



**Friday 29 December, 2006**

### **Simplified Superannuation**

On 7 December 2006 the Government introduced the Tax Laws Amendment (Simplified Superannuation) Bill 2006 into Parliament. The reform proposed in this Bill will:

- simplify superannuation arrangements for retirees making it easier to understand;
- improve incentives to work and save; and
- introduce greater flexibility in how superannuation savings can be drawn down in retirement.

Under the Simplified Superannuation reforms, the adequacy of retirement incomes will be improved, and over 10 million Australians with superannuation accounts, plus future account holders and their families will benefit through greater simplicity.

To read further on the Simplified Superannuation reforms please go to <http://simplersuper.treasury.gov.au/default.asp>

### **Contribution Strategies**

We remind readers that the most recent transitional rule relating to the post tax contribution limit for *Simplifying Super* will enable a window of opportunity for eligible members to contribute up to a maximum post tax contribution of \$1,000,000. For those considering super contribution strategies, this transitional opportunity will lapse after 30 June 2007. Importantly the cap of \$1,000,000 will not affect any subsequent post tax contributions, since averaging will only occur after the transitional period.

### **Instalment Warrants**

The Minister for Revenue and Assistant Treasurer, Peter Dutton MP, announced on the 3<sup>rd</sup> November 2006 that the Government will act to allow superannuation funds to continue to invest in instalment warrants, consistent with longstanding administrative practice.

Over a number of years instalment warrants have been marketed to superannuation funds — particularly to self managed superannuation funds (SMSFs). The Commissioner of Taxation (responsible for regulating SMSFs) and the Australian Prudential Regulation Authority (responsible for regulating other superannuation funds) have now concluded that these products entail a borrowing for the purposes of section 67 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and are therefore not an allowable investment.

The borrowing prohibition has been in place since the 1980s, and is one of a number of rules in superannuation legislation designed to limit risk in superannuation fund investments.

“While the Regulators have concluded that investment in instalment warrants by superannuation funds is not in keeping with the SIS Act, the practice is long standing and widespread and superannuation fund investment comprises a significant proportion of the instalment warrant market. The Government will legislate to allow longstanding practice to continue, following consultation with industry regarding the precise scope of amendments to the SIS Act,” Mr Dutton said.

In order to avoid any disruption to markets, the Regulators have advised that, pending the law change, superannuation funds investing in traditional instalment warrants will not be considered to be non-complying under the SIS Act merely because of their investment in those products.

Fund investments in instalment warrants must still comply with other superannuation rules; for example, they must not result in fund assets being subject to a charge. Trustees are still required to demonstrate the appropriateness of including instalment warrants in their investment strategy.

## SMSF Statistics

For those subscribers who love stats, we have sourced the following from the ATO. They may be useful as a benchmarking guide and we welcome your feedback.

### SMSF Asset Allocation Tables

SMSF asset allocation table (\$m)	Sep-05	Dec-05	Mar-06	Jun-06	Sep-06	%
Cash	42,612	44,367	47,331	49,430	50,525	23%
Loans	1,675	1,744	1,861	1,943	1,986	1%
Equities	100,248	104,378	111,350	116,289	118,865	54%
Property	21,605	22,495	23,998	25,062	25,617	12%
Other	5,337	5,557	5,928	6,191	6,328	3%
Overseas	1,197	1,246	1,329	1,388	1,419	1%
Life	464	484	516	539	551	0%
Other Managed	11,048	11,504	12,272	12,816	13,100	6%
<i>Total direct assets</i>	172,674	179,786	191,797	200,304	204,741	94%
<b>Total assets (\$m)</b>	<b>184,187</b>	<b>191,774</b>	<b>204,585</b>	<b>213,659</b>	<b>218,392</b>	

This table contains estimates of the amount of assets held by SMSFs in each of the following asset classes: cash, loans, equities, property, overseas, life, other managed and other, as well as the summary statistics of total direct assets and total assets.

These figures are estimates based on SMSF income tax and regulatory return form data, with estimates for recent quarters extrapolated from 2004-05 data. The data was extracted on 13/10/2006.

### SMSF Member Demographic Table

Age ranges	Male	Female	Total
< 25	0.8%	0.9%	0.8%
25 – 34	5.3%	6.1%	5.6%
35 – 44	16.6%	20.0%	18.1%
45 – 54	27.6%	30.1%	28.7%
55 – 64	32.6%	31.2%	32.0%
> 64	17.0%	11.7%	14.6%
Unknown	0.0%	0.0%	0.0%
Total	100.0%	100.0%	100.0%
All ages	55.3%	44.7%	100.0%
Income ranges	Male	Female	Total
\$0-\$20,000	18.8%	28.7%	23.2%
>\$20,000-\$40,000	20.3%	26.4%	23.0%
>\$40,000-\$60,000	20.6%	20.5%	20.6%
>\$60,000-\$80,000	13.1%	10.5%	11.9%
>\$80,000-\$100,000	6.8%	4.1%	5.6%
>\$100,000-\$200,000	11.9%	5.5%	9.1%
>\$200,000-\$500,000	5.5%	1.7%	3.8%
>\$500,000	1.7%	0.4%	1.1%
Unknown	1.3%	2.2%	1.7%
Total	100.0%	100.0%	100.0%

#### SMSF member demographic table – age ranges

This table contains an approximate age distribution of members of SMSFs. The data behind this table was extracted on 3/11/2006 and is an estimate based on Australian Business Register (ABR) data.

#### SMSF member demographic table – income ranges

This table contains an approximate distribution of the taxable income of SMSF members. The data was extracted on 9/11/2006 and is an estimate based on ABR data and the member's most recently lodged personal income tax return.

#### SMSF total asset range table

Asset Ranges	2003-04	2004-05	2005-06
\$0-\$50,000	12.6%	9.8%	insufficient
>\$50,000-\$100,000	10.7%	9.2%	data
>\$100,000-\$200,000	17.0%	15.6%	available
>\$200,000-\$500,000	29.1%	28.8%	
>\$500,000-\$1m	18.4%	20.5%	
>\$1m-\$2m	8.9%	11.3%	
>\$2m-\$5m	2.9%	4.1%	
>\$5m-\$10m	0.3%	0.5%	
>\$10m-\$100m	0.1%	0.1%	
TOTAL	100.0%	100.0%	

This table shows an approximate distribution of the size of SMSFs, in terms of total assets. These figures are estimates based on SMSF income tax and regulatory return form data, extracted on 3/11/2006.

## Compliance Tip – Registration of Funds Assets

The trustees of self managed superannuation funds (SMSFs) must ensure that the fund's assets are appropriately recorded as being held on trust for the beneficiaries of the SMSF.

If this rule is breached, fund trustees are expected to rectify the breach as soon as is reasonably possible.

The ATO recognises, however, that certain types of breaches can take longer to rectify than others.

For this reason, where an approved auditor or actuary reports to the ATO this year that a fund's assets are not appropriately recorded, the ATO will not take immediate investigative action against the fund. Nevertheless, trustees must take immediate steps to rectify the breach.

- **Should the breach be reported or identified again in the next year, SMSF trustees will come under ATO scrutiny**

### Securing the Assets of the Fund

The *Superannuation Industry (Supervision) Act 1993 (SISA)* contains covenants that are included in the governing rules of all regulated superannuation funds. They aim to protect member assets for retirement purposes. One of these covenants requires trustees of a superannuation fund to keep money and other assets of the superannuation fund separate from their personal assets and the assets held by employers who contribute to the fund <refer SISA Section 52(2)(d)> .

Trustees must ensure that the fund's ownership of its investments is assured. As the regulator of SMSFs, the ATO requires the fund's assets to be held in a legally recognised ownership arrangement. The ATO prefers the assets to be in the names of all of the individual trustees as trustees for the fund or, in the case of a corporate trustee, in the name of the company as trustee for the fund.

#### Example 1:

The Smith Family Superannuation Fund has two individual trustees, Bill and Mary Smith. Where legally possible, the fund's assets must be held in the name of 'Bill and Mary Smith as trustee for the Smith Family Superannuation Fund'.

#### Example 2:

The Johnson Superannuation fund has a corporate trustee, being ABC Pty Ltd. Where possible, the fund's assets should be held in the name of 'ABC Pty Ltd as trustee for the Johnson Superannuation Fund'.

It is recognised that in certain states, restrictions may prevent SMSFs from holding assets using the fund's name at all. In this circumstance, a **caveat, legal instrument or declaration of trust** must be properly executed for the asset, to clearly show the fund's ownership of the property. Failure to take appropriate action to protect the fund's assets is a breach of trustee duties and responsibilities. If a restriction from holding the assets using the name of the fund exists, these restrictions should be clearly documented in trustee meeting minutes.

## Separation of Assets

Trustees are required to keep the books and accounts of the fund separate from those of other entities. As the fund's accounts include the value of property owned by the fund, it is necessary that the property is correctly titled to demonstrate legal ownership by the fund.

Without securing and separating the ownership of the assets trustees are at risk of losing their assets to other parties, including via bankruptcy proceedings and/or fraud and theft.

## What about other contraventions?

The above arrangements do not apply for other breaches of the *Superannuation Industry (Supervision) Act 1993*.

## More information

For more information on putting assets in your fund's name see [DIY super - It's your money...but not yet! \(NAT 11393\)](#). This publication also explains the ATO's position on compliance and the consequences of non-compliance, including what will happen if you do not rectify breaches satisfactorily.

You can also find information on the duties of SMSF trustees in [Role and responsibilities of trustees \(NAT 11032\)](#).

*Your Super Admin* provides a SMSF 'Health Check' for clients as part of our ongoing compliance review for clients and registration of fund assets is reviewed as part of this 'Health check'. This service is also available to non-administration clients as a separate service and as it is not an official audit will not constitute reportable breaches to the ATO. The objective is to identify areas of concern, so that the trustees have the opportunity to address these issues before you engage an auditor to review your fund. For more information please email [admin@yoursuperadmin.com.au](mailto:admin@yoursuperadmin.com.au).

## **1<sup>st</sup> Quarter 2007 reporting Dates**

### January 2007

- 1 Superannuation guarantee quarter 3 commences.
- 14 Reasonable benefit limits (RBL) reporting – all RBL reportable benefits paid in December 2006 must be reported to the Tax Office on or before this date.
- 28 Last day for superannuation contributions to be paid to a complying superannuation fund or retirement savings account (RSA) provider for quarter 2 (1 October – 31 December 2006).

If an employer does not pay minimum superannuation contributions for quarter 2 by this date, they must pay the superannuation guarantee charge and lodge a Superannuation guarantee charge statement – quarterly with the Tax Office by 28 February 2007. The superannuation guarantee charge is not tax deductible.

## February 2007

- 14 Reasonable benefit limits (RBL) reporting – all RBL reportable benefits paid in January 2007 must be reported to the Tax Office on or before this date
- 15 Superannuation contributions surcharge and termination payments surcharge assessments issued.
- 28 Due date for lodgement of the Superannuation guarantee charge statement - quarterly and payment of the superannuation guarantee charge for quarter 2 (1 October – 31 December 2006) if sufficient superannuation obligations were not paid on time. The superannuation guarantee charge is not tax deductible.
- 28 Final due date for lodgement of the 2006 Fund income tax and regulatory return for superannuation entities (superannuation funds, ADFs and PSTs) whose income year ended on 30 June 2006 and that do not use a tax agent to prepare the return, or were not required to lodge earlier (see Note1).

Note 1: As in previous years, the Tax Office will issue a letter outlining the lodgement and payment due dates for the 2006 fund income tax return. The letters will issue approximately eight weeks before the lodgement due date.

## March 2007

- 14 Reasonable benefit limits (RBL) reporting – all RBL reportable benefits paid in February 2007 must be reported to the Tax Office on or before this date.
- 15 Due date for payment of assessment of superannuation contributions surcharge and termination payments surcharge issued on 15 February 2007.
- 15 Due date for lodging amended superannuation member contribution statements (MCS) for inclusion in the May 2007 processing of assessments.
- 22 Due date for lodgement of superannuation assessment variation advice (AVA), where applicable, for variation of assessment that issued on 15 February 2007.
- 31 Due date for lodgement of Superannuation Member Contributions Statements (MCS) by self managed superannuation funds (SMSF). A SMSF may lodge its MCS when its Fund income tax and regulatory return is due if this is later than 31 March.

Wishing you a safe New Year

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