

# THOMSON GEER

LAWYERS

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Domestic & Cross Border

## SHIFTING GEER MAY 2014

26 MAY 2014

Welcome to Shifting Geer, Thomson Geer's superannuation newsletter for the period 28 April 2014 - 23 May 2014.

### APRA AND ASIC UPDATES

#### ASIC reports on red tape reduction and invites feedback

(7 May 2014)

ASIC released Report 391: *ASIC's deregulatory initiatives*, outlining ongoing and new initiatives to reduce compliance costs for its regulated population.

Accordingly, ASIC is seeking suggestions for reform in the following areas:

- any changes that might be made to ASIC forms;
- suggestions for regulatory change that ASIC might discuss further with Treasury and the Government; and
- any changes that might be made to ASIC processes or procedures.

ASIC is seeking initial feedback by 18 June 2014.

#### AFSL holder's APRA undertaking

(21 May 2014)

ASIC has confirmed that Sentry Financial Services Pty Ltd (**Sentry**) has agreed to address concerns ASIC raised about SMSF advice provided to clients by Sentry's corporate authorised representative, Connect Financial Services Pty Ltd (**Connect**).

ASIC's surveillance identified concerns surrounding non-compliance by Connect in respect of SMSF advice provided to clients, including:

- the requirement for a Statement of Advice to be given to clients;
- the requirement to act in clients' best interests and provide appropriate advice; and
- the product replacement disclosure requirements when recommending the replacement of one financial product with another.

Further, ASIC was concerned that Sentry may not have complied with its obligations as an AFSL holder to properly monitor and supervise Connect and ensure Connect was adequately trained and competent to provide SMSF advice.

In response, Sentry has agreed to:

- write to 158 clients that received an SMSF promotional letter from Connect to inform them that the letter contained personal financial advice and to offer the clients a review so that any necessary remedial action can be undertaken; and
- engage an independent expert to:

- review 17 Connect client files that involved the establishment of an SMSF; and
- make recommendations regarding any deficiencies identified and, where relevant, recommend remediation and/or compensation for the client.

The independent expert will report to ASIC and Sentry to ensure ASIC's concerns are addressed.

Sentry has cooperated fully with ASIC's inquiries and ASIC acknowledges the constructive action taken by Sentry to address its concerns.

**Thomson Geer Comment:** *It is worth noting that when AFSL holders breach the terms of their licences, ASIC may report these onto APRA, just as APRA may report the breaches of an RSE Licence to ASIC.*

### ASIC Product Dashboard Guidance

(22 May 2014)

ASIC has issued further guidance to trustees about their obligation to produce a MySuper product dashboard, following a review of existing product dashboards.

ASIC reviewed a number of MySuper product dashboards, based on the product dashboard requirements and measures set out in ASIC Information Sheet 170 *MySuper product dashboard requirements for superannuation trustees (ASIC INFO 170)*.

Whilst ASIC appears to be pleased with the product dashboards it reviewed, it noted some areas for improvement in respect of the accessibility and clarity of product dashboards. In particular, ASIC expects that:

- product dashboards will be displayed in a prominent position and readily accessible location on the fund's website. This requirement is not met if several pages have to be navigated through, or a site 'searched', to view the product dashboard, or the product dashboard is otherwise difficult to find. The product dashboard should be able to be seen readily by someone who has no prior knowledge of the concept of the product dashboard;
- non-prescribed information will not be displayed within the parameters of the product dashboard. Additional information can be located outside and proximate to the product dashboard. The inclusion of optional information, such as asset allocation information, within the product dashboard has the potential to compromise the ability of users to compare across multiple product dashboards;
- product dashboards will address all of the prescribed elements. Some trustees have omitted the past returns and return target-past return comparison from the product dashboard where there is no predecessor product. ASIC's preferred approach is for trustees to include all elements with an accompanying explanation to the effect that no past return information is available; and
- each of the prescribed elements will be addressed separately. For example, past return percentages should not be shown in the return target-past returns comparison graph.

No amendments have been made to ASIC INFO 170.

ASIC states that it is taking a facilitative compliance approach for

superannuation reforms until 1 July 2014, and is adopting a measured approach where inadvertent breaches arise or systems changes are underway, provided industry participants are making reasonable efforts to comply.

## LEGISLATION

### Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 (13 May 2014)

The Federal Government has introduced the *Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014* and 14 additional supporting Bills for the purposes introducing a 3-year progressive budget repair levy in the primary form of additional income tax on Australian resident and foreign resident individuals commencing in the 2015 Financial Year.

The following three supporting Bills impact superannuation fund members:

- *Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014:*

Temporary residents who receive employer superannuation contributions, are entitled to receive their superannuation benefits once they leave Australia as a departing Australia superannuation payment (DASP).

The taxable component of DASP payments from:

- a taxed superannuation fund will be subject to a tax rate of 38% (an increase of 3 percentage points); and
- an untaxed superannuation fund will be subject to a rate of 47% (an increase of 2 percentage points),

during the period in which the levy applies.

- *Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014:*

The Bill will:

- increase the rate at which excess non-concessional contributions tax is payable from 47% to 49% of an individual's excess non-concessional contributions for a financial year (which is the sum of the maximum income tax rate of 45%, the Medicare levy rate at 2% and the new levy rate of 2%); and
- cap the taxation of excess concessional contributions, that flow over and result in the member exceeding his or her non-concessional contributions cap, to 95% rather than the current 98%.

- *Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014*

The Bill increases the taxation of an excess untaxed roll-over amount from 47% to 49%, (which is the sum of the maximum income tax rate of 45%, the Medicare levy rate at 2% and the new levy rate of 2%).

### Tax and Superannuation Laws Amendment (2014 Measures No 2) Regulation 2014 (16 May 2014)

The Regulation prescribes a methodology for the purposes of calculating

an individual's defined benefit contributions in order to determine the additional 15% tax liability of high income earners (those earning in excess of \$300,000) for the 2014 Financial Year and subsequent years.

The Regulation amends the *Income Tax Assessment Regulations 1997* to specify that an individual's defined benefit contributions is an estimate of the amount of employer contributions that would be made if defined benefit funding applied to an employee on an annual basis

### **Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)**

(19 May 2014)

The Instrument amends the Anti-Money Laundering/Counter-Terrorism Financing Rules to address certain Customer Due Diligence deficiencies. The substantive amendments relate to the identification of the beneficial owners of a customer and politically exposed persons.

A new paragraph 4.1.2 has been inserted to clarify that the amendments to Chapter 4 (relating to customer identification) do not apply to:

- existing customers of a reporting entity who were first provided with a designated service before 12 December 2007; and
- customers covered by the statutory exemption at subsection 39(6) of the *Anti-Money Laundering/Counter-Terrorism Financing Act 2006* (AML/CTF Act) which relates to the designated services covered by:
  - item 40 (accepting payment of the purchase price for a new pension or annuity);
  - item 42 (accepting a superannuation contribution, roll-over or transfer); or
  - item 44 (accepting a Retirement Savings Account contribution, roll-over or transfer)

of table 1 (Financial Services) in subsection 6(2) of the AML/CTF Act.

### **CASES**

There were no cases of interest for this period.

### **OTHER RECENT DEVELOPMENTS**

#### **Australian and United States intergovernmental agreement**

(28 April 2014)

The Treasurer has announced that Australia and the United States signed an intergovernmental agreement (IGA) for Cooperation to Facilitate the Implementation of the United States' Foreign Account Tax Compliance Act (FATCA).

#### **IGA terms**

Under the IGA, Australia and United States are to provide each other with reportable information in respect of certain Financial Institutions, some of which may be quite onerous.

#### **IGA and superannuation funds**

Fortunately, the following entities are exempted from the FATCA requirements:

- any plan, scheme, fund, trust, or other arrangement operated principally

to administer or provide pension, retirement, superannuation, or death benefits that is a superannuation entity or public sector superannuation scheme (including an exempt public sector superannuation scheme) as defined in the *Superannuation Industry (Supervision) Act 1993*, or a constitutionally protected fund as defined in the *Income Tax Assessment Act 1997*, including pooled superannuation trusts;

- any entity that is wholly owned by, and conducts investment activities, accepts deposits from, or holds financial assets exclusively for or on behalf of, one or more plans, schemes, funds, trusts, or other arrangements referred to in paragraph (a) above; and
- a retirement savings account as defined in the *Retirement Savings Accounts Act 1997*.

### Superannuation choice product dashboard deferral

(5 May 2014)

The Government has announced its decision to defer the start date for the choice product dashboard and the introduction of a portfolio holdings disclosure regime to 1 July 2015.

The Government has stated that the deferral:

- is based on the realisation that large parts of the superannuation industry are not ready for implementation and that many issues remain unresolved; and
- will allow sufficient time for consultation on draft legislation and provide industry additional time to implement the changes.

#### WRITTEN BY:

Mark Abramovich | Partner | +61 3 9641 8627 | mabramovich@tgllaw.com.au

Luke Hooper | Senior Associate | +61 3 9641 8767 | lhooper@tgllaw.com.au

For further information, please [click here](#) to contact our national Superannuation team or contact our office directly:

#### SYDNEY

Level 25  
1 O'Connell Street  
Sydney NSW 2000  
+61 2 8248 5800

#### MELBOURNE

Level 39  
Rialto South Tower  
525 Collins Street  
Melbourne VIC 3000  
+61 3 8080 3500

#### MELBOURNE

Level 20  
385 Bourke Street  
Melbourne VIC 3000  
+61 3 9670 6123

#### BRISBANE

Level 16  
Waterfront Place,  
1 Eagle Street  
Brisbane QLD 4000  
+61 7 3338 7500

#### ADELAIDE

Level 7  
19 Gouger Street  
Adelaide SA 5000  
+61 8 8236 1300

[www.tgllaw.com.au](http://www.tgllaw.com.au)