



Super Tax News

28 February 2018



Overview

The purpose of this communication is to provide you with a summary of significant superannuation tax news and announcements during February 2018.

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. Merging super funds tax rollover relief extension and other super related amendments

Overview

The Government introduced *Treasury Laws Amendment (2018 Measures No. 1) Bill 2018* to Parliament on 7 February 2018.

The proposed Bill includes a number of super related amendments as follows:

- Extension of the existing tax rollover relief available to merging super funds from 1 July 2017 to 1 July 2020. The extension would apply retrospectively to mergers that occurred after the previous sunset date of 1 July 2017
- Transfer of the regulatory role for the early release of superannuation benefits on compassionate grounds, from the Chief Executive Medicare to the Commissioner of Taxation. In support of this change, the Government also released exposure draft regulations to reflect this change
- Enable the Government to recover the ongoing cost of the governance of the superannuation transaction network from the superannuation supervisory levy, for financial years starting on and after 1 July 2018
- Allow the Commissioner of Taxation to pay certain superannuation amounts directly to individuals with a terminal medical condition. At present, these amounts must first be transferred to an account with a complying superannuation fund before being paid to the individual.

KPMG comments

While the extension of the rollover relief to merging super funds is welcomed by the industry, the Government is urged to consider making this relief permanent.

Given the current focus on the efficiency and competitiveness of the superannuation industry by the Government and other superannuation related bodies, permanent rollover relief will ensure that tax does not act as an impediment to future mergers.

Please contact us if you need any assistance with understanding how the amendments may affect you.

References

Parliament of Australia | [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#)

2. Taxpayer Alert TA 2018/1 – Shares acquired on a limited risk basis around ex-dividend dates

Overview

The ATO released Taxpayer Alert TA 2018/1 on 13 February 2018, in relation to the review of arrangements that are intended to provide imputation benefits to Australian taxpayers who are not the true economic owners of the shares.

The arrangements involve an Australian taxpayer with a long position in Australian shares, legally acquiring an additional parcel of the same shares, but having little or no economic exposure to associated risks. These types of arrangements typically involve the use of securities lending arrangements in combination with purchase agreements or derivative contracts, to create a circular flow of shares. The Australian taxpayer then claims franking credits on both the long position and additional parcel of shares.

The ATO's main concern with such arrangements is that taxpayers would be claiming imputation benefits to which they are not entitled to under the law. In particular, the alert refers to the objects of the qualified person rules referred to under section 207-145(1)(a) of the *Income Tax Assessment Act 1997*, that the benefits of imputations should only be available to the true economic owners of shares and only to the extent they are able to use the franking credits themselves.

The ATO states that it is currently reviewing these types of arrangements and engaging with taxpayers who have entered into or are considering entering in such arrangements. This compliance activity will continue, while the ATO develops a technical position on the arrangements.

KPMG comments

It is possible that funds' Australian equity investment managers may have engaged in arrangements captured under TA2018/1 without the funds themselves being aware that this is the case.

We have designed a short series of questions that should enable funds to assess (at high level) the risk that this may be the case, and subject to the level of risk assessed, guide funds on the questions that they may then put to their investment managers..

Should you wish to assess this level of risk for your fund's specific circumstances, please contact us.

References

Australian Taxation Office | [Taxpayer Alert TA 2018/1](#)

3. ATO focus areas for superannuation fund tax

Key areas of focus

At the recent Financial Services Taxation Conference, hosted by The Tax Institute, Jeremy Hirschhorn, the Deputy Commissioner Public Groups, Australian Taxation Office (ATO), addressed the conference in relation to the ATO's approach to significant financial services tax issues.

As part of this presentation, Jeremy outlined the four key areas of focus in relation to superannuation funds, namely:

- propagation (and de-propagation), in particular the application of PCG 2017/D16
- data integrity from underlying investment systems
- increased non-portfolio offshore investments
- accelerating shift of assets to pension phase

In relation to the first and fourth issues, the ATO's concern is primarily with respect to the integrity of the various tax parcel selection methodologies applied by the funds.

The second issue, in relation to data integrity, has been on the ATO's radar for some time now in the context of tax risk management and the need to demonstrate appropriate controls and processes, particularly for Key Taxpayer Engagement (KTE) taxpayers, and will no doubt receive a greater level of scrutiny as part of the upcoming "Justified Trust" reviews.

The focus on the tax treatment of non-portfolio investments is unsurprising given the increase in non-portfolio investments by the larger funds. The focus here is really on the correct tax characterisation of both the offshore investment vehicles and the investment returns (examples include the treatment of Corporate Limited Partnerships under TR 2017/D4 and Foreign Trusts under TD 2017/23 and TD 2017/24). It also dovetails neatly into the second issue in relation to data integrity, with a growing expectation for funds to understand the tax consequences of the underlying investment and not just rely on the custodian reporting.

KPMG is working closely with our clients on these ATO areas of focus.

Other ATO updates

ATO super team restructure

We have been advised that there has been a restructure at the ATO recently impacting our superannuation clients. Effectively, the "superannuation cell" team at Box Hill is in the

process of being disbanded with some of our key superannuation contacts / case offices moving to other areas of the business. Sven Kabel, Andrew Grace and Tanya Peters, who deal with super fund tax issues, have been transferred to a new "superannuation strategy team". This team will report to Rob Thompson in LB & I in Parramatta. Chris Thomson is now full time in TCN (but is still a good contact for member tax issues).

Status of Key Taxpayer Engagement (KTE)

The ATO is currently in the process of sending out letters noting which super fund taxpayers will continue to be "Key Taxpayers" and therefore subject to the additional regulatory reporting by the ATO as part of the ATO's KTE product. Those taxpayers who have moved off KTE status will also be receiving letters from the ATO in due course noting this change.

ATO Justified Trust reviews

The ATO's Justified Trust initiative will be expanded to the Top 1000 taxpayers in Australia. The ATO expects that super funds caught by the Top 1000 reviews will be required to complete a "Tax Assurance Report (TAR) template" which lists questions (and information) for superannuation funds to answer and provide. The answers and information provided will assist the ATO with the publication of the taxpayer's TAR at the completion of the reviews.

ATO FITO Project

After having devoted significant resources to this issue over the last few years, we have been advised that the ATO's "FX hedging / FITO project" has been wound up and subject to the ATO finalising some outstanding cases with particular clients, this ATO focus area should be expected to drop off the radar in the coming months.

ASFA FITO submission

On 31 July 2017, a submission was made by ASFA (principally written by KPMG) to the ATO's Tax Council Network to discuss five industry issues concerning Australian super funds' entitlements to foreign income tax offsets (FITOs). The ATO has noted that Issue One, which deals primarily with the issue of whether "capital gains" have a "source" at law is currently still being considered by the ATO and as such, there is no development at this stage on their position. The ATO drafted a preliminary response letter issued on 20 December 2017 dealing with the four other issues addressed in the original ASFA submission. We are currently in the process of finalising a response to the ATO.

4. Other superannuation matters

Asia Region Funds Passport – consultation extended

The Government has announced that it will be seeking further public comment on revisions to draft legislation for the Asia Region Funds Passport. The Minister for Revenue and Financial Services has announced that while the revisions are minor, they are important to ensure Australian consumers are protected. In particular, they extend the penalty notices regime and consumer protections measures in the Corporations Act and the ASIC Act to notified foreign passport funds and address the administrative processes for deregistration and removal of passport funds.

Submissions closed on 5 March 2018.

Treasury | [Asia Region Funds Passport 2018 - Overview](#)

Minister for Revenue and Financial Services | [Further consultation on revised Asia Region Funds Passport legislation](#)

Draft legislation – transfer of Transition to Retirement Income Streams (“TRIS”) to death dependents

The Government has released exposure draft legislation to ensure that a reversionary TRIS will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient. At present, a reversionary TRIS requires that the dependant beneficiary satisfies a condition of release before the benefits are paid from the interest, otherwise the TRIS will cease.

The draft legislation proposes to modify the rules to ensure that reversionary TRIS can be paid to the dependant beneficiary rather than having to be commuted and a new income stream started from the deceased member’s underlying superannuation interests. This change is expected to simplify the administrative processes for funds and to ensure recently bereaved beneficiaries are not required to engage with their superannuation quickly.

The consultation process has now been closed.

Treasury | [Reversionary Transition to Retirement Income Streams](#)

ATO Law Companion Guidelines: name changed to Law Companion Rulings

The ATO has changed the name of its Law Companion Guidelines to Law Companion Rulings, with effect from 19 February 2018. To formalise the change of name, the ATO issued addenda notices on 19 February 2018, including an amendment to Taxation Ruling TR 2006/10 (Public rulings).

ATO | [Public Advice and Guidance Issue List](#)

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