Super Tax News

As at 31 July 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 July 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. Draft legislation released – Housing affordability

Overview

On 21 July 2017, Treasury released draft legislation to implement the 2017-18 Federal Budget measures related to housing affordability, including the introduction of the First Home Super Saver Scheme and a special downsizing contribution measure for superannuation.

Comments on the draft legislation were due by 4 August 2017.

First Home Super Saver Scheme (FHSSS)

The proposed FHSSS will allow voluntary superannuation contributions to be made from 1 July 2017 to be withdrawn for the purchase of a first home. Under the FHSSS, up to $15,000 per year (and $30,000 in total) will be allowed to be contributed to superannuation, subject to the concessional contribution cap (currently $25,000).

Withdrawals of eligible contributions will be allowed from 1 July 2018 onwards and taxed at marginal rates less a 30 percent offset. The maximum release amount is 85 percent of concessional contributions (reflecting the 15 percent contributions tax).

The FHSSS will be administered by the Australian Taxation Office (ATO) and an individual would receive the funds after applying to the ATO and declaring eligibility to purchase or construct residential premises. The ATO will withhold an amount of tax before releasing the funds.

Upon receipt of the funds under the FHSSS, individuals will have 12 months to sign a contract to purchase residential premises (including vacant land to be built and occupied as a residence, but not a houseboat or motor home). If an individual does not make an eligible purchase within the required period, they will be required to re-contribute the release amount or pay an additional 20 percent tax on that amount.

Contributing the proceeds of downsizing to superannuation

The special 'downsizer contribution' measure applies from 1 July 2017, allowing people aged 65 or over to make additional non-concessional contributions into their superannuation of up to $300,000 from the proceeds of selling their home.

The measure will apply to capital proceeds received from the disposal of an ownership interest in a dwelling in Australia on or after 1 July 2018 (excluding a caravan, houseboat or mobile home) that is a main residence (partial or full) for capital gains tax (CGT) purposes and has been held for a minimum of 10 years. If the person's spouse is not on the title with them, both can still make a downsizer contribution (i.e. $600,000 in total for a couple).

Importantly, the draft legislation includes proceeds from the sale of pre-CGT homes as being eligible for downsizer contributions.

The downsizer contributions will not be subject to the existing non-concessional contributions caps and will also be exempt from the age test and work test. However, downsizer contributions will count towards an individual's total superannuation balance for the purpose of that ($1.6 million) test.

KPMG comments

We are supportive of the Government's moves to address housing affordability across the country, although it remains to be seen how far these measures will go towards helping reduce the pressure on the domestic housing market.

We note that whilst the ATO will administer the FHSSS, it is likely that funds will need to address systems implementation issues and cost considerations associated with contributions and withdrawals made by their members under the FHSSS.

With regards to downsizer contributions, while these will be unaffected by the $1.6 million total superannuation balance test for making non-concessional contributions, they will count towards an individual's total superannuation balance for the purpose of that test, meaning individuals aged between 65 and 74 who meet the work test will need to take special care in ensuring that their personal contributions do not result in excess non-concessional contributions.

Furthermore, it is unlikely that individuals will take up this measure if there are any broader Centrelink implications. For those where there are no such implications, we note that the measure essentially results in transferring moneys from one tax preferred asset (i.e. accretion in value in the family home) to another (tax free earnings in the superannuation funds).

References

Draft legislation

2. Country-by-Country (CbC) reporting exemptions: Still open for business

Overview

The financial year ended 30 June 2017 (FY2017) has just passed, which means that the first reporting year for super funds - and their controlled entities – who are subject to CbC reporting has been completed. That said, there are still another 10 months before the CbC reporting documents will be due for lodgement in 30 June 2018.

The three CbC reporting documents are:

1. **CbC Report:** Requires financial and economic metrics data for each jurisdiction that the MNE Group operates in. The report must be prepared in an XML Schema format in accordance with the OECD's guidance.

2. **Master File:** This requires significant qualitative information regarding the MNE Group's operations. This document must be attached to the combined Master File/Australian Local File XML Schema.

3. **Australian Local File (ALF):** Contains information to assist the ATO to administer CbC reporting for the taxpayer and also international related party dealing (IRPD) information. The ALF must be prepared in an XML Schema.

The CbC regime provides the Commissioner of Taxation (CoT) with the discretion to provide taxpayers with exemptions from all, or some, of the CbC reporting documents. The CoT continues to grant CbC reporting exemption requests for eligible super funds.

KPMG comments

Super funds subject to CbC reporting for FY2017 should consider seeking a CbC reporting exemption if they have not sought one already.

The CbC exemption process continues to evolve and the ATO is refining the criteria and the associated evidence required for exemptions on a regular basis. Nevertheless, the ATO is applying the criteria and framework consistently across the taxpayer base, irrespective of industry. Taxpayers should be aware of the ATO's criteria for the best outcome from an exemption request.

The ATO are more likely to grant an exemption for the CbC Report and Master File than the ALF. This is positive from the standpoint that these two documents are typically the most onerous to complete for MNE Groups. However, the ALF needs to be prepared using specific software (to create and lodge the XML Schema), and can be costly to license, therefore an ALF exemption will also significantly reduce the compliance burden for super funds.

One of the key challenges in demonstrating eligibility for an exemption from the ALF is that the concept of an IRPD is not clearly defined for the ALF. Specific attention should be paid to the types of information that is requested in the ALF when seeking an exemption from the document.

The ATO's focus in recent weeks has been the implementation of the ALF lodgement process, as first filings of the ALF for 31 December year-end taxpayers who elected for the 'administrative concession'were due 15 August 2017. As a result, this key project has temporarily shifted resources within the ATO from the CbC reporting exemption process and extended request response timelines.

Please contact Jane Rolfe or Aaron Yeo of KPMG's Global Transfer Pricing Services team (contact details provided below) should you have enquiries or seek assistance in relation to these matters.

3. Other Superannuation Matters

The tax 'wish list' for the collective investment vehicle regime

In 2016, the Federal Government committed to the introduction of a new tax and regulatory framework for two new types of collective investment vehicles (CIV): a corporate CIV and a limited partnership CIV. It is anticipated that the corporate CIV will be introduced this year and the partnership CIV next year. Whilst we are yet to see the details of the legal and regulatory framework for the corporate CIV, the managed funds industry and Treasury are now turning their focus to the next phase of the roll-out, being the tax framework for the corporate CIV.

For a discussion on some of the issues that need to be considered and what is on the tax 'wish list' for fund managers, please refer to our Insights article referenced below.

KPMG Insights | 20 July 2017

The next step in superannuation income must meet the evolving needs of retirees

Friday 21 July was the deadline for submissions to the Government's Discussion Paper on a new phase in the evolution of the superannuation system – the Comprehensive Income Products for Retirement (CIPR) framework. While the industry has had great success in the pre-retirement phase over the past 25 years, the increasing number of members reaching retirement age, coupled with increasing life expectancies, means funds need to turn towards the development of retirement products to meet the needs of an increasing portion of their members.

We support the objective of CIPRs but have some important considerations to raise. For a discussion on these considerations, please refer to our NewsRoom article referenced below.

KPMG NewsRoom | 10 July 2017

APRA releases guidance on Successor Fund Transfers and Wind-ups

On 21 July 2017, APRA released Prudential Practice Guide SPG 227 Successor Fund Transfers and Wind-ups to provide guidance to trustees of registrable superannuation entities on fund mergers and wind-ups. SPG 227 is intended to assist RSE licensees when reviewing their strategic and business plans, and considering the appropriateness of a successor fund transfer (SFT).

SPG 227 covers the key aspects of 'equivalent rights', including rights under the trust deed, legally enforceable rights, rights as a 'bundle of rights' and rights for the individual member/groups of members. It also covers MySuper to MySuper SFTs, and planning for an SFT, including an RSE licensee's strategic direction, business plan and due diligence assessment.

APRA website | SPG 227

Productivity Commission inquiry into Australia's superannuation system

On 7 July 2017, the Productivity Commission (PC) released an issues paper as part of its 12 month Inquiry into the Competitiveness and Efficiency of the Superannuation System. This Inquiry is the third and final stage of the Commission's Review of the superannuation system, flowing from the Australian Government's response to the 2014 Financial System Inquiry. The inquiry will assess the efficiency and competitiveness of Australia's superannuation system based on the assessment framework developed in the Commission's Stage 1 Study in 2016.

Comments from superannuation members and initial public submissions from all interested participants are due by 21 August 2017. The Commission has been asked to provide a final report to the Australian Government in June 2018.

Australian Government website | Issues paper

Superannuation supervisory levies for 2017-18

The Superannuation Supervisory Levy Imposition Determination 2017, registered 11 July 2017, sets the financial institutions supervisory levies that will apply for the 2017-18 financial year. For superannuation funds other than small APRA funds (SAFs), the restricted component of the 2017-18 levy is proposed to be calculated at 0.00307 percent (down from 0.00324 percent for 2016-17) of assets held by the entity, subject to a minimum of $3,500 (up from $2,500 for 2016-17) and a maximum of $300,000 (up from $260,000 for 2016-17). The unrestricted component of the 2017-18 levy is proposed to be is calculated at 0.005655 percent (down from 0.007075 percent) of assets held by the entity. SAFs will be levied a flat amount of $590 per fund (unchanged). Under the Retirement Savings Account Providers Supervisory Levy Imposition Determination 2017, an RSA provider will not be levied directly in relation to the 2017-18 financial year.

Federal Register of Legislation | Superannuation Supervisory Levy Imposition Determination 2017 and Retirement Savings Account Providers Supervisory Levy Imposition Determination 2017

Improving accountability and member outcomes in super: Consultation

On 24 July 2017, Treasury released an extensive consultation package on proposed changes to improve accountability and member outcomes in superannuation.

The amendments will improve accountability and member outcomes through a number of amendments, including:

- Replacing the current 'scale test' with an 'outcomes test' that requires trustees to undertake an annual determination considering a number of features to ensure the outcomes being delivered are in the financial interests of their members;
- Providing APRA with enhanced capacity to refuse or cancel a MySuper authorisation, where it believes that the registrable superannuation entity (RSE) licensee may not comply with its obligations;
- Aligning the superannuation director penalty regime with the penalty regime that applies to directors of managed investment schemes;
- Requiring people to seek approval from APRA prior to change in ownership or control of an RSE licensee occurring;
- Requiring RSE licensees to hold annual members' meetings to enable members to ask questions about all areas of their RSEs performance and operation; and
- Enabling APRA to gather more information on the operational and managerial expenses of RSEs.

Submissions close on 11 August.

Australian Treasury website | Consultation package

Tax Institute – National Superannuation Conference 24-25 August 2017 (Sydney)

This specialist superannuation conference brings together regulators and leading practitioners from the legal, accounting, audit and financial advisory services fields across the superannuation industry. Speakers are selected from leading experts within the industry that possess the essential blend of knowledge and experience in the practical application of the laws. A mixture of plenary sessions and two streams of breakouts ensures this conference is essential for any professional working within the ever-changing superannuation operating environment.

Damian Ryan and James Gordon from KPMG are among the presenters at the conference, presenting on structures for domestic investments by funds and tax risk and governance respectively.

The Tax Institute website | Key Events

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