

Super Tax News

30 November 2017



Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements during November 2017.

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*.

Contents

- [Draft anti-hybrids law released](#)
- [Member contribution reporting](#)
- [ASIC updates on fee transparency for super and managed investment schemes](#)
- [Other superannuation matters](#)

Happy Holidays

This will be our last publication for 2017 and our next edition covering December 2017 and January 2018 superannuation tax news will be issued in early February 2018.

The KPMG Asset and Wealth Management team wish you safe and relaxing break and look forward to working with you in 2018!



1. Draft anti-hybrids law released

Overview

On 24 November 2017 the Government released draft anti-hybrids legislation to prevent multinational groups (and related entities) from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements.

These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions.

According to the draft explanatory memorandum the most common types of hybrid mismatch arrangements between related entities are 'double deduction' and 'deduction/non-inclusion' arrangements.

- A double deduction mismatch occurs when a business receives a deduction in two countries for the same payment.
- A deduction/non-inclusion mismatch occurs when a deduction is provided for a payment in one country, but the corresponding income is not included as assessable income in the recipient country (i.e. deductible debt in one country and exempt equity in another country).

The draft legislation seeks to neutralise a mismatch by:

- disallowing a deduction or
- including an amount in assessable income.

For the purposes of the anti-hybrids legislation, entities are considered related where there is common ownership of at least 25 percent (which could be a third entity not party to the arrangement) of:

- the entity paying and
- the entity receiving the payment.

As currently drafted, the anti-hybrid measures could apply to entities (and subsidiaries) which have tax imposed on them in respect of income or profits made.

As such, depending on the terms of a financial arrangement the anti-hybrid measures could apply to an Australian superannuation fund or its subsidiaries where there is control of at least 25 percent.

This draft legislation could impact a range of financing arrangements including mandatorily redeemable

preference shares, non-hybrid financing instruments issued by partnerships, and vanilla debt issued by Australian entities to foreign affiliates.

This may result in the assessment of interest in Australia that might otherwise be non-assessable. It also appears that there will be no corresponding relief from the thin capitalisation safe harbour calculation.

The Government will consult with stakeholders as it develops the targeted integrity rule and branch mismatch rules including through the release of separate exposure draft legislation.

These additional rules will commence at the same time as the general hybrid mismatch rules (that is, six months after Royal Assent of the bill introducing the hybrid mismatch rules).

KPMG comments

This legislation considers the impact of taxation law in both Australia and foreign jurisdictions which will therefore require constant monitoring.

As there will be no grandfathering of arrangements under the rules, taxpayers with potential hybrid arrangements in place should consider the impact of the hybrid mismatch rules now and consider unwinding hybrid arrangements.

Given the anti-hybrid measures could apply to Australian superannuation funds and their investments where there is control of at least 25 percent, additional questions should be asked of investment managers to mitigate/properly manage any exposure.

KPMG is on hand to assist in determining both the potential application of the anti-hybrid rules to any investments or to financing arrangements more generally.

References

Parliament of Australia | [Treasury Laws Amendment \(OECD Hybrid Mismatch Rules\) Bill 2017](#)

ATO | [Implementation of the OECD hybrid mismatch rules](#)

The Treasurer's Media Releases | [Turnbull Government clampdown on multinational tax avoidance hits hybrids](#)

KPMG Insights: [Hybridicity is History](#)

2. Member contribution reporting

Overview

On 30 November 2017, the Deputy Commissioner Superannuation, Australian Taxation Office (ATO), James O'Halloran, gave an address to the 2017 Association of Superannuation Funds Australia (ASFA) Conference in Sydney.

In his speech, Mr O'Halloran discussed how the ATO is utilising technology to improve member contribution reporting by moving from an annual basis as currently stands through member contribution statements (MCS), to more regular reporting.

Importantly, the shift to have more frequent member reporting would:

- improve member engagement
- mitigate some regulatory risks
- reduce time lag of member contribution statements (MCS)
- increase accuracy of MCS and
- increase member visibility.

The Deputy Commissioner noted that the implementation of SuperStream coupled with the legislative requirements arising from the 2016 Budget have provided the platform for the change in member contribution reporting.

In particular, the 2016 budget measures necessitated the development of an interim transfer balance account report (TBAR) for superfunds to capture information regarding super amounts moving in and out of pension phase. In addition, the TBAR also allows the ATO to record and track an individual's transfer balance cap.

Whilst it has been agreed with funds that they need to start reporting via the TBAR no later than 14 December 2017, the TBAR is now operating and also allows the ATO to record and track an individual's transfer balance cap (TBC).

Further, from January 2018 individuals will be able to log onto the ATO online services and view their transfer balance account amount for 2016–17 financial year.

To replace the annual MCS, the Deputy Commissioner also noted that the ATO are building two new digital services for reporting between super funds and the ATO. These two digital services being the member account attribute service (MAAS) and the member account transaction service (MATS).

These new digital services will provide funds, and fund members, with a range of benefits including up-to-date data on their super holdings and transaction

information to facilitate more informed decision making by them and on their behalf.

From April 2018, the MAAS will start, with an extended cutover period through to October 2018.

From 1 July 2018 funds will be able to start sending transactions through the MATS.

For these reasons, the last MCS lodgement in the current format will be due by 31 October 2018 for the 2017–18 financial year.

As such, the 2018–19 financial year will be a transitional year with the expectation that full solutions will be in place by 1 April 2019. A conformance date of 1 April 2019 has been set and super funds will be required to report more detailed transactional information via the MATS. However funds can start reporting member transactions (i.e. through MATS) from 1 July 2018 and must fully transition to MATS no later than 31 March 2019.

If a fund transitions after 1 July 2018 the fund will need to back-report transactions that occur between 1 July 2018 and the date of transition. As such, if a fund's systems can capture and report the full set of information before the transition date to MATS, it is recommended that this is actioned by the fund.

In the coming weeks the ATO will send formal advice to trustees about anticipated readiness dates and provide more information to help prepare.

KPMG comments

The changes in member reporting is welcomed and represents a significant shift in how the ATO (and funds) are to report member activity. The changes in member reporting coupled with other reporting changes such as single touch payroll means that the ATO will have access to much more timely and relevant data.

Given the software for MAAS and MATS reporting is still being developed by the ATO, funds will need to ensure that their reporting systems can meet the ATO's evolving expectations and requirements.

KPMG is on hand to assist with funds in implementing new systems to meet the ATO requirements, as well as testing the development refinement of relevant data prior to providing this information to the ATO.

References

[ATO | ASFA National Conference Speech](#)

3. ASIC updates on fee transparency for super and managed investment schemes

Overview

On 1 November 2017, the Australian Securities and Investments Commission (ASIC) released a media statement regarding the update on the continual improvements of fee transparency for super and managed investment schemes under regulatory guide 97 *Disclosing fees and costs in PDS and periodic statements (RG97)*.

RG97 was issued in response to ASIC's concern that there were inconsistencies and under reporting of fees by these funds. These concerns were investigated and resulted in the release of *Report 398 fee and cost disclosure: Superannuation and managed investment products* which identified the following issues:

- under-disclosure of fees and costs associated with investing indirectly through other vehicles
- tax treatment of fees and costs
- performance fees and
- under disclosure of management costs.

Following this ASIC issued an updated RG97 seeking to provide clarity on how certain fees and costs should be disclosed.

On November 1 ASIC has announced the following changes:

- the disclosure for fees and costs requirements to be provided to ASIC has been extended beyond 30 September 2017 and

- an external expert will be sought to conduct a review on the fees and cost disclosures under RG 97, to ensure the practice of transparency is adequately met for consumers.

ASIC anticipates that the process of working with the experts should be finalised within the first half of 2018. ASIC expects that funds should uphold and provide accurate details and information regarding the fees and costs detailed in the PDS and periodic statements.

Whilst making this statement, ASIC recognises the complexity of calculating and accurately presenting fee and cost disclosures as well as the fact implementation takes time.

KPMG comments

Whilst greater transparency with respect to costs and fees associated with investment products is welcomed, some of the complexities associated with certain tax outcomes are seldom simple to concisely explain in a PDS for retail investors.

KPMG is on hand to assist with any related fee disclosures to ensure that all disclosures meet ASIC's expectations and whilst still adding value to investors.

References

[ASIC | 17-369MR ASIC updates work on fee transparency for super and managed investment schemes](#)

4. Other superannuation matters

Super Bills face possible Senate hurdles

Passing any or all of the three bills before Christmas remains in doubt. On 20 November 2017, the Speaker set an alternative day for the next meeting of the House and delayed the next sitting session. The House will next meet on Monday 4 December 2017 at 10.00 am. Both Houses will sit for four days before rising for summer recess.

Parliament of Australia | [Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 2\) Bill 2017](#)

Parliament of Australia | [Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 1\) Bill 2017](#)

Parliament of Australia | [Superannuation Laws Amendment \(Strengthening Trustee Arrangements\) Bill 2017](#)

Retirement and Comprehensive Income Products for Retirement

On 14 November 2017 Minister for Revenue and Financial Services, Kelly O'Dwyer in a speech to the Financial Services Council's Retirement Income Products Conference, referred to the consultation on Comprehensive Income Products for Retirement (CIPR). The Minister highlighted that there are four issues which the government is considering in relation to various views regarding the implementation of the CIPRs framework:

- Some stakeholders expressed a desire for funds to hold more than one CIPR – with different CIPRs offered to different segments of membership.
- There are a range of views on who should and should not be offered a CIPR.
- There are a broad range of views on the likely extent of take-up by trustees and members, and the effectiveness of 'the nudge'.
- The consultation further convinced the Minister of the absolute need to have a retirement income framework.

The Minister stated that trustees should be assisting their members by designing and offering retirement income solutions as well as reducing the complexity of member decisions around retirement. The Minister believes that further consultation is required to ensure proper principles are implemented for the retirement phase.

The Hon Kelly O'Dwyer MP | [Video message to the Financial Services Council's Retirement Income Products Conference](#)

Royal Commission into Banks and Financial Services

On 30 November 2017, the Prime Minister, Malcolm Turnbull and the Treasurer, Scott Morrison, announced a Royal Commission into alleged misconduct of Australia's banks, superannuation and financial services entities. A financial service entity includes an RSE licensee of a registrable superannuation entity and any entity that has any connection (other than incidental connection) to the RSE licensee of a registrable superannuation entity.

Under the proposed measures to conduct the investigation, the Commission will inquire a list of matters, including:

- the nature, extent and effect of misconduct by a financial services entity (including by its directors, officers or employees, or by anyone acting on its behalf)
- any conduct, practices, behaviour or business activity by a financial services entity that falls below community standards and expectations
- the use by a financial services entity of superannuation members' retirement savings for any purpose that does not meet community standards and expectations or is otherwise not in the best interest of members
- the adequacy of the internal systems of the financial services entities.

The Commission will have 12 months to complete the inquiry and a final report is expected to be issued by 1 February 2019, with the interim report submitted no later than September 2018.

Prime Minister of Australia | [Media release](#)

Prime Minister of Australia | [Draft Terms of Reference](#)

Superannuation governance

On 30 November 2017, the Deputy Chairman of the Australian Prudential Regulation Authority (APRA), Helen Rowell addressed a speech to the 2017 Association of Superannuation Funds Australia (ASFA) Conference in Sydney.

In her speech, Ms Rowell highlighted that there is an increasing focus on superannuation governance, and therefore legislation and policy will continue to evolve to meet the changing nature of superannuation funds and its members. Ms Rowell also announced that to accompany the government's recent legislation reforms, APRA is expected to release a consultation package outlining the proposed revision to the prudential framework, including changes to promote greater transparency, specifically around expenditure.

The speech also recognised the expected changes within the next five years for the superannuation industry and how APRA will address these changes, including the following:

- APRA will begin to target poor performers in superannuation funds, regardless of their industry. APRA will provide details of this measure in their consultation paper.
- As part of strengthening member outcomes, there is an expectation, as shared by APRA, that trustees of funds will consider reducing the number of investment options it provides to its members. This is due to recent research supporting that the higher the number of investment options a fund provides leads to a decrease in returns for its members.
- There will likely be an increase in diversity, be it age, gender or skill on superannuation boards. In order for this to be achieved, APRA believes that directors may need to remove themselves from boards in order to meet the interests of their members.

In this speech, it was reiterated that APRA expects funds to put their members' interests first and will work towards providing stronger superannuation reforms in order to meet the ongoing needs of members.

APRA | [Enhancing Australia's superannuation system: A vision for a sustainable future](#)

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