



TapIn SMSF Roundup

October 2011

This publication provides a dedicated snapshot summary of legislation and other technical developments relevant to financial planners and advisers providing advice to clients in relation to Self Managed Superannuation Funds (SMSFs).

Issue Date	Topic	Summary
13/10/2011	ATO: SMSF Newsletter (Edition 19)	<p>In this edition of the ATO's SMSF Newsletter, we are reminded that generally, SMSFs cannot lend money of the fund nor provide financial assistance, to a member of the fund or a member's relative. However, an SMSF could potentially lend money to another entity.</p> <p>If an SMSF does lend money to another entity (including a related entity) the fund trustees must ensure that the provision of the loan is in the best interest of the fund.</p> <p>Additional guidance provided by the ATO tells us that fund trustees should:</p> <ul style="list-style-type: none">• write an appropriate loan agreement and have it signed by all the parties involved,• ensure the loan agreement specifies all the terms of the loan, such as what the security for the loan is, the repayment period, when repayments will be paid, the amount of the repayments, and the interest rate,• ensure the interest and repayments are received by the fund according to the loan agreement,• take appropriate action to protect the fund's investment if the loan agreement is not followed,• ensure the loan is sensible and does not put the members' benefits at risk,• ensure that the conditions of the loan agreement do not provide the borrower with favourable terms. <p>In relation to funds paying superannuation income streams, the ATO also reminds us that:</p> <ul style="list-style-type: none">• The recent draft tax ruling TR 2011/D3 (which considers when a superannuation income stream commences and ceases), merely provides clarification of the ATO's longstanding views,• SMSFs should use market value for valuation purposes – including for the purposes of determining the purchase price of a super income stream and when producing financial statements for the fund,

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- Failure to have assets valued prior to the commencement of a superannuation income stream may result in the fund's exempt current pension income (ECPI) claim being denied,
- Where a fund adopts the unsegregated method for determining ECPI and requires an actuarial certificate, the actuarial certificate must be obtained before the fund lodges its annual income tax return.

11/10/2011	"Own Occupation" TPD Deductibility	<p>Regulations specifying a statutory percentage of TPD insurance premiums that will be tax deductible to a superannuation fund have now been finalised. The use of these statutory percentages remains optional for fund trustees and applies from 1 July 2011 onwards.</p> <p>The amount of TPD insurance premium available as a tax deductible to a superannuation fund can be broadly summarised as follows:</p> <ul style="list-style-type: none">• Any occupation: 100%• Own occupation: 67%• Own occupation (bundled with death cover): 80% <p>It should be noted that each of the above percentages will also apply where the policy includes activities of daily living, cognitive loss, and/or loss-of-limb.</p>
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21/09/2011	Stronger Super announcements	<p>The Government announced its decisions in relation to a number of key aspects of the Stronger Super reforms. Of particular relevance to the SMSF sector, the Government has announced that it will:</p> <ul style="list-style-type: none">• Introduce independence requirements for SMSF auditors; and• Introduce a requirement that all related party transactions be conducted through a market, where one exists. This will mean, for example, that in specie transfers of listed shares will no longer be able to be done "off-market". <p>On the other hand, where a market does not exist, for example when dealing with in specie transfers of property, a valuation from a suitably qualified independent valuer will be required.</p> <p>The aim of this measure is to curtail the manipulation of transaction dates and asset values designed to achieve more favourable outcomes.</p> <p>Also contained within these broader announcements, the Government has expressed its concern in relation to superannuation funds holding insurance cover for members that may not be released to them when an insurance payment is made, for example own-occupation TPD and trauma.</p> <p>As such, the Government will be seeking to align insurance definitions with the conditions of release. This measure is likely to impact on an SMSF's ability to offer these types of insurance cover to members.</p>
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14/09/2011	Limited Recourse Borrowing Arrangements	<p>The ATO has issued a draft ruling, SMSFR 2011/D1 outlining its views on the application of key concepts relating to Limited Recourse Borrowing Arrangements.</p> <p>The key issues addressed in this draft ruling include:</p> <ul style="list-style-type: none">• What is an acquirable asset and a single acquirable asset,• What is considered "maintaining" or "repairing" the acquirable asset distinguished from "improving" it; and• When a single acquirable asset is changed to such an extent that it becomes a different asset.
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Whilst this draft ruling provides greater clarity and flexibility, it must be noted that this ruling is still in draft form and is subject to industry consultation. Submissions on this draft ruling close on 28 October 2011.

Further details are available in TapIn Flash 2011/13 and the TapIn Guide to SMSF Borrowings (which, at the time of writing, was being updated).

08/09/2011	APRA Statistics	<p>The Australian Prudential Regulation Authority (APRA) released its Quarterly Superannuation Performance statistics for June 2011.</p> <p>The report highlights show that over the 12 months to June 2011, total estimated superannuation assets increased by 10.9% and stood at \$1.34 trillion.</p> <p>At the end of June 2011, SMSFs still held the largest proportion of superannuation assets accounting for 31.2% of total assets, followed by retail funds with 27.5%.</p> <p>Industry funds accounted for 18.6%, public sector funds 15.1% and corporate funds 4.5%. Small APRA funds held 0.1% of total assets.</p>
07/09/2011	Allen's Ashphalt Case – Special Income	<p>This case broadly revolves around the assessment of a trust distribution, received by an SMSF, as “special income” of the SMSF.</p> <p>By way of background, income received by an SMSF may broadly be treated as non-arm's length income (formally special income) if:</p> <ul style="list-style-type: none">• The fund does not hold a fixed entitlement to the income (e.g. a distribution from a discretionary trust); or• The income is derived as a result of a scheme where the parties were not dealing with each other at arm's length. <p>In this particular case, an amount of \$2.5 Million was first distributed from a non-fixed trust into a fixed trust. Then, as the SMSF in question had a fixed entitlement to 100% of the income in this fixed trust, this amount was subsequently distributed to the SMSF.</p> <p>The Full Federal Court has upheld the ATO's earlier decision, finding that the \$2.5 Million distribution received by the SMSF – via the interposed unit trust – was “special income” of the fund and as such would be subject to tax at the highest personal tax rate instead of the usual 15% tax rate.</p> <p>The Full Federal Court determined that the steps involved in distributing the income from a non-fixed trust to a fixed trust, and then to the SMSF could be seen as an arrangement which involved non-arm's length dealings stating that</p> <p>“...the Super Fund acquired the fixed entitlement to income and subsequently derived the income under an arrangement, where some or all of the parties were not dealing with each other at arm's length.”</p> <p>The trustee of the fund has appealed to the High Court against the decision made by the Full Federal Court.</p>
24/08/2011	ATO SMSF Statistical Report	<p>Based on information extracted on 12 July 2011, it is estimated that during the March 2011 quarter 7,269 new SMSFs were established (down from 10,020 in the previous quarter). Also, 183 SMSFs were wound up (up from 163 in the previous quarter).</p> <p>This net increase takes the total number of SMSFs (in the March quarter) to 449,070 comprising 854,596 members. The June 2011 estimates indicate that there are 456,472 SMSFs in existence.</p>

04/08/2011	ATO NTLG: Superannuation technical group minutes – 7 June 2011	<p>Some of the key discussion points covered in the June 2011 meeting of this working group included:</p> <ul style="list-style-type: none"> • Where an asset is held as tenants in common with an SMSF, the ATO has provided an initial (and not a concluded) view that a charge provided by a co-owner over the non-SMSF interest in that asset would not result in a breach of regulation 13.14 – which prohibits an SMSF from giving a charge over an asset of the fund. <p>Notwithstanding this, The ATO highlighted that this type of arrangement can still result in significant consequences for the SMSF. In addition, other compliance concerns with this type of arrangement may include whether it:</p> <ol style="list-style-type: none"> 1. is consistent with the investment strategy of the fund, 2. provides a current-day benefit for the member or related party, 3. constitutes the provision of financial assistance to a member, or relative of a member, using SMSF resources. <ul style="list-style-type: none"> • A step-child is considered to be a “child” for SIS purposes meaning that they are automatically able to receive death benefits directly from a superannuation fund. <p>However, a step-child / step-parent relationship is considered to end when the step-child’s own parent dies first and is survived by the step-parent. This is also the case where the step-child’s own parent and their step-parent divorce.</p> <p>In such situations, a death benefit could not automatically be paid to the former step-child unless dependency can be established by some other means (e.g. if the child is subsequently adopted or otherwise financially dependant on the deceased member).</p>
03/08/2011	ATO: SMSF Newsletter (Edition 18)	<p>Among other things, in this edition of the SMSF Newsletter the ATO repeats the commissioner’s message that this years compliance activity will focus on:</p> <ul style="list-style-type: none"> • Newly registered funds, • Funds lodging their first annual return, • Auditor contravention reports, • Related party investments (monitoring compliance with the 5% IHA limit, and the prohibition on lending to members), • Exempt current pension income and non-arm’s length income, and • Re-reporting of contributions and compliance with ECT release authorities.

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