



Super Tax News

As at 30 June 2016



Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements made as at 30 June 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*.

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1. Treasury Report on Retirement Income Streams Review

Recent developments

On 3 May 2016, as part of the Federal Budget 2016 announcement, Treasury released a report titled *Retirement Income Streams Review*. This report has seven recommendations which include, inter alia:

- the Australian Government Actuary should be asked to undertake a review of the annual minimum drawdown rates every five years and advise the Government to ensure that they remain appropriate in light of any increases in life expectancy.
- an additional set of income stream rules should be developed which would allow lifetime products to qualify for the earnings tax exemption provided they meet a declining capital access schedule.
- Self-Managed Superannuation Funds (SMSFs) and small Australian Prudential Regulatory Authority (APRA) funds should not be eligible to offer income stream products in the new category.

By way of background, a discussion paper was released in 2013 to review the regulatory barriers restructuring the availability of relevant and appropriate income stream products and the minimum annual drawdown amounts for account based superannuation income streams.

KPMG comments

The existing regulatory framework for superannuation income streams is an impediment to the development of products that could provide better longevity risk management. The key regulatory impediments are:

- the requirement to pay an amount of income each year. This prohibits products that defer income until a particular time. Deferred annuities currently attract tax on earnings at 15 percent, not 0 percent; and
- the requirement for non-account based products to provide payments that do not vary from year to year other than to increase in line with the same percentage factor, movements in consumer price index (CPI) or average wages.

References

[Retirement Income Streams Review Report](#)

2. Attributed Managed Investment Trust Reform

Recent developments

The much anticipated Attribution Managed Investment Trust (AMIT) Bills were passed by the Senate on 4 May 2016, and received Royal Assent on 5 May 2016. The new Bill incorporates the measures as discussed in Item 5 of the KPMG *March 2016 Superannuation Tax News* titled "Committee report on managed investment trusts bill."

Additionally, the new Managed Investment Trust Regime removes the law that imposes public trading trust rules in trading trusts which have at least 20 percent ownership held by superannuation funds.

On 2 June 2016, the Australian Securities and Investments Commission (ASIC) announced it had made changes that allow responsible entities of registered schemes to change to their constitutions without automatically holding a members' meeting.

On 22 June 2016, the Australian Taxation Office (ATO) released the *Practical Compliance Guide (PCG) 2016/9: Attribution Managed Investment Trusts (AMIT): clearly defined rights on transition to the AMIT regime in 2017*.

This Guideline applies to the income year commencing 1 July 2016.

KPMG comments

It will be important to consider:

- the advantages and disadvantages to each MIT electing to become an AMIT, and the timing of the election i.e. whether the election should be made in respect of the year commencing 1 July 2016
- amendments to Trust Deeds and other constituent documents (including the MITs distribution policy)
- System issues – what changes are required to your IT environment, processes and interaction with custodian(s)?
- whether the amendments change the status of the unit trusts i.e. will some unit trusts cease to be public trading trusts or will some unit trusts potentially become a MIT on a retrospective basis?
- what product opportunities and issues arise, including the on-going treatment of any multi-class unit trusts
- whether it is expected that any material gains may be released in the short term. If so, how will the AMIT regime impact the distribution to be declared?
- will trusts you invest in adopt the AMIT regime and from when?
- project timetable: draft timetable and business case and set work streams and milestones
- impact on overall governance framework – consider on-going impact on drafting of trust deeds, distribution policies, compliance plans, PDS, service level agreements and consider approaches to managing future commercial and tax risks
- communications and training strategy for key internal and external stakeholder groups. In particular, educating senior management and investment committee regarding the AMIT regime.

References

[Tax Laws Amendment \(New Tax System for Management Investment Trusts\) Act 2016](#)

[ASIC announcement](#)

[Practical Compliance Guide \(PCG\) 2016/9](#)

3. Source: Addendum to TR 2014/7 and PCG 2016/6

Recent developments

The release of the latest addendum to Taxation Ruling TR 2014/7 on 16 March 2016 effectively reinstates (retrospectively) most of the original drafting around the determination of the source of a currency hedging contract for the purpose of applying the foreign income tax offset (FITO) limit in Division 770 (which was previously withdrawn by the Australian Taxation Office (ATO) for reconsideration in June 2015).

The ATO considers that the activity which is most important in producing the currency hedging gain is the entering into and the conclusion of the contract itself. Therefore, the place where each currency hedging contract is formed is the most important element in determining the source of any resulting gain.

The Ruling further concludes that a currency hedging contract is considered to be formed (and therefore sourced) where the communication of the acceptance is received. However, what was clear from the consultation process, is that the place where communication of acceptance is received can be different depending on the method of trade (i.e. phone, email, online platform, etc.)

Subsequently, the ATO issued Practical Compliance Guidance PCG 2016/6 on 15 April 2016 setting out the ATO's compliance approach to working out source to provide practical certainty that taxpayers are acting in accordance with the ATO's view of the law as expressed in the addendum to TR 2014/7. The PCG provides guidance on the ATO's view of communication of acceptance of the offer.

In PCG 2016/6, the ATO expressly rejects a number of indicia of source as not demonstrating compliance with the ATO's views. These include:

- where the Master ISDA is formed
- where any payment is required to be made or received
- the location of underlying assets

- where decisions are made regarding setting up and managing the hedging strategy
- an office specified in a confirmation, SWIFT message or similar.

KPMG comments

Whilst the Ruling deals specifically with the issue of source of currency hedging contracts for the purpose of determining the FITO limit in Division 770, the rules around the determination of source for these purposes are no different to the determination of source for any other purpose.

Putting to one side the resulting practical difficulties for superannuation funds and other investment vehicles (and their custodians and hedge managers) in extracting the transaction level data sufficient to confirm place of acceptance, of equal concern are the broader implications of the view expressed in the Ruling. For example, the fact that the ruling is also relevant to managed funds in the context of determining their overall net foreign income position. Also, the potential extension of the principles around the determination of source to other derivative contracts or financial arrangements more broadly.

Adopting a prescriptive view on source which is dependent on one factor, rather than a relative weighting of all relevant factors, inherently results in unintended outcomes and the potential for manipulation. However, given that the effect of the addendum is to essentially reinstate the original drafting of the ruling, we are left to embrace the guidance that we now have and hope that the Commissioner will not seek to broaden its application.

References

[TR 2014/7A](#)

[PCG 2016/6](#)

4. The Politics of Superannuation

Recent developments

In the current uncertain political landscape surrounding Australian politics it is worth noting the policies of the major political parties and recent announcements with respect to superannuation.

As announced in this year's budget, the Coalition proposed to redefine the objective of superannuation. The lynchpin of the Coalitions proposed changes were to limit the tax-free treatment of superannuation on balances in retirement to the first \$1.6 million. However, the Coalition's proposed lifetime cap of \$500,000 on non-concessional contributions has been the most controversial proposal. Transitional relief for Self-Managed Superannuation Funds in relation to this measure was recently announced by the Coalition.

On 26 June 2016, the Shadow Treasurer, Chris Bowen, and the Shadow Minister for Financial Services, Jim Chalmers, announced that, if elected, an Australian Labor Party (ALP) government would conduct a review of the current government's proposed changes to superannuation, contained in the 2016 Federal Budget.

In the announcement, the ALP implied that the Coalition's policy on superannuation was rushed and has resulted in diminished confidence in the system.

On 1 June 2016, the Australian Greens issued a media release announcing they would save \$11 billion over the next four years by reducing unsustainable superannuation tax concessions, while supporting low income earners to save for their retirement.

The Greens' policy would make the superannuation tax system more progressive by more closely aligning it with the income tax system. The Greens proposal is for progressive tax rates on superannuation contributions, with a government co-contribution for individuals below the tax-free threshold (\$18,200) of 15 cents for each dollar of concessional superannuation contributions.

KPMG comments

As none of the major political parties enjoy a clear majority in parliament, there is currently substantial uncertainty relating to what changes will definitively be made to the superannuation industry.

This is particularly so given that much of the Coalition's changes are due to start on 1 July 2017, which will require many hurdles to be cleared if they are to be successfully implemented.

It will be important to watch the negotiations had between the major political parties over the coming months to determine the likely impact to superannuation.

References

[Coalition budget](#)

[Coalition transitional relief announcement](#)

[ALP announcement](#)

[Greens media release](#)

5. OECD Amendments to Transfer Pricing Guidelines and International Tax

Recent developments

On 15 June 2016, the Organisation for Economic Co-operation and Development (OECD) announced that the OECD Council approved amendments to the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, as set out in the reports on Base Erosion and Profit Shifting (BEPS) Actions 8-10, *Aligning Transfer Pricing Outcomes with Value Creation*, and BEPS Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, which were released in 2015.

The amendments incorporate the BEPS transfer pricing measures into the Transfer Pricing Guidelines, as well as into the *Recommendation of the Council on the Determination of Transfer Pricing Between Associated Enterprises*.

Additionally, on 29 June 2016 the OECD released a new report with respect to the implementation of BEPS Action 13: *Guidance on the Implementation of Country-by-Country (CbC) Reporting*.

The guidance includes:

- Transitional filing options for Multinational Enterprises (MNEs) that voluntarily file in the Parent jurisdiction;
- Guidance on the application of CbC reporting to investment funds;
- Guidance on the application of CbC reporting to partnerships; and
- The impact of exchange rate fluctuations on the agreed EUR 750 million filing threshold for MNE groups.

KPMG comments

The new amendments, provide clarity and legal certainty with respect to the status of the BEPS changes to the Transfer Pricing Guidelines, and are the same amendments endorsed by the G20 Finance Ministers and the G20 Leaders in October and November of 2015 of which Australia was a part of.

Regarding the guidance with respect to the application of CbC reporting for investment funds: this guidance recognises that if the accounting rules do not require an investment entity to consolidate investee entities then these investee entities should not be considered Constituent Entities of the MNE Group. This is particularly helpful clarification for Australian Superannuation Funds.

References

[Amendments to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations](#)

6. Other Superannuation Matters

ASFA submission on OECD discussion paper on pension funds

On 1 April 2016, the Association of Superannuation Funds of Australia (ASFA) lodged a submission to the Tax Treaties – Transfer Pricing and Financial Transaction Division of the Organisation for Economic Co-Operation and Development (OECD) on its discussion draft on the treaty residence of pension funds.

[Submission](#)

ATO notices for Division 293 to be issued

On 18 May 2016, the Australian Taxation Office (ATO) advised that notices of assessment regarding Division 293 tax liabilities will soon be issued. Deferred debt amounts are assessed on taxpayers' defined benefit contributions. The amount of defined benefit contributions represents the annual increase in a defined benefit superannuation account.

[Media Release](#)

ASIC update on Stronger Super regime

On 4 May 2016, the Australian Securities and Investments Commission (ASIC) provided an update regarding the aspects of the Stronger Super regime which are aimed at providing the superannuation industry with the start dates for key superannuation reform.

ASIC has advised that the start date for portfolio holdings disclosure reporting and choice product dashboard requirements has been deferred until 30 June 2017 in order for the *Superannuation Legislation Amendment (Transparency Measures) Bill 2016* to pass.

The start date for certain disclosure requirements under section 29QB of the *Superannuation Industry (Supervision) Act 1993* regarding standard employer-sponsored sub-plans has been deferred until 1 July 2017.

[Media Release](#)

ATO deadline extended for review of LRBAs

On 6 April, the ATO released PCG 2016/5: Income tax: arm's length terms for Limited Recourse Borrowing Arrangements established by self-managed superannuation funds (SMSFs).

When a SMSF acquires an asset under a Limited Recourse Borrowing Arrangement (LRBA), the non-arm's length income (NALI) provisions in section 295-550 of the *Income Tax Assessment Act 1997* may apply to ordinary or statutory income generated from the asset if the terms of the LRBA are not consistent with an arm's length dealing.

The Guideline sets out the 'Safe Harbour' terms on which SMSF trustees may structure their LRBAs consistent with an arm's length dealing. That is, for income tax compliance purposes, the Commissioner accepts that an LRBA structured in accordance with this Guideline is consistent with an arm's length dealing and that the NALI provisions do not apply purely because of the terms of the borrowing arrangement.

On 30 May 2016, the Australian Taxation Office (ATO) announced that it will allow self-managed superannuation funds (SMSF) trustees additional time to ensure that any limited recourse borrowing arrangements (LRBAs) are on terms consistent with an arm's length dealing, or are brought to an end. Payments of principal and interest for the year ended 30 June 2016 must be made under LRBA terms consistent with an arm's length dealing by 31 January 2017.

[Media Release](#)

Financial System Regulation and Treasury Amendment Regulation

On 5 May 2016, the Governor-General, Peter Cosgrove, made the *Financial System Legislation Amendment (Resilience and Collateral Protection) Regulation 2016*.

The regulation amends the *Superannuation Industry (Supervision) Regulations 1994*, the *Life Insurance Regulations 1995*, and the *Payment Systems and Netting Regulations 2001* to facilitate access to derivatives for superannuation funds and life insurance companies, and also to update the list of approved bodies (being domestic and foreign exchanges and clearing houses) to whom trustees of Superannuation Funds and life companies may grant securities.

[Regulation](#)

Treasury Amendment Regulation and Tax and Super Regulation Released

On 5 May, the Governor-General, Peter Cosgrove, made the *Treasury Laws Amendment (2016 Measures No 2) Regulation 2016*.

The Regulation removes redundant references to the Community Development Employment Projects (CDEP) Scheme from the *Retirement Savings Accounts Regulation 1997*, the *Superannuation Guarantee (Administration) Regulations 1993* and the *Superannuation Industry (Supervision) Regulations 1994*. It also amends various schedules including the transfer of superannuation benefits from eligible rollover funds, superannuation measures, and exemption for Defence operations.

[Regulation](#)

APRA Deputy discusses governance and culture in superannuation

On 5 April 2016, the Australian Prudential Regulation Authority (APRA) Deputy Chairman, Helen Rowell, delivered a speech at the Australian Financial Review (AFR) Banking and Wealth Summit held in Sydney on the governance and culture in superannuation.

Ms Rowell highlighted in her speech that:

- sound governance requires rigorous decision-making and oversight processes to be well-founded;
- APRA will be following-up on a 2014 review of conflict management by reviewing practices in relation to the management and oversight of different types of related party arrangements; and
- there needs to be a far greater transparency about the underlying costs associated with running a superannuation fund

[Speech](#)

Industry Super Australia highlights gender gaps in savings

On 5 April 2016, Industry Super Australia issued a media release highlighting the gender gap in retirement savings. The analysis of Australian Taxation Office (ATO) data showed that the gender gap is largest for women working part time in the bottom two brackets.

Industry Super Australia also released a research note, entitled *Missing the Mark*, which analyses ATO Taxation Statistics superannuation data for 2013-14. The analysis argues that the current superannuation tax incentives are mis-allocated, disproportionately benefiting high income earners and men, and exacerbating gender differences in superannuation savings and retirement outcomes. The ATO data shows there are almost 40 percent more females than males in the bottom tax brackets.

[Media Release | Report](#)

ASIC Corporations regulations registered

On 16 May 2016, the *ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378* was registered, and was released on 30 May 2016. This instrument combines the following class orders which are due to expire ('sunset'):

- *Class Order [CO 02/1161]* Licensing relief (dealing) for public offer superannuation entities, which is due to sunset on 1 April 2017
- *Class Order [CO 02/1073]* Financial Services Guide: Dealing in underlying investments by responsible entities, which is due to sunset on 1 April 2017
- *Class Order [CO 02/1074]* Financial Services Guide: Dealing in underlying investments by superannuation trustees, which is due to sunset on 1 April 2017.

It continues with minor and technical changes in relation to various Chapter 7 requirements of the *Corporations Act 2001* that apply to underlying investments in a superannuation fund is combined into one instrument.

[Instrument](#)

ATO interim guidance on unit trust distributions statements

On 8 June 2016, the Australian Taxation Office (ATO) released interim guidance on the application of s 104-71(4) table item 7 in determining the tax deferred and capital gains tax (CGT) concession components of unit trust distributions. This is particularly relevant for trustees completing 2016 distribution statements for unit trusts.

The ATO guidance sets out information concerning its proposed application of the law to distributions of capital gains offset by trust losses. This is designed to help trustees to consider their approach under self-assessment principles for income years ending on or after 30 June 2016 in respect of unit trust interests.

[Guidance](#)

ASFA submissions to the Productivity Commission

The Association of Superannuation Funds of Australia (ASFA) has made a submission and a supplementary submission to the Productivity Commission with respect to the Productivity Commission's issues paper on Superannuation Efficiency and Competitiveness.

The ASFA has advocated for a balanced scorecard approach in assessing efficiency that examines the outputs/benefits delivered as well as the inputs/cost and has advocated that a single indicator approach would not be feasible to measure operational efficiency.

The commissioned study was to develop criteria to assess the efficiency and competitiveness of Australia's superannuation system.

[Submissions](#)



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