



Super Tax News

As at 31 May 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 May 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. Corporate limited partnerships: Draft Taxation Ruling TR 2017/D4

Overview

On 17 May 2017, the ATO released *Draft Taxation Ruling TR 2017/D4: Income tax: when does a corporate limited partnership 'credit' an amount to a partner in that partnership?*

The object of the corporate limited partnerships (CLP) provisions is to tax limited partnerships (LPs) and their partners as though the LP were a company and the partners were shareholders. It is this object which the Commissioner has anchored his view on the meaning of 'credited'.

A partner is taken to receive a dividend from an LP when the LP pays or credits an amount to a partner against profits or anticipated profits of the LP.

TR 2017/D4 sets out the Commissioner's view that an amount will be credited where the LP *'in substance ... applies or appropriates its resources to confer a benefit on the partner that:*

(a) is not subject to a condition precedent and is legally enforceable by the partner, and

(b) is separate and distinct from the partner's existing interest in the CLP and its assets.'

Notably, the ATO has confirmed that 'a mere credit entry in a CLP's accounts is not a crediting within the meaning of section 94M unless it records an underlying act or transaction' that meets the above requirements.

In determining whether or not a partner has a legally enforceable benefit in respect of an amount 'credited' by a CLP, reference is to be had to:

- Conditions precedent (i.e. distributions whilst credited in the accounts may be subject to general partner discretion such that a legally enforceable benefit would not confer on the Partner until such time the general partner exercises their discretion);
- The partnership agreement (i.e. if distributions contravene the process of offsetting unpaid CLP obligations such distributions may not confer a legally enforceable right on the partner); and
- The laws governing the partnership and the benefit in question.

Once finalised, TR 2017/D4 is proposed to have retrospective application.

KPMG comments

TR 2017/D4 is of particular interest to large investors in foreign limited partnerships, such as superannuation funds and managed funds.

Of note, the ATO specifically states that TR 2017/D4 does not deal with whether an amount credited to a partner is credited 'against the profits or anticipated profits' of the LP. This leaves an important question open – having determined an amount has been credited, what are the profits or anticipated profits for that purpose?

In the lead up to 30 June 2017, investors should start considering whether there is a potential for amounts to be credited by an LP in line with TR 2017/D4 which will not be received, by reviewing their limited partnership agreements.

Please contact your KPMG partner if you need assistance with this process.

Comments on the draft ruling are due by 30 June 2017.

References

[TR 2017/D4](#)

2. Superannuation fund expense apportionment: Addendum to TR 93/17

Overview

On 17 May 2017, the Australian Taxation Office (ATO) released the long awaited Addendum to *Taxation Ruling TR 93/17: Income tax deductions available to superannuation funds*.

The Addendum provides an update and further clarity on the Commissioner's views in respect of deductions available to superannuation funds and is broadly similar to the previous iteration of the ruling.

The most notable change is the increased emphasis on the concept of 'fair and reasonable' as a fundamental apportionment principle.

The Addendum incorporates the apportionment methods that were set out in the previous version of the ruling with a number of high-level examples to assist in determining what constitutes 'fair and reasonable' as well as consideration of expenses of a 'capital' versus 'revenue' character.

Other features of the Addendum include:

- an expectation that the apportionment method chosen would be applied consistently over time for a type of expenditure, unless there are specific reasons for departure
- further commentary on the issue of capital versus revenue expenditure
- identification of 'generally' vs 'specifically' deductible expenses.

The Addendum applies to years commencing both before and after the date of issue. The ATO notes that there are current practices in relation to the treatment of administrative expenses incurred as a result of a merger that are different from the view expressed in the Addendum. However, the ATO does not propose to allocate resources to examine the treatment of administration expenses as a result of a merger which took place prior to 1 July 2016.

KPMG comments

The Addendum is helpful in providing further guidance to superannuation funds on the apportionment of expenses. It is however noted that the examples are relatively simplistic and it is questionable how helpful they will be in more complicated and 'greyer' circumstances.

As this remains a focus area for the ATO, it is important that superannuation funds revisit their expense apportionment methodologies in light of the Addendum, well in advance of preparing their 2017 income tax return.

Please contact your KPMG partner if you need assistance in reviewing current methodologies used to determine compliance with the ruling.

Reference

[TR 93/17A2 - Addendum](#)

3. Further ATO guidance on Superannuation Tax Reforms

Overview

During April and May 2017, the ATO released the following guidelines in relation to certain elements of superannuation tax reforms that will apply from 1 July 2017:

- Law Companion Guideline LCG 2017/3, which finalises LCG 2017/D3, on the tax and regulatory treatment of superannuation death benefits and the treatment of death benefit income streams (whether reversionary or non-reversionary) under the \$1.6 million pension transfer balance cap from 1 July 2017.

The guidance also sets out a number of examples based on revisionary and non-revisionary death benefit income streams.

- Practical Compliance Guideline PCG 2017/5, which outlines the circumstances in which the ATO will not apply compliance resources to review commutations made before 1 July 2017 by a member of a self-managed superannuation fund (SMSF) in order to avoid exceeding the \$1.6 million transfer balance cap. The request to commute the excess amount must be made in writing prior to 1 July 2017 and cannot be revoked.

The guidance provides a number of examples to illustrate the situations in which commutations would not be reviewed by the ATO.

- Practical Compliance Guideline PCG 2017/6, sets out the ATO's compliance approach to a commutation of a death benefit income stream that occurs prior to 1 July 2017 within a SMSF. The ATO states that a rollover by a spouse of a deceased member's death benefit income stream does not change a superannuation providers regulatory requirement to cash the deceased members superannuation interest as soon as practicable.

The guideline also advises circumstances in which the ATO will not apply compliance resources to review whether the SMSF has complied with the cash out requirement.

- Low income super tax offset (LISTO): ATO guidance note; which provides guidance on the changes associated with the LISTO, which replaces the low income superannuation contribution from 1 July 2017. To reduce data standards compliance and system build costs of implementing this change, the ATO states that funds can maintain and re-use the existing taxonomy element name of 'Superannuation Contribution Low Income Amount'.

KPMG comments

Over the last few months, the ATO have released a number of Practical Compliance Guidelines and Law Companion Guidelines to provide assistance with the operation of the superannuation tax reforms from 1 July 2017.

Given the complexity of the 1 July 2017 superannuation changes and the significant operational issues created for funds, the ATO guidance is helpful in understanding and implementing some of these key changes.

KPMG have developed a guide for project managing the operational implications of the superannuation reforms. Please contact your KPMG partner if you would like to access our guide in order to check in on the comprehensiveness of your project.

References

[PCG 2017/5](#), [PCG 2017/6](#), [LCG 2017/3](#), [LISTO: ATO guidance note](#)

4. Superannuation Deputy Commissioner's address to the CPA Australia conference – May 2017

Overview

On 11 May 2017, the ATO Deputy Commissioner of Superannuation, James O'Halloran, gave an address to the Certified Practising Accountants (CPA) Australia NSW Public Practice Conference in Sydney.

In his speech, Mr. O'Halloran, discussed the ATO view on the 2016 and 2017 Federal Budget measures for superannuation, and specifically:

- Concessional contributions cap
- Non-concessional contributions cap.
- Personal super contributions deductions.
- Transfer balance cap.
- Transitional capital gains tax (CGT) relief.
- Transition to retirement income streams (TRISs).
- Self-Managed Superannuation Funds (SMSFs).

Some of the key points made by Mr. O'Halloran were:

1. There are no changes to the three year bring forward for the 2016-17 income year. Individuals who have triggered the three-year bring-forward since 1 July 2015 and who do not contribute the full \$540,000 by 30 June 2017, will be subject to transitional provisions from 1 July 2017, with their bring forward cap reducing in line with the lower annual cap.
2. From 1 July 2017, more people are now eligible to claim a deduction for personal contributions they make to their super after removal of the 10 per cent maximum earning condition. All other eligibility criteria remain the same.
3. There is a defined benefit income cap of \$100,000 for the 2017-18 income year, and if individuals exceed it, they may have to lodge a return, pay tax on the payments and the fund may need to withhold PAYG.
4. CGT relief is not automatic and the fund will need to make an election to access the CGT relief in the CGT schedule to the 2016-17 SMSF annual return. The election will also impact how the CGT discount will apply.
5. The ATO does not require SMSFs to report their member account balances and values of any income streams on commencement of the superannuation changes on 1 July 2017.
6. There is no change to the TRIS benefit paid to a member.
7. The transfer balance cap of \$1.6 million applies for each member of a couple (with modifications for death benefit recipients) and cannot be shared or aggregated between a couple.
8. The transfer balance credit amount is determined as the annual entitlement from the term allocated pension (TAP) multiplied by the rounded up remaining term, which will always exceed the actual balance. The credit will not be determined by the TAP's account balance.

KPMG comments

With 1 July 2017 fast approaching, it is important for funds and individual members to understand and be prepared for the upcoming changes to superannuation laws.

Mr. O'Halloran has helpfully discussed a number of the key changes and cleared a number of misconceptions regarding the upcoming superannuation changes.

Further to this, the ATO has released a number of ATO law companion guidelines (LCGs) and practical compliance guidelines (PCGs) in the past few months to provide further clarity on the ATO's approach to administering the new law (discussed above).

Please feel free to reach out if assistance is required in preparing for the upcoming superannuation changes.

References

[Speech by James O'Halloran on 11 May 2017 to the CPA Australia NSW Public Practice Conference](#)

5. Other Superannuation Matters

Super Guarantee non-compliance: Senate Committee report

On 2 May 2017, the Senate Economics References Committee released its report “Superbad – Wage theft and non-compliance of the Superannuation Guarantee”. The report states that the ATO’s current approach in identifying and addressing Super Guarantee (SG) non-compliance was inadequate and that the ATO should take a more proactive approach. The report makes reference to a recent analysis by Industry Super Australia that indicated that employers failed to pay an aggregate amount of \$5.6 billion in SG contributions in the 2013-14 income year. The committee has made 32 recommendations to address the problem of SG non-compliance.

Parliament of Australia website | [Report and Inquiry](#)

Amendments to super reforms bill introduced to Parliament

On 25 May 2017, the *Treasury Laws Amendment (2017 Measures No 2) Bill 2017* was introduced into parliament. These changes were previously released as exposure draft legislation for public consultation on 12 April 2017 and 27 April 2017. Most of the proposed amendments appear in the final bill, which makes amendments in relation to the transfer balance cap, concessional and non-concessional contributions, limited recourse borrowing arrangements, objective of superannuation, transition to retirement income streams, capital gains tax relief for superannuation funds and administrative processes. Following on from this, on 30 May 2017, the Senate Economics Legislation Committee released its report stating there were “no substantive matters in the Bill that required examination”. It is expected that the Bill is likely to pass Parliament quickly and without amendment.

Parliament of Australia website || [Amendment Bill](#) and [Senate Committee report](#)

Superannuation rates and thresholds for 2017/18

The ATO has published the key superannuation rates and thresholds for the 2017/18 income year. These include the rates and thresholds that apply to the concessional and non-concessional contributions cap, Division 293 tax, payments from super, super income stream tax, employment termination payments, super guarantee, government contributions and other super rates and thresholds.

ATO Website | [Key Superannuation rates and thresholds](#)

SMSF annual return due date extended to 30 June 2017

On 11 May 2017, the ATO extended the due date for lodgement of SMSF annual returns for the 2015-16 income year from 15 May 2017 to 30 June 2017. The decision was made as a result of feedback from accounting and advisory firms that are having difficulty meeting their SMSF lodgement commitment, given the major super reforms set to start on 1 July 2017.

ATO Website | [Media release](#)

Superannuation supervisory levies for 2017-18 discussion paper

Treasury has released a discussion paper seeking submissions from industry on the proposed financial institutions supervisory levies for the 2017-18 income year. The levies are set to recover operation costs of the Australian Prudential Regulation Authority (APRA) and cost incurred by other Commonwealth agencies and departments. Submissions are due by 22 June 2017.

Australian Treasury website | [Discussion paper](#)

ASIC guidance on registration of managed investment schemes

On 24 May 2017, the Australian Securities and Investments Commission (ASIC) released an information sheet to explain common issues identified in the content of managed investment scheme constitutions during the registration process and how these issues have been addressed by ASIC. In considering over 700 constitutions since 1 October 2013, ASIC has found the following areas to be where ASIC regularly ask for amendments:

- definition of scheme member
- fees and expenses
- member withdrawal from the scheme
- timeframes for withdrawal payment
- independent final audit when the scheme is wound up.

ASIC website | [Information sheet](#)

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