Super Tax News

31 October 2017

Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements during October 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. Treasury exposure draft released on whistleblowers

Overview

On 23 October 2017, Treasury released for public consultation draft legislation designed to create a single whistleblower protection regime in the Corporations Act. Importantly, from a tax perspective, the legislation creates a new whistleblower protection regime to protect those who expose tax misconduct, as well as modifying the existing regime covering the corporate, financial and credit sectors.

Draft *Treasury Laws Amendment (Whistleblowers) Bill 2017* proposes changes to the Corporations Act, including:

- expanding the protections to a broader class of people
- expanding the types of disclosures that will be protected under the framework
- imposing new and stringent obligations to maintain the confidentiality of a whistleblower's identity
- making it significantly easier for a whistleblower to bring a claim for compensation where he or she has been victimised and
- requiring all large companies to have a whistleblower policy in place, with penalties for failing to do so.

The Bill proposes a definition of 'whistleblower regulated entity' that specifically includes a superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993* ("SIS Act"), or the trustee of such an entity.

The types of whistleblower disclosures that may qualify for protection under the regime include disclosures where the discloser has reasonable grounds to suspect that the information:

- concerns misconduct, or an improper state of affairs or circumstances, in relation to a whistleblower regulated entity and
- indicates conduct that constitutes a contravention of, or an offence against, a list of legislation including the SIS Act (and instruments made under that Act).

The proposed new whistleblower protections in the taxation law are broadly consistent with the enhanced protections under the Corporations Act, and will facilitate disclosures about tax misconduct being made directly to the Australian Taxation Office ("ATO").

Submissions to Treasury closed on 3 November.

KPMG comments

Whilst whistleblowing reform across Australia is welcome, Funds will need to consider the impact the proposed consolidated Corporations Act changes and the new tax whistleblower protection regime may have on existing whistleblower reporting protocols.

KPMG's FairCall whistleblower hotline service can provide assistance in assessing existing whistleblower procedures against the proposed new rules.

References

Treasury | Exposure draft

KPMG | KPMG FairCall

2. A new era of taxpayer compliance

Overview

Previously, the ATO would select taxpayers to audit based on perceived risks, moderated by its risk differentiation framework and as announced in its annual compliance program.

However, in recent years there has been an increasing shift towards real time compliance and achieving greater tax certainty in Australia, commencing with measures such as annual compliance arrangements, pre-lodgment compliance reviews, and the reportable tax position schedule.

Areas that have been identified as recurring areas of focus for the ATO are international profit shifting, cross-border tax avoidance and ensuring companies have good corporate governance and tax risk management. The ATO is seeking to 'sustainably' reduce the $2.5 billion net income tax gap for large companies through key initiatives, including:

- legislative measures like the Multinational Anti-Avoidance Law and Diverted Profits Tax and encouraging taxpayers to engage early on tax issues
- Justified Trust reviews and annual top 100 reviews to ensure full compliance or action on non-compliance
- Publishing Law Companion Guidelines, Practical Compliance Guidelines and Taxpayer Alerts where the ATO view is provided on critical issues, so that taxpayers are informed about the level of potential risk attached to a tax position
- offering taxpayers the opportunity to engage with the ATO prior to a transaction in order to obtain real time certainty and
- looking to settle prior year disputes with an agreement to 'lock in' treatment for future years.

To the extent disputes occur, the ATO continues to welcome alternative dispute resolution and settlement as potential pathways to resolution.

This new approach flags the end of the audit era, with the ATO announcing in its Tax and Corporate Australia publication that it is not attempting to audit away the tax gap. Instead, to reduce the gap, the ATO is seeking to "head off non-compliance before it occurs".

KPMG comments

These key initiatives represent a significant shift in the way the ATO administers tax and places the burden of proof on the taxpayer. Despite this being a relatively new approach for the ATO, taxpayers can still expect significant and extensive reviews of taxation positions, particularly where there is a difference in opinion on critical tax issues.

KPMG is on hand to assist with ATO reviews and engagement, as well as the development/refinement of a robust tax governance and control framework that meets ATO expectations.

References

KPMG Insights | 18 October 2017

3. Super Bills face possible Senate hurdles

Three important Bills affecting superannuation funds are now before the Senate.

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017* passed the House of Representatives without amendment. Its measures include changes affecting Superannuation Guarantee, as follows:

- employers will be prevented from using an employee's salary sacrifice contributions to reduce the employer's own minimum 9.5% super guarantee ("SG") contributions and
- the extension of choice of super fund to employees covered by new enterprise agreements and workplace determinations made on or after 1 July 2018.

Labor Senators recommended that the Bill be amended in the Senate so as to:

- ensure there are no impediments to collective bargaining that would lift superannuation arrangements beyond the community standard and
- ensure that sufficient safeguards exist when workers exercise choice of fund.

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017* was introduced to the Senate on 14 October 2017, and referred to the Senate Economics Legislation Committee.

This Bill includes measures to:

i. amend the SIS Act to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually

ii. give 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 and

iii. 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 members.

The *Strengthening Trustee Arrangements) Bill 2017* was introduced to the Senate on the same day, and also referred to the Senate Economics Legislation Committee.

This Bill proposes to require all trustees of registrable superannuation entities to have a minimum of one-third independent directors on their trustee board, and an independent Chair. The amendments would replace the existing equal representation rules.

The Senate Committee report has recommended that the Senate pass both Bills.

However, in a dissenting report, Labor Senators recommended that both be opposed.

Given the composition of the present Senate, and that some of the minor parties and independents have not yet stated their positions, the passage of any or all of the three bills remains in doubt.

References

Parliament of Australia | Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017

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

Parliament of Australia | Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

4. Other superannuation matters

Superannuation Complaints Tribunal Annual Report

The report for 2016-17 has been released and during the 2016-17 year, the number of complaints and complex enquiries received by the Tribunal increased by 17 percent on the 2015-16 year. The total number of complaints and complex enquiries received by the Tribunal was 3,151 (2,138 complaints and 1,013 complex enquiries). However, the Tribunal kept the overall increase in open complaints to less than 100, bringing the total of open complaints to 1,621 as at 30 June 2017.

Superannuation Complaints Tribunal | Report

Practitioner lodgment service

The ATO is reminding tax agents that from 11 November 2017, SMSF annual returns, trust tax returns and fund income tax returns can only be lodged through the practitioner lodgment service ("PLS"). The PLS is the ATO's main electronic lodgment channel for tax practitioners and is gradually replacing the ELS.

From 1 February 2018, company tax returns can only be lodged through the PLS, while individual tax returns can only be lodged through PLS from 1 April 2018.

The ATO says that all other forms, services and reports will be progressively removed from the ELS based on its discussions with software providers. These include activity statements, client lists and client updates. The ATO says it will let tax agents know when it plans to remove any other services.

ATO | Practitioner lodgment service

2017-18 Budget measures

On 18 October 2017, the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Bill 2017* and the *First Home Super Saver Tax Bill 2017* passed the House of Representatives and now move on to the Senate for consideration.

By way of background, the Bills were introduced on 7 September 2017, and propose to:

- establish 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 and
- 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.

Parliament of Australia | Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Bill 2017

Parliament of Australia | First Home Super Saver Tax Bill 2017

Collective investment vehicles

Australia's ability to attract foreign investment has for many years been sub-optimal due to the reluctance of certain overseas investors to put their money into trust structures. The corporate collective investment vehicle regime would create an alternative for Australian investment outside of traditional trust structures. This has the potential to improve the international competitiveness of Australian fund managers, and to simplify some inbound Australian investment structures. Exposure draft legislation was released in late August 2017 for public comment.

KPMG Insights | 25 October 2017

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