Super Tax News

30 September 2017

Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements made as at 30 September 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

1. 2017-18 Budget measures implemented

Overview

On 7 September 2017, the Government introduced the *First Home Super Saver Tax Bill 2017* (FHSS) and the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 1) Bill 2017* (TLAB) into the House of Representatives.

The Bills implement the 2017-18 Federal Budget Housing Affordability measures.

First Home Super Saver Tax Bills introduced

This FHSS proposes to implement the establishment of the First Home Super Saver Scheme, which allows individuals who are saving for their first home to take advantage of the concessional taxation arrangements that apply to the superannuation system.

From 1 July 2017, first home buyers can voluntarily make concessional contributions of up to $15,000 per year and up to $30,000 in total into their superannuation account to purchase their first home. Employees will be able to take advantage of salary sacrifice options in order to make pre-tax contributions.

Contributions made under the FHSS and any associated earnings will be concessionally taxed at 15 percent.

The FHSS Scheme will be legislated under the new Division 313 of the *Income Tax Assessment Act 1997* and Division 38 of the *Tax Administration Act 1953*.

This Bill has remained largely unchanged from the Exposure Draft previously released on 21 July 2017.

Contributing the proceeds of downsizing to superannuation

In addition to the FHSS, the TLAB proposes to allow an individual to use the proceeds in relation to one sale of their main residence to make contributions (downsizer contributions) of up to $300,000 to their superannuation provider if they are 65 years of age or over.

Under this proposal, contributions will not be subject to the existing non-concessional contributions caps and will also be exempt from the existing age test and work test (i.e. no contributions for those aged 75 and over work test for 65 to 74 year olds) and the $1.6 million balance test for making non-concessional contributions.

This Bill has remained relatively unchanged from the Exposure Draft previously released on 21 July 2017. Subtle changes include a revision of the requirement for an individual to have never held an interest in a CGT asset that is taxable Australian property. Instead, the Bill now requires a person to have never held a freehold interest in Australian property, a long-term lease of land in Australia or a company title interest in Australian land.

KPMG comments

The introduction of these Bills is in line with our expectations and previous comments on the Exposure Drafts.

Although the ATO will administer the FHSS, practically there will be some additional systems issues for funds to implement and the potential for additional costs to the funds.

Additionally, the TLAB is not drafted in such a way that allows family homes which are also pre-CGT assets to be included. As a result this measure may be unattractive to individuals considering selling their family home and downsizing if the home is classified as pre-CGT.

Further, we note that the different circumstances in which members can access moneys from Australian superannuation funds, including as part of the new FHSS measures, can have significant implications for the treatment of funds in overseas jurisdictions, including the Qualifying Recognised Overseas Pension Scheme rules in the UK, the Qualified Foreign Pension Fund rules in the US, and more generally the treatment of funds in Australia's double tax treaties.

We will continue to liaise with our colleagues in our overseas offices to determine the extent of the implications of the new FHSS measures and any similar future measures affecting members' access to moneys from Australian funds.

References

Parliament of Australia | Treasury Law Amendments Bill,

Parliament of Australia | FHSS Bill 2017

2. Further guidance and reporting for 2016-17 Budget Changes

LCG 2016/8, LCG 2016/9 and LCG 2016/12 updates

On 26 September 2017, the ATO released updated draft versions of Law Companion Guides LCG 2016/8, LCG 2016/9, and LCG 2016/12. The LCGs have been updated to reflect amendments made to the legislation since the original versions of the LCGs issued, and additional guidance since that time.

These changes include:

- Changes to the circumstances in which transition to retirement income streams (TRISs) cease to qualify for as current pension liabilities for tax purposes (and thus become taxable at 15%).
- Extension of the transitional CGT relief to pooled superannuation trusts (PSTs).
- More detailed guidance from the ATO as to the manner in which a trustee must choose for the CGT relief to apply to the asset. The ATO has now confirmed that this will be done by using the 2017 CGT Schedule as part of the lodgement of a fund's 2017 income tax returns.
- Further guidance on the pension transfer balance credits for self-managed super funds under any limited recourse borrowing arrangements.
- Further guidance on how an individual's 'total superannuation balance' is calculated.

All three LCGs are open for public comment until 27 October 2017.

ATO instrument- Transfer Balance Account Report (TBAR)

On 14 September 2017, the ATO released the legislative instrument 'Reporting of event based transfer balance account information in accordance with the Taxation Administration Act 1953'. This instrument is intended to capture information on superannuation amounts moving into and out of retirement phase accounts as part of the reporting requirements for the ATO to manage the $1.6 million pension transfer balance cap.

The instrument requires the lodgement of a Transfer Balance Account Report (TBAR) to the ATO. APRA regulated super-funds will need to adhere to these new reporting requirements from 1 October 2017.

Following consultation with the industry, the ATO has agreed to provide an administrative concession for funds to allow them to lodge their first TBAR no later than 14 December 2017.

The instrument provides a range of other ATO guidance in respect of the lodgement of TBARs.

Special arrangements apply to SMSF reporting for the 2017-18 financial year.

KPMG comments

Most of the superannuation changes announced in the 2016/17 Budget applied from 1 July 2017.

In this regard, the ATO guidance through the LCGs and other announcements has been of great value to superannuation funds and other industry participants in ensuring that funds' systems have been appropriately modified to cope with the changes.

With the TBAR and similar reporting changes about to commence, it is timely for funds to confirm that their systems and/or those of their external administrators are ready to prepare the required reporting efficiently, correctly and in a timely manner.

References

ATO | LCG 2016/08, LCG 2016/09, LCG 2016/12

ATO | ATO TBAR instructions

Federal Register of Legislation | TBAR Legislation

3. Super guarantee reforms: closing the Gap

Overview

On 1 September 2017, the Australian Tax Office (ATO) released the 'Super Guarantee Gap'. This is the difference between the amount payable by employers to meet their Superannuation Guarantee (SG) obligations for their employees and the actual amount received by employees' super funds.

For 2015, $2.85 billion was estimated to not have made its way to employees' super accounts. Together with voluntary savings and the pension, SG is a key pillar of ensuring working Australians can retire with dignity.

The ATO undertakes extensive case work to ensure compliance, including fielding over 20,000 reports each year but in reality, SG is only required to be paid quarterly and is not aligned with shorter pay cycles. In these circumstances, there is a high risk of non-compliance when businesses come under financial stress. The ATO estimates that 50 percent of unpaid super is attributable to insolvency.

This issue has long been an area of focus by super funds who have implemented their own monitoring systems and data analytics to endeavour to identify and pro-actively manage 'problem' employers to protect their members and reduce the SG Gap.

Pleasingly, after considering the report of the SG Cross-Agency Working Group, released on 14 July 2017, the Government has now announced a package of reforms to improve SG non-compliance including at least monthly reporting to the ATO and enhanced recovery powers for the ATO.

Single Touch Payroll

The most powerful initiative to mitigate the Gap is to extend 'Single Touch Payroll' (STP) – a reporting system which will provide real-time visibility to the ATO at the time of payment of wages to employees of the associated pay as you go (PAYG) withholding and super information. STP applies to businesses with greater than 20 employees from 1 July 2018 and to all Australian businesses from 1 July 2019. This will enable the ATO to identify patterns and potential non-compliance earlier and provide a greater focus in its reviews.

KPMG comments

Following the introduction of the STP system, it is timely for organisations to examine and improve their internal processes, and to review payroll systems in order to be more compliant with PAYG.

Whilst these are welcome reforms, arguably the single most powerful reform the Government could make is to require employers to pay SG at least monthly, rather than quarterly, and potentially to align SG payments with pay cycles.

For those employers wanting to reduce the risk of under or overpaying SG and improve compliance, KPMG's Employment Tax Data Analytics can assist by analysing payroll code configurations of 'ordinary time earnings' and by identifying contractor payments that may be at high risk of SG shortfalls.

References

ATO | Superannuation guarantee gap

4. Other superannuation matters

Superannuation Trustee Arrangements Bill introduced

On 14 September 2017 the Government introduced the *Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017* into the Senate. This amends the *Superannuation Industry (Supervision) Act 1993* ("SIS Act") to introduce new trustee arrangements requiring registrable superannuation (RSE) licensees to have at least one-third independent directors and for the Chair of the Board of directors to be one of these independent directors.

Parliament of Australia | Superannuation Law Amendments (Strengthening Trustee Arrangements) Bill 2017

Superannuation Guarantee salary sacrifice amendments

On 14 September 2017, the Government released into the Parliament the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017*. This Bill proposes to amend the Superannuation Guarantee (SG) legislation to ensure employees under workplace determinations or enterprise agreements have an opportunity to choose the superannuation fund for their compulsory employer contributions and to ensure an individual's salary sacrificed contributions cannot be used to reduce their employer's minimum SG obligations.

Parliament of Australia | Treasury Law Amendment (Improving Accountability and Member Outcomes in Superannuation Measure No.2) Bill 2017

Insurance in Superannuation

During September, the Insurance in Superannuation Working Group (ISWG) released a consultation paper containing a draft Code of Practice, and sought feedback on a proposed set of industry standards for insurance benefits provided in superannuation. The draft code has been developed over the past 10 months with input from the superannuation associations, funds, insurers and consumer representatives. The key proposals of this draft code covers premium caps, insurance cessation, duplicate insurance cover, enhanced communication, claims handling initiatives and greater transparency.

Following the release of the ISWG paper, KPMG has released the outcomes from its analysis of these issues undertaken at the request of ISA and the ISWG. This analysis adopted an evidence-based approach using publicly-available industry-level data from the Australian Taxation Office (ATO), the Australian Prudential Regulation Authority (APRA), and major superannuation funds.

KPMG's analysis suggests that making targeted rather than wholesale changes may be more effective in solving the issues that concern the industry and the wider community. These changes could include variations in insurance according to individual's needs for protection, premium caps based on salary, and appropriate cessation rules.

The ISWG is seeking submissions on the draft Code and the other issues in the consultation paper by 20 October 2017, and intends that the final Code will be approved by the ISWG and published by the end of 2017.

ISWG Report | ISWG Code of Practice

Bills for new 'scale test' and annual member meetings introduced

On 14 September 2017, the Government introduced the *Treasury Legislation Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* into the Senate. This Bill seeks to implement measures to improve accountability and member outcome proposals in superannuation announced in July 2017, including:

- proposal to amend the SIS Act to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually including how that product continues to deliver appropriate outcomes to MySuper members
- proposal to amend the SIS Act to give the Australian Prudential Regulation Authority (APRA) an enhanced capacity to refuse a registrable superannuation entity (RSE) licensee a new authority to offer a MySuper product or to cancel an existing authority
- proposal to amend the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of member

- proposal to amend the SIS Act to strengthen APRA's supervision and enforcement powers when a change of ownership or control of an RSE licensee takes place
- proposal to amend the SIS Act to strengthen APRA's supervision and enforcement powers to include the power to issue a direction to an RSE licensee where APRA has prudential concern
- proposal to amend the *Corporations Act 2001* to refine the requirements for RSE licensees to make publicly available their portfolio holding
- proposal to amend the SIS Act to require RSE licensees to hold annual members' meetings (AMMs), to provide members with a forum to discuss the key aspects of the fund and to ask questions about all areas of the fund's performance and operations and
- proposal to amend the *Financial Services (Collection of Data) Act 2001* to provide APRA with the ability to obtain information on expenses incurred by RSE and RSE licensees in managing or operating the RSE.

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

Contact us

Melbourne

Income Tax

Dana Fleming
Sector Lead
T: +61 3 9288 5871
E: dfleming@kpmg.com.au

Connie van Werkum
Partner
T: +61 3 9288 6516
E: cvanwerkum@kpmg.com.au

Neil Lamb
Partner
T: +61 3 9838 4088
E: nlamb@kpmg.com.au

Ross Stephens
Director
T: +61 3 9288 6619
E: rdstephens@kpmg.com.au

Abbey Pearce
Director
T: +61 3 9838 4896
E: abbeypearce@kpmg.com.au

Indirect Tax

Nick Kallinikios
Partner
T: +61 3 9288 6714
E: nkallinikios@kpmg.com.au

Anthony Versace
Partner
T: +61 3 9288 5934
E: aversace@kpmg.com.au

Sydney

Income Tax

Damian Ryan
Partner
T: +61 2 9335 7998
E: dryan@kpmg.com.au

Natalie Raju
Partner
T: +61 2 9335 7929
E: nraju1@kpmg.com.au

Bernard Finnegan
Director
T: +61 2 9335 7016
E: bfinnegan@kpmg.com.au

Peter Oliver
Partner
T: +61 2 9455 9520
E: peteroliver@kpmg.com.au

Indirect Tax

George Spathis
Partner
T: +61 2 9455 9262
E: gspathis@kpmg.com.au

Alternatively, visit our website at
kpmg.com.au

KPMG's Tax practice is not licensed to provide financial product advice under the Corporations Act and taxation is only one of the matters that must be considered when making a decision on a financial product. You should consider taking advice from an Australian Financial Services Licence holder before making a decision on a financial product.

The information contained in this document is of a general nature and is not intended to address the objectives, financial situation or needs of any particular individual or entity. It is provided for information purposes only and does not constitute, nor should it be regarded in any manner whatsoever, as advice and is not intended to influence a person in making a decision, including, if applicable, in relation to any financial product or an interest in a financial product. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To the extent permissible by law, KPMG and its associated entities shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including for reasons of negligence, negligent misstatement or otherwise).

KPMG respects your privacy. We manage personal information in accordance with the Australian Privacy Act and we will use your personal information to process your request, to maintain our contacts data, to contact you about KPMG services and for other business related purposes. We may disclose this information to our service providers on a confidential basis or to co-hosts of KPMG events. You may access the personal information that we hold about you by contacting the National Privacy Officer at austprivacy@kpmg.com.au or on 03 9288 6068. For further details on how we handle your personal information, please refer to our Privacy Policy