

Integrity of Limited Recourse Borrowing Arrangements (LRBAs)

On 27 April 2017, the Government released exposure draft legislation along with draft explanatory material for public consultation to address concerns regarding LRBAs in a member's superannuation balance and transfer balance cap. In particular, the draft legislation addresses where a member of a self-managed superannuation fund (SMSF) utilises LRBAs to circumvent contribution caps by effectively transferring accumulation phase growth to retirement phase that it not currently captured within the transfer balance cap provisions. Interested parties were required to make a submission by 3 May 2017.

Australian Treasury website | [Exposure draft legislation](#)

Income tax relief for transfers within a fund to a MySuper product

On 13 April 2017, the Government released exposure draft legislation along with draft explanatory material for public consultation in respect of income tax relief for funds whom are mandatorily required to transfer assets as a result of the transition to MySuper provisions. At present, tax relief via an asset-rollover is currently granted to funds which transfer assets into a different superannuation fund however this relief is not available to superannuation funds who transfer assets within the same fund structure. The exposure draft legislation aims to extend the asset rollover relief to transfers made between 29 June 2016 and 1 July 2017. Interested parties were required to make a submission by 27 April 2017.

Australian Treasury website | [Exposure draft legislation](#)

AASB 1056 Guidance

The Australian Accounting Standards Board (AASB) has released guidance on the new accounting standard AASB 1056 *Superannuation Entities*. The new standard which replaces AAS 25 *Financial Reporting by Superannuation Plans*, takes effect for reporting periods beginning 1 July 2017. The new standard was developed to recognise significant changes in the superannuation industry since issuance of AAS 25, recognise member's entitlement as liabilities to better reflect the substance of the relationship between superannuation entities and its members as well as aligning the financial reporting of superannuation funds with other similar vehicles such as managed investment schemes and pooled superannuation trusts.

The guidance released includes a comparison and contrast of AASB 1056 to AAS 25 as well as a summary of AASB responses to commonly asked questions in respect of superannuation funds preparation for the upcoming AASB 1056 implementation.

AASB | [AASB 1056 guidance](#)

Productivity Commission Draft Report on Super

On 29 March 2017, the Productivity Commission (PC) released a draft report identifying the possible models to guide employees new to the superannuation system to preferred, simple default super products.

Productivity Commission | [Draft Report](#)

AIST Conference of Major Superannuation Funds 2017

From 22-24 March 2017 the Australian Institute of Superannuation Trustees (AIST) hosted the CMSF at the Gold Coast Convention and Exhibition Centre. The conference provided an opportunity to discuss the important issues facing the Australian superannuation industry and for individuals within the industry to engage with one another and to discuss creative ways to approach the challenges in superannuation. Of particular note was the address by former Australian High Court judge Michael Kirby who focussed on the importance of superannuation in playing a role in making Australia a more socially inclusive nature.

AIST CMSF | [Speaker presentations](#)

Committee on Super Guarantee Non-Payment Inquiry – transcript released

On 14 March 2017, the Senate Economics References Committee held a public hearing as part of its inquiry on the impact of Superannuation Guarantee Non-Payment. A transcript of the public hearing is now available.

The Committee heard from the Finance Sector Union of Australia, the Industry Fund Services Limited, Industry Super Australia, Commonwealth Bank and other industry associations.

Parliament of Australia website | [Report and Inquiry](#)

ISWG releases discussion paper on superannuation

On 9 March 2017, the Insurance in Superannuation Working Group (ISWG) released a discussion paper, Account balance erosion due to insurance premiums. The paper examines how to address the issue of members paying for cover they don't need through having multiple super accounts. The ISWG is a working group comprised of Australia's superannuation bodies including the Australian Institute of Superannuation Trustees (AIST), the Association of Superannuation Funds of Australia (ASFA), the Financial Services Council (FSC), Industry Funds Forum (IFF) and Industry Super Australia (ISA). They invite industry and stakeholder feedback to help shape a Code of Practice and Good Practice Guidance for Trustees document that is due to be published later this year.

ASFA | [Media Release](#)

ISA release show \$1.8 billion in unpaid super to women

On 8 March 2017, Industry Super Australia (ISA) released new research that shows women are contending with unpaid superannuation entitlements on top of the gender pay gap.

Analysis by ISA of latest ATO data reveals that women working for wages and eligible for the superannuation guarantee were underpaid \$1.84 billion in super contributions by their employers in 2013-14.

The analysis also shows that women had superannuation balances that were 34 percent or around a third lower than those who were paid correctly. This suggests that underpayment of superannuation entitlements persists for many years amongst women in at-risk industries such as retail and hospitality.

ISA Website | [Media Release](#)

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