



TapIn SMSF Roundup

June 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
30/06/2011	Collectables and personal use assets	<p>Tax Laws Amendment (2011 Measures No. 2) Bill 2011 received Royal Assent on 27th June 2011 – and is now law.</p> <p>Of particular relevance to SMSFs, this Tax Bill introduced legislation allowing regulations to specify rules for SMSFs that make, hold or realise investments involving collectables or personal use assets.</p> <p>After a consultation period, final regulations were issued on 30 June.</p> <p>As well as defining the types of assets that these rules will apply to, these regulations will require SMSF trustees who invest in collectables or personal use assets to:</p> <ul style="list-style-type: none">• Not lease this asset to a related party;• Not store the asset in the private residence of a related party;• Not permit use of the asset by a related party;• Document the reasons for deciding on the storage of the asset;• Insure the asset, unless the asset is a membership to a sporting or social club;• Obtain a valuation, from a qualified independent valuer, should the fund later transfer the asset to a related party. <p>These rules will apply to all collectables or personal use assets purchased by an SMSF on or after 1 July 2011. Existing SMSF assets will have until 1 July 2016 before they are required to comply with these measures.</p>
27/06/2011	“Own Occupation” TPD Deductibility	<p>Tax Laws Amendment (2011 Measures No. 4) Bill 2011 also received Royal Assent on 27th June 2011 – and is now law.</p> <p>Among other things, this Tax Bill introduced legislation allowing regulations to specify a statutory percentage of disability insurance premiums that will be tax deductible to a superannuation fund.</p> <p>This means that for SMSFs that hold disability insurance (generally other than “any occupation” cover) and who claim a tax deduction in accordance with these regulations, an actuarial certificate will not be required.</p>

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While the regulations have not yet been drafted, on the 16th June 2011 the Government issued a consultation paper outlining the proposed percentages to be specified in regulations and the descriptions of the types of TPD policies to which these percentages will apply.

In short, the discussion paper indicates that the percentage of TPD premiums that will be tax deductible to a fund are broadly:

- Any occupation: 100%
- Own occupation: 60%

The closing date for industry submissions in response to this consultation paper was 1 July 2011.

09/06/2011	APRA Statistics	<p>The Australian Prudential Regulation Authority (APRA) released its Quarterly Superannuation Performance statistics for March 2011.</p> <p>The report shows that total estimated superannuation assets increased by 3.3% in the March 2011 quarter to \$1.36 trillion, an 8.6% increase over the 12 months to March.</p> <p>At the end of March 2011, SMSFs still held the largest proportion of superannuation assets accounting for 31.9% of total assets, followed by retail funds with 27.3%.</p> <p>Industry funds accounted for 19%, public sector funds 14.1% and corporate funds 4.6%. Small APRA funds held 0.1% of total assets.</p>
08/06/2011	Flood Levy	<p>The ATO issued a reminder to superannuation funds (including SMSFs) that they will be required to withhold the Flood Levy from payments made to certain individuals during the 2011/12 financial year.</p> <p>Note: This does not apply to superannuation lump sums or pension payments made to members aged 60 and over, or to exempt members who have lodged a flood levy exemption declaration form.</p>
31/05/2011	ATO Super Update	<p>Highlights from the June edition of the ATO Super Update include a reminder that:</p> <ul style="list-style-type: none">• Severe penalties apply when individuals illegally access their super early. In worst case scenarios, where individuals set up an SMSF and knowingly access their super savings they may face a fine of up to \$220,000 and a jail term of up to five years.• SMSF trustees must ensure that they are able to accept contributions made for a member in accordance with SIS regulations. If a trustee accepts a contribution for a member that is inconsistent with these regulations – including where the contribution breaches the fund-capped contribution limits – the trustees must return all or part of the contribution (as appropriate with regards to the SIS regulations) to the contributor within 30 days of becoming aware of the inconsistency. <p>The ATO will regard trustees as being aware of the inconsistency when the trustees have the facts to determine whether or not they can accept the contribution. Generally, an SMSF trustee will be considered to have all these necessary facts on the date the contribution is made.</p> <p>Even where more than 30 days have passed, trustees are still required to return any inconsistent part of a contribution to the contributor.</p>

16/05/2011	ATO SMSF Statistical Report	<p>The ATO issued its SMSF Statistical Report for the March 2011 quarter.</p> <p>Based on information available as at 11 April 2011, it is estimated that during the December 2010 quarter 9,955 new SMSFs were established (up from 8,287 in the previous quarter). Also, 136 SMSFs were wound up (up from 69 in the previous quarter).</p> <p>This net increase takes the total number of SMSFs to 442,096, comprising 843,838 members.</p> <p>The report also contains a number of other statistics around demographics and fund investments that may be of interest.</p>
10/05/2011	AAT Decision: Triway Superannuation Fund	<p>The Triway Superannuation Fund (an SMSF) was established in 2002 and consisted of 3 members, who were also individual trustees – father, mother and son.</p> <p>Unfortunately the son had a drug addiction and in 2006 also became bankrupt – yet did not remove himself from being a trustee.</p> <p>In June 2002, just over \$40,000 was rolled into the fund, and by September 2002, the money had been withdrawn by the son who spent it all – essentially leaving the fund with no money.</p> <p>It is alleged that under advice from their tax agent, this was covered up for 5 years, with the transaction(s) being treated as a “loan” – which the trustees later admitted was fictitious.</p> <p>Following an ATO audit in 2008 the fund was made non-complying and subsequently, amended notices of assessment were issued in relation to the fund for the years ending 30 June 2002 through to 30 June 2007.</p> <p>The trustees applied to the AAT seeking discretion to have the notice of non-compliance waived. However, despite citing their tax agent’s advice, the fact that they had already suffered significant losses, and an acknowledgement from the son that he should be held responsible – the serious nature of their breaches meant they were unsuccessful.</p> <p>This case perhaps highlights a number of issues. For example, greater consideration of the appropriateness of an SMSF, the son’s involvement as a member/trustee, as well as some basic controls such as requiring more than one signatory on the bank account may have helped to avert this situation. Also, their situation was not helped by their attempts to cover up the breach by knowingly treating the payments as a fictitious loan.</p>
15/04/2011	Social Security - ATE pension relief extended	<p>Regulations have been tabled that will allow an SMSF to commute a 100% Asset Test Exempt (ATE) lifetime or life expectancy income stream and use the proceeds to commence a Term Allocated Pension within the SMSF – without incurring a Social Security debt.</p> <p>While this Term Allocated Pension will not be eligible for any ongoing asset-test exemption, it is still required to meet the Social Security conditions applicable to complying Term Allocated Pensions in order for this debt waiver to be available – for example it must be non-commutable etc.</p>

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This change will enable Centrelink recipients who currently receive a 100% ATE lifetime or life expectancy income stream through their SMSF to:

- Retain their current lifetime or life expectancy income stream through their SMSF and continue to benefit from a 100% asset-test exemption;
- Fully transfer their pension to an equivalent retail product and retain their 100% asset-test exemption (provided the conditions for retention of asset-test exemption are met); or
- Fully transfer into an asset-tested Term Allocated Pension within their SMSF, or via a retail fund, at any time without incurring a debt (albeit foregoing future ATE status).

The regulations will be effective on the day after the end of a disallowance period.

21/03/2011

ATO NTLG:
Superannuation
technical group
minutes – 21
March 2011

Some of the key discussion points covered in the March 2011 meeting of this working group include:

- Where only part of a property that is owned by an SMSF is leased to a related party, in order for the Business Real Property (BRP) exemption to apply, the entire property must meet the definition of BRP – not just the part of the property that is subject to the lease with a related party.

For example, consider a property that is held on a single title but comprises of a house and a warehouse. The house is leased to unrelated residential tenants, while it is envisaged that the warehouse be leased to a related party.

As the entire property is not BRP, evidenced by the house being tenanted to unrelated tenants, leasing the warehouse to a related party would give rise to an in house asset.

This is the case even though the lease between the SMSF and the related party only deals with commercial premises that are to be used in a business.

- The ATO has confirmed that the tax savings amount, which represents the additional lump sum payment required in order to benefit from the anti-detriment tax deduction, need only be calculated based on the actual amount of the lump sum death benefit that is paid.

This means that where a combination of lump sum and pension(s) death benefits are paid following a member's death, only the lump sum death benefit amount needs to be used in determining the size of the additional tax savings amount required to be paid.

This may have some practical application for SMSFs where reserves are used to fund the additional anti-detriment payment required.

For example, in order to maximise the anti-detriment benefit available to the fund, SMSF trustees may give added consideration to paying a death benefit as a combination of a lump sum and pension(s) where:

1. Amounts held in a reserve account would be insufficient to pay out an additional lump sum based on the whole account balance; and/or
2. Concessional contribution caps restrict the ability to pay out an additional lump sum based on the whole account balance.

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- The ATO was asked to comment on a number of situations that related to Limited Recourse Borrowing Arrangements (LRBA's) and the definition of a "Single Acquirable Asset".

No response was provided by the ATO during the meeting however, it was noted that issues relating to LRBA's are a high priority for the ATO and work is currently being undertaken with a view to a public ruling being issued in due course.

- Similarly, the ATO was asked to confirm the industry view that while pension income payments cannot be made *in specie*, an *in specie* lump sum commutation from a pension is allowable.

The ATO indicated that this issue will be addressed in a superannuation income stream ruling, a draft of which was expected to be published in 2011.

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