Super Tax News

As at 31 December 2016

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.

Contents

1. Superannuation Tax Reforms

Overview of current status

Following on from our Super Tax News Special Edition on the Superannuation Tax Reform Package (2 November 2016), the Superannuation (Objective) Bill 2016 passed the House of Representatives on 22 November 2016 without amendment and has now moved to the Senate for consideration.

The Superannuation (Objective) Bill 2016 proposes to establish a legislative framework to guide the development of future superannuation policy, and require new bills and regulations relating to superannuation to be accompanied by a statement of compatibility with the objective of the superannuation system.

In addition, the following Bills received Royal Assent on 29 November 2016 and have now become law:

- Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016
- Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016.

These Bills implemented a major package of superannuation tax reforms, which are summarised below, and which will take effect from 1 July 2017.

- Imposing a $1.6 million cap (the transfer balance cap) on the amount of capital that can be transferred to the tax-free earnings retirement phase of superannuation.
- Introducing additional income tax rules on recipients of certain defined benefit income streams in excess of $100,000 per annum to achieve a broadly commensurate taxation outcome to the transfer balance cap.
- Reducing the annual concessional contributions cap to $25,000 (from $30,000 for those aged under 49 at the end of the previous financial year and $35,000 otherwise), and the threshold at which high-income earners pay Division 293 tax on their concessionally taxed contributions to superannuation, to $250,000 (from $300,000).
- Reducing the annual non-concessional contributions cap from $180,000 to $100,000, and permitting members aged under 65 to be able to bring forward the balance of their $100,000 annual cap for a period of 3 years (a maximum of $300,000) for balances below $1.6 million.
- Enabling eligible low income earners to receive the low income superannuation tax offset.
- Removing the requirement that an individual must earn less than 10 percent of their income from their employment related activities to be able to deduct a personal contribution to superannuation and make it a concessional contribution.
- Allowing individuals to make additional concessional superannuation contributions in a financial year by utilising unused concessional contribution cap amounts from up to five previous financial years, provided that the individual's total superannuation balance just before the start of the financial year is less than $500,000 (start date deferred until 1 July 2018).
- Encouraging individuals to make superannuation contributions for their low income spouses;
- Amending the earnings tax exemptions to:
  - Extend the earnings tax exemption to new lifetime products such as deferred products and group self-annuities; and
  - Remove the earnings tax exemption in respect of transition to retirement income streams.
- Removing the anti-detriment deduction.

KPMG comments

The above reforms implemented the Government's 2016-17 Budget measures, as amended by changes announced on 15 September 2016. The Bills introducing these reforms progressed through both Houses of Parliament without any amendments.

Please refer to our Super Tax News Special Edition on the Superannuation Reform Package for more detailed commentary on these measures.

References

Superannuation Reforms

2. ATO Draft Guidance on Superannuation Tax Reforms

Overview

The ATO has also released the following draft law companion guidelines ("LCGs") on the implementation of a number of the above superannuation tax reforms:

- LCG 2016/D8 Superannuation reform: transfer balance cap and transition-to-retirement reforms - transitional CGT relief for superannuation funds;
- LCG 2016/D9 Superannuation reform: transfer balance cap;
- LCG 2016/D10 Superannuation reform: defined benefit income streams – non commutable, lifetime pensions and lifetime annuities;
- LCG 2016/D11 Superannuation reform: concessional contributions – defined benefit interests and constitutionally protected fund; and
- LCG 2016/D12 Superannuation reform: Total Superannuation Balance.

Comments on the first two draft LCGs were due to be provided to the ATO by 8 December 2016.

Comments on LCG 2016/D10 and LCG 2016/D11 can be submitted to the ATO by 23 January 2017, and comments on LCG 2016/D12 can be provided by 6 February 2017.

LCG 2016/D8 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 either the transfer balance cap or transition to retirement reforms. The guidance provides information on a number of practical aspects of the relief.

LCG 2016/D9 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/D10 clarifies how the defined benefit income cap applies to superannuation income stream benefits that are paid from a non-commutable, lifetime pension or lifetime annuity. The guidance covers how the "special value" of a lifetime pension or annuity is calculated, which results in a credit to an individual's transfer balance account. It also covers the concept of a "defined benefit income cap threshold", and the consequences of exceeding the defined benefit income cap, which may result in additional assessable income.

LCG 2016/D11 clarifies how the changes to the calculation of concessional contributions and excess concessional contributions apply to contributions and amounts allocated by superannuation providers for the financial years commencing on or after 1 July 2017. In particular, the guidance clarifies how contributions to constitutionally protected funds and defined benefit interests will be calculated. Contributions to constitutionally protected funds will be included in an individual's concessional contributions. Where concessional contributions to constitutionally protected funds or defined benefit interests are greater than an individual's cap, they will be treated as being equal to the concessional contributions cap.

LCG 2016/D12 provides guidance on how an individual's superannuation balance is calculated from 30 June 2017. An individual's superannuation balance is relevant in a number of circumstances, including:

- Eligibility for unused concessional contributions cap carry forward, where your total superannuation balance is less than $500,000;
- Eligibility for the non-concessional contributions cap and for the bring forward of your non-concessional contributions cap, where your superannuation balance is less than the general transfer balance cap (currently $1.6 million);
- Eligibility for the Government co-contribution; and
- Eligibility for the tax offset for spouse contributions.

KPMG comments

Many of these reforms are complex. For example, dealing with the transfer balance cap is already proving a challenge for superannuation fund trustees, members and their financial advisers, as they grapple with complying with the cap prior to the start date of 1 July 2017.

We therefore welcome the ATO's draft guidelines on the transfer balance cap and other key reform measures, which will assist the superannuation industry with understanding the ATO's views on how these reforms will be implemented in practice.

References

Parliament website

Australian Taxation Office website

3. Superannuation regulations reforms package

Overview

Following the passage of superannuation reforms on 29 November 2016 (detailed above), on 16 December 2016, the Government released for public consultation a further tranche of draft regulations and associated explanatory materials.

As detailed by the explanatory statements, the draft regulations largely aim to amend corporations law, income tax law and superannuation law to support:

- The implementation of the new transfer balance cap;
- Improving access to tax deductions for personal contributions;
- Simplification and consolidation of existing processes in respect of release authorities;
- Lowering the fund-capped contribution limit;
- Definition of total superannuation balances; and
- Prescribing the subsidiary objectives of the superannuation system.

Comments on the regulations and the discussion paper are due 10 February 2016.

In addition, the Government has given notice that further public consultation will be sought in respect of upcoming draft regulations to:

- Support innovative income stream products; and
- Provide valuation rules for the transfer balance cap.

These additional draft regulations are anticipated to be released in early 2017, and the consultation to occur prior to the commencement of the measures contained in the reform package.

KPMG comments

As noted above, the complexity of many of these reforms means that the additional guidance from Government will assist the superannuation industry with understanding the measures, and in implementing them in practice.

References

Treasury discussion paper

4. Labor's superannuation reform package proposal

Overview

Notwithstanding that the main parts of the Government's Superannuation Reform Package have been enacted – it is worth noting the Opposition's super reform package 'response' which was released by Labor's Chris Bowen on 8 November 2016. It contains several proposals which would have gone further than the Government's reforms in reducing superannuation tax benefits, including:

- A lower annual non-concessional contributions cap of $75,000 rather than the Government's proposed $100,000 (it was previously $180,000); and
- A reduced High Income Superannuation Contribution threshold of $200,000 rather than the Government's proposed $250,000 (it was previously $300,000) – meaning that those earning $200k+ pay 30 percent tax on their concessional super contributions, rather than 15 percent.

Labour opposed the introduction of catch-up concessional contributions and changes to tax deductions for personal super contributions on the basis that these measures are likely to be taken up by those on higher incomes who can afford to make additional superannuation contributions. They believe these particular changes will cost about $12.3bn over the next decade.

Labor claims that its reform package (as costed by the Parliamentary Budget Office) will improve the budget position by $1.4bn to 2019 -20 and $18.9bn to 2026-27 in comparison to the Government's proposals.

However, Labor signalled its intent to support some measures in the Turnbull government's package:

- Introduction of a $1.6 million superannuation transfer cap;
- Introduction of a Low Income Superannuation Tax Offset;
- Improvement to the superannuation balances of low income spouses;
- Removal of the anti-detriment provision for death benefits from superannuation; and
- Strengthening the integrity of retirement income streams.

On 21 November 2016 the Opposition Leader, Bill Shorten, gave an address to the Industry Superannuation Australia Forum in Canberra. In his address, Mr Shorten discussed the history and purpose of Australia's superannuation system, and reiterated the Australian Labor Party policy towards proposed changes to the system, including its commitment to the changes noted above.

KPMG comments

Labor's statement labels the Government's measures to allow members to make "catch up" concessional contributions and to allow broad deductibility of personal superannuation contributions as 'tax loopholes'.

However, the Government views these as valid policy responses to address social issues such as:

- Broken patterns suffered by women while they are raising young families limiting the ability to make contributions in years they are not working and
- The increasing trend of the combination of some part-time work with running a small business from home which can limit the ability of individuals to make contributions up to the new $25,000 cap.

Intuitively, while more men are taking on greater roles in raising families, implementation of these measures would seem most beneficial to women.

In KPMG's view, it would have been better for Labor to support these measures. Its reservations could then be dealt with by subsequently measuring their success or otherwise in achieving the Government's stated objectives after a reasonable period such as 4-5 years.

References

ALP Fact sheet

Opposition Leader's Speech

5. Comprehensive Income Products for Retirement (CIPRs)

Overview

In response to the final report of the Financial Systems Inquiry (FSI), the Government agreed to support the development of more efficient retirement income products and to assist trustees offering these products to members.

Following this support, on 15 December 2016, the Government released for public consultation a discussion paper addressing the key issues in developing the framework for Comprehensive Income Products for Retirement (CIPR), or MyRetirement products.

As detailed in the discussion paper, a CIPR will be a mass-customised, composite retirement income product which trustees can choose to offer to members in the retirement phase. The intention is that superannuation fund trustees will design products to be in the best interests of the majority of its members, and will seek to achieve the following objectives:

- Increase the standard of living for individuals by facilitating risk pooling, which will provide security of income for life and the potential for higher income in retirement phase;
- Increase the availability, flexibility and choice of products that efficiently manage longevity risk;
- Increase the efficiency of the superannuation system so that it can better achieve the objective of superannuation to provide income in retirement to substitute or supplement the Age Pension; and
- Empower trustees to provide an easier transition for members entering the retirement phase.

In respect of the structure of the proposed CIPRs, the discussion paper details a number of suggested minimum product requirements as follows:

- Deliver a minimum level of income that would generally exceed an equivalent amount invested in an account-based pension drawn down at minimum rates and/or deliver a guaranteed level of income;
- Deliver a stream of broadly continual real income for life; and
- Deliver products that provide flexibility to access a lump sum and leave a bequest.

In particular, the Government is seeking views from interested stakeholders on the following:

- The structure and minimum requirements of these products;
- The framework for regulating these products; and;
- The offering of these products.

Comments on the discussion paper are due 28 April 2016.

KPMG comments

It is widely agreed within the superannuation industry that the drawdown or post-retirement stage remains the largest unfinished part of the system.

This discussion paper, and the likely industry responses to it, represent significant steps in potential policy responses that will address these issues.

References

Treasury discussion paper

6. Superannuation Fund Merger Rollover Relief

Overview

The Government's key policy settings for the super industry require funds to continue to consider scale and efficiency so as to increase value for members. The present scheduled expiry of capital gains tax (CGT) rollover relief for fund mergers occurring on or after 2 July 2017 is inconsistent with these settings.

The relief enables the closing fund in a merger to transfer its unrealised tax positions to the ongoing fund along with the relevant assets. This means that the Government continues to collect the tax in the usual timeframe (i.e. when the relevant asset is then sold in the ordinary course of business).

Without the relief, these unrealised tax positions are crystallised at the date of merger. The associated time value of money cost results in an effective cost to the members of the closing fund. The trustee of the closing fund needs to weigh this against the benefits of the merger in determining whether it is in the best interests of its members.

KPMG comments

There will always be both costs and benefits for Trustees to consider in any merger. However, given the Government's broader policy settings, tax and especially the early payment of tax should not be an impediment to mergers.

It is time for the superannuation industry to press the Government for permanent relief, in the same way that equivalent relief is available in the corporate world. The policy imperative is clear: there is no cost to the Government, which continues to receive the tax on the gains when normal sales occur. However, there is a cost to members, if otherwise viable mergers do not proceed or are delayed, due to tax tipping the balance.

7. Other Superannuation Matters

Superannuation Data and Payment Standards registered

On 11 November 2016, the Deputy Commissioner of Taxation, James O'Halloran, registered the Superannuation Data and Payment Standards (Payments and Information from the Commissioner of Taxation) Amendment 2016.

This standard amends the Superannuation Data and Payment Standards 2012 to extend the application to rollover superannuation benefits and contribution payments made between the Commissioner of Taxation and APRA-regulated superannuation entities.

Standard

Draft ARPA guidance on successor fund transfers and wind-ups for superannuation trustees

On 24 November 2016, the Australian Prudential Regulation Authority (APRA) released draft guidance for public consultation on successor fund transfers (SFTs) and wind-ups for APRA regulated superannuation trustees (RSE licensees).

The Draft Prudential Practice Guide SPG 227 Successor Fund Transfers and Wind-ups provides guidance where an RSE licensee has elected for the transfer of some or all of its members to another RSE via an SFT and where an RSE licensee has elected to receive a transfer or members from another RSE via an SFT.

The new guidelines replace previous APRA guidance on SFTs and wind-ups and intends to assist RSE licensees to execute a SFT when it is in the best interests of the members. The draft guidance also provides new commentary on key areas such as the assessment of 'equivalent rights' in an SFT, transfer between MySuper products and considerations for the operation risk financial requirement in undertaking a SFT.

Comments on the draft guidance are due by 17 February 2017.

APRA draft guidance

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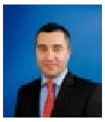

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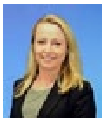

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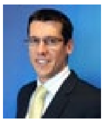

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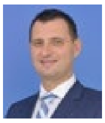

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