



# Super Tax News

As at 31 August 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 August 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*.

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# 1. Draft Practical Compliance Guidance – PCG 2017/D16

## Overview

On 21 August 2017, the Australian Taxation Office (ATO) released a draft Practical Compliance Guidance (PCG 2017/D16) on propagation arrangements adopted by superannuation funds and PSTs.

Most of the custodians providing tax reporting for funds or PSTs have systems available that enable parcel selection to occur at a “whole of fund” or “whole of asset class” level, rather than at the level of the individual fund manager. These systems are commonly known as propagation.

The PCG states that the Commissioner will consider propagation as appropriate where all of the following parameters are satisfied:

- the custodian is the legal owner of all relevant assets of the entity and all assets subject to the propagation arrangement are held for the purposes of the relevant entity
- the relevant assets are fungible (i.e., identical in all respects)
- asset identification and selection are contemporaneous with the actual disposal transaction
- where the entity uses either:
  - (i) a single pool of assets to support member interests or
  - (ii) multiple pools of assets to support specific member interests and any propagated portfolios are confined within each specific pool (i.e. there can be more than one propagated pool within a single entity, but there cannot be any intermingling of parcel selection between these pools)
- propagation only occurs within a sub-fund of an entity (where applicable) and
- assets identified for disposal under a propagation arrangement are also reflected as the assets disposed for non-tax regulatory or accounting purposes.

The Commissioner may still devote compliance resources to confirm that the arrangements of a particular fund propagation satisfy the above parameters set out in the PCG, and additionally where any of the following features exist:

- an entity has segregated assets to support specific member interests in any way, including assets

specifically identified under a member directed investment option, or assets segregated for members in pension phase and propagation occurs across both segregated and unsegregated pools

- an entity includes a sub-fund that is to be treated as a separate entity and propagation occurs across the assets of both entities and
- propagation occurs across assets held by separate sub-custodians and each sub-custodian holds legal title to that portion of the portfolio.

When finalised, the PCG will apply from 1 July 2016.

## KPMG comments

The largest controllable part of a fund’s tax liabilities is capital gains tax (CGT). For this reason, it is incumbent on all funds to closely examine strategies such as propagation arrangements that assist in both deferring the payment date for capital gains, and ensuring that the one-third CGT discount is accessed wherever possible. Appropriate tax management of investment decisions by funds can have a significant impact on returns to members over time.

In this light, the release of public guidance by the ATO on propagation, providing greater certainty to the industry in respect of these arrangements, is to be greatly welcomed.

It is expected that public comments in relation to the PCG are expected to request clarification on a number of facets including the following:

- ATO’s definition of a sub-fund;
- Consequences of a custodian utilising different sub-custodians internationally; and
- The extent of ‘alignment’ required between the tax records and the accounting records in order to be considered compliant with PCG.

Comments in relation to the PCG are due by 2 October 2017.

## References

**ATO website** | [PCG 2017/D16](#)

**KPMG Insights website** | [24 August 2017](#)

## 2. Treasury Exposure Draft on Asia Region Funds Passport and CCIV

### Overview

On 25 August 2017, the Minister for Revenue and Financial Services, Kelly O'Dwyer, announced the release of Exposure Draft legislation to implement the Asia Region Funds Passport (Passport) and the Corporate Collective Investment Vehicle (CCIV). The aim of these new measures is to enhance the marketability of Australian managed funds across the Asia region and create domestic and regional economies of scale.

#### Asia Region Funds Passport

The Passport is a common framework of coordinated regulatory oversight to facilitate cross border issuing of managed investment funds.

The intent of the Passport is to support the development of an Asia-wide managed fund industry through improved market access and regulatory harmonisation. Australia, Japan, Korea, New Zealand and Thailand are signatories to the Passport's Memorandum of Cooperation (MoC), which took effect on 30 June 2016.

The Passport will enable fund providers from other Passport economies to market their products in Australia increasing the competition and choice for Australian consumers and providing opportunities to gain investment exposure to a wider range of assets. In turn, Australian managed funds can sell their products to other Passport economies.

#### Corporate Collective Investment Vehicle

CCIVs will offer an internationally recognisable investment vehicle, helping to increase the competitiveness of Australia's managed fund industry.

CCIVs will operate with a corporate structure, meaning they will have legal form of a company limited by shares with most of the powers, rights, duties and characteristics of a public company.

Retail CCIVs will require a depository to hold the assets of the CCIV on trust for the CCIV and supervise certain aspects of the corporate directors' responsibilities for the benefits of the members. Wholesale CCIVs will be subject to fewer regulatory requirements including the requirement for a depository.

### KPMG comments

The introduction of the Passport and CCIV are welcomed investment vehicles for Australian investors as both measures will provide greater opportunity for diversity in investment options for Australian investors.

At this stage, a framework legislation which sets the foundations for the regulatory changes required to accommodate both the Passport and the CCIV has been released. Once this has been consulted on and refined, the Government is expected to then draft the required consequential changes to the tax law.

These tax law changes are largely expected to accommodate CCIVs, by providing tax neutral outcomes as between a CCIV and a Managed Investment Trust. This means that:

- the CCIV will be "tax transparent" and therefore a genuine corporate flow through vehicle for tax purposes
- the taxation arrangements applying to Attribution Managed Investment Trusts (AMIT) will be extended to CCIVs and therefore the principles of attribution will apply and
- there will be character retention of the income of the CCIV to investors and therefore withholding tax rates will apply based on the nature of the income attributed.

Please contact your KPMG partner if you need any assistance with understanding how the Passport and CCIV measures will affect you.

Submissions are due by 21 September 2017.

### References

**Treasury website** | [Consultation overview](#)

**Treasury website** | [Media Release](#)

**KPMG Insights website** | [31 August 2017](#)

## 3. Other Superannuation Matters

### ATO issues draft guidance on Transfer Balance Account Reports

The ATO has released a draft legislative instrument, SPR 2017/D2 titled 'Reporting of event based transfer balance account information in accordance with the Taxation Administrative Act 1953'. The purpose of this draft instrument is to provide the timeframe in which the Transfer Balance Account Report (TBAR) is to be provided to report transactional data in respect of members of superannuation funds and life insurance companies. Transactional data that is associated with the payment of retirement phase income streams is required to be reported.

The effect of this instrument is that superannuation providers and life insurance companies have an obligation to lodge the TBAR no later than 10 business days after the end of the month in which the event occurred or such later date as the Commissioner of Taxation may permit. Penalties may be issued where a TABR has failed to be lodged on time.

Pending finalisation SPR 2017/D2 will be operational from 1 October 2017.

**ATO website** | [SPR 2017/D2](#)

### Treasury Laws Amendment (2017 Measures No.4) Bill 2017

On 23 August 2017, *Treasury Laws Amendment (2017 Measures No.4) Bill 2017* received royal assent, becoming Act No. 94 of 2017.

The Act amends the *Income Tax Assessment Act 1997* to provide asset roll-over relief for mandatory transfers within a superannuation fund in the transition to a MySuper product. The amendment allows for the availability of roll-over relief for a complying superannuation fund to postpone an income tax liability for assets that are transferred to a MySuper product ensuring that the liability will not arise until the asset is finally disposed of. Where the superannuation fund invests in a life insurance company or a pooled superannuation trust to support its default members, the same relief is provided to those entities.

The amendments apply to transfers within a superannuation fund to a MySuper product between 29 June 2015 and 1 July 2017.

**ATO website** | [Treasury Laws Amendment \(2017 Measures No. 4\) Bill 2017](#)

### Position paper released on SMSF transfer balance cap reporting

On 24 August 2017, the ATO released a position paper on how self-managed superannuation funds (SMSFs) will report instances impacting an individual member's pension transfer balance accounts for the purposes of the \$1.6 million cap from the 2017-18 year and onwards.

The ATO is specifically seeking feedback on the timing of reporting, based on two possible options.

Submissions are due by 15 September 2017.

**Parliament website** | [ATO Position Paper](#)

## **ASIC announces more transparent super fees and charges**

On 25 August, the Australian Securities and Investments Commission (ASIC) announced that from 30 September 2017 there will be significant changes to the way superannuation and managed investment funds disclose the fees and charges that affect consumers. From this date, product issuers must comply with ASIC Regulatory Guide RG97 'Disclosing fees and costs in PDSs and period statements' as well as complying with changes to ASIC Class Order CO 14/1252.

The new requirements follow ASIC identifying a significant amount of under-reporting of fees, as well as inconsistency in the way fees and charges are listed by funds.

**ASIC website** | [17-282MR Super fees set to become more transparent and easier to understand](#)

## **ATO releases Superannuation Guarantee gap estimate**

On 29 August 2017, the ATO released its estimate of the Superannuation Guarantee (SG) gap. The gap is the difference between the theoretical amount payable by employers to be fully compliant with their SG obligations and actual contributions received by funds. The ATO estimates the net SG gap to be 5.2 percent or \$2.85 billion of the total estimated \$54.78 billion in SG payments that employers were required to pay in 2014-15.

**ATO website** | [ATO releases Super Guarantee gap estimate](#)

## **Government announces reforms to SG compliance**

On 29 August 2017, the Minister for Revenue and Financial Services, Kelly O'Dwyer, announced a package of reforms to give the ATO near real-time visibility over SG compliance by employers.

The Government will provide the ATO with additional funding for a Superannuation Guarantee Taskforce to crackdown on employer non-compliance and the measures include:

- superannuation funds need to report contributions received more frequently, at least monthly, to the ATO
- the rollout of Single Touch Payroll (STP) and
- improving the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers.

These measures will give the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment, including employers who are repeatedly caught but fail to pay superannuation guarantee liabilities.

**Treasury website** | [Turnbull Government backs workers on superannuation](#)

**KPMG Insights website** | [1 September 2017](#)

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