

In this issue:

[Illegal early release of superannuation benefits](#)

[SG for foreign employees](#)

[AML/CTF rules relating to cashing out of low balance superannuation accounts](#)

[Superannuation Clearing House Bill enters parliament](#)

[Excess contributions and defined benefits](#)

Illegal early release of superannuation benefits

The Australian Prudential Regulation Authority (APRA) has written to the trustees of APRA Regulated Superannuation Funds expressing concern about the illegal early release (IER) of superannuation benefits involving transfers and rollovers into self-managed superannuation funds (SMSFs) and to provide guidance on additional processes that trustees should consider implementing.

APRA has identified two types of IER schemes whereby superannuation benefits held by APRA-regulated funds are illegally accessed under the guise of transfers or rollovers into SMSFs:

- ⊘ The fraudulent use of a member's identification by an unrelated party to steal the member's benefits without their knowledge or consent.
- ⊘ The member participates with a promoter to access the member's benefits. In many cases, the participant ends up with a considerably reduced benefit after fees, tax and penalties are deducted.

APRA's correspondence outlines a number of suggestions that trustees should consider integrating into benefit payment processes that may assist in verifying the validity of transfer/rollover requests to SMSFs starting with Proof of Identity checks to confirm they are dealing with their member (or authorised representative).

Although there are no express legislative requirements for trustee to do so, APRA's guidance advises trustees to complete the following checks for transfer/rollover requests for all SMSFs, more particularly new SMSFs:

- ⊘ conduct Proof of Identity (POI) checks to confirm that the trustee is dealing with their member (or authorised representative);
- ⊘ confirm the SMSF is a regulated SMSF. The status of regulated SMSFs is listed in Super Fund Lookup (SFLU);
- ⊘ conduct additional checks if the SMSF is "Registered – status not determined" to determine their compliance status;
- ⊘ check the payment details to verify that the payment is valid and being made to an SMSF; and
- ⊘ conduct any other checks you consider appropriate to confirm the validity of the transfer/rollover.

APRA explains that there may be valid explanations for some issues that may arise when carrying out a transfer/rollover (i.e. a member has changed their details without notifying their superannuation fund). As such, APRA recommends that the trustee should contact their member first and try to resolve the issue. If the trustee still suspects that the transfer is suspicious after contacting the member, then they should contact the relevant authority or regulator.

The status of Regulated SMSFs is listed in SFLU. APRA indicates that it is risky to rely on downloaded or hard copies of the information on SFLU because this information is likely to be outdated very quickly. APRA adds that the Australian Tax Office regularly updates SFLU with the latest information about SMSFs and will investigate and remove a SMSF from SFLU if appropriate.

APRA also explains that where a member may request 3 or more transfers/rollovers, this may indicate that someone is 'siphoning' off the member's superannuation benefits over a period of time. Although such a transaction may be legitimate, it may still require a second look. Similarly, APRA indicates that if there has been 3 or more payments to the same SMSF or bank account (even where this has been made by more than 1 member), this may indicate a promoter is using an SMSF for IER where members are passed through the SMSF, or never become a member of the SMSF.

As such, to reduce the risk of a transfer/rollover being paid to an entity that is not a regulated superannuation fund, APRA advises trustees to request a copy of a bank account statement header or bank account establishment confirmation document as part of the standard documents for the transfer/rollover request.

Source

Australian Prudential Regulation Authority, APRA's Letter to All Trustees on managing the risk of the illegal early release of superannuation benefits – Transfers and Rollovers into SMSFs, 5 February 2010.

<http://www.apra.gov.au/Superannuation/upload/IER-FINAL-LETTERTO-TRUSTEES-5-Feb-2010-Vn-2.pdf>

SG for foreign employees

Australia has signed the second protocol of the bilateral Social Security Agreement with Austria on 17 February 2010.

The amendment to the existing Agreement will reduce the superannuation costs for Australian companies doing business in Austria and for Austrian businesses operating in Australia.

Australia has entered into a number of international social security agreements, primarily to avoid 'double superannuation coverage'. This is often a topical issue for employers and their international assignees.

Double superannuation coverage arises where an employee is sent to work temporarily in another country and the employer or employee is required to make superannuation (or equivalent) contributions under the legislation of both countries for the same work.

Please refer to this link for a list of the agreements that are currently in place with Australia:

<http://www.ato.gov.au/superprofessionals/content.asp?doc=/content/20524.htm&page=2&H2>

In general, these agreements provide that where an individual who is a resident of one country for the purposes of their social security laws, is seconded to another country on a temporary basis, that individual will remain subject to the social security laws of their home country. The length of time falling within the meaning of temporary will vary from treaty to treaty.

In order for the above to apply, the individual must remain covered by the law of the home country.

In the case of Australian employees going overseas, these agreements provide an exemption from the destination country's compulsory contributions requirements only if the employee remains covered by Australia's superannuation guarantee regime while they are working overseas.

For example, Australian individuals who are seconded overseas for a period of at least two years, and become non-residents of Australia for income tax purposes, are exempt from the provisions of the Australian Superannuation Guarantee legislation.

Employers in Australia are not required to make superannuation contributions to an Australian complying fund for non-resident employees working offshore.

However, a United States citizen who remains on a US payroll, for example, will continue to have US Social Security obligations, regardless of the length of time he/she is in Australia.

Again, a Dutch citizen who remains an employee of a Dutch company and is temporarily assigned to Australia for no more than 5 years and who has obtained a Certificate of Coverage from the Dutch Social Security Authorities in time, will continue to be covered by the Dutch social security system.

In a nutshell, this means that under social security agreements between Australia and the other countries that have entered into such an agreement with Australia, a non-Australian resident individual who is covered by the law of their home country will be exempt from the superannuation guarantee rules in Australia and no contributions will be required to an Australian superannuation fund.

Source

Australian Minister for Foreign Affairs, Visit to Austria, 17 February 2010.

<http://www.foreignminister.gov.au/releases/2010/fa-s100218.html>

Australian Tax Office, Bilateral agreements - what are my super obligations when my employee is working overseas? 6 October 2009.

<http://www.ato.gov.au/superprofessionals/content.asp?doc=/content/20524.htm&page=2&H2>

AML/CTF rules relating to cashing out of low balance superannuation accounts

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No.5) exempts trustees of a superannuation fund from carrying out the customer identification requirements of the AML/CTF Act on customers where:

- ⊘ The superannuation account balance is not greater than \$1,000;
- ⊘ The whole of the interest of the customer in the superannuation fund has been cashed out; and
- ⊘ The customer's account is closed as soon as practicable after the cashing out.

Source

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No.5)

<http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrument1.nsf/asmade/bytitle/5AEC00E3897EE73CCA25767A001D5C87?OpenDocument>

Superannuation Clearing House Bill enters parliament

The *Tax Laws Amendment (2010 Measures No. 1)* Bill was introduced into Parliament on February 10. Following the passage of this Bill, a regulation will be made prescribing Medicare Australia as the approved clearing house for small business superannuation contributions. The service will be available from July 2010.

The Association of Superannuation Funds of Australia (ASFA) indicates that the Bill, among other things, provides the legislative framework for the clearing house. The legislation amends the *Superannuation Guarantee (Administration) Act 1992* so that an employer who pays a contribution to an approved clearing house is treated as if that contribution had been made to a superannuation fund. The employer will then also be considered to have met its choice of obligation.

ASFA further explains that the legislation also amends the Superannuation industry Supervision (SIS) Act to allow employers to meet their obligation to promptly remit superannuation amounts deducted from employees' wages by paying them to the approved clearing house. The amendments also allow for the disclosure of taxpayer information so that the clearing house can perform its functions.

The clearing house service will be available to eligible small businesses (those with fewer than 20 employees) from July 2010, although businesses will be able to register with Medicare Australia from May 2010.

ASFA has announced that the Government has accepted its suggestion that, rather than requiring the choice form to be passed by the employer to the clearing house, the employer will be able to pass on the information contained in the form.

ASFA explains that in addition to passing on the information contained in the choice form, the employer will also be required to pass on 'any other prescribed information'. This will enable Medicare Australia, should it wish to, to require employers to provide more information than is contained on the standard choice form.

Source

Tax Laws Amendment (2010 Measures No.1) Bill

[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=Tax%20Laws%20Amendment%20\(2010%20Measures%20No.%201\);querytype=:rec=2;resCount=Default](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=Tax%20Laws%20Amendment%20(2010%20Measures%20No.%201);querytype=:rec=2;resCount=Default)

Association of Superannuation Funds of Australia, ASFA Action 380, Superannuation Clearing House bill enters parliament, 11 February 2010.

Excess contributions and defined benefits

ASFA has announced that the Australian Taxation Office will shortly be writing to trustees of superannuation funds that have members who hold a defined benefit interest.

ASFA explains that the purpose is to ensure that trustees are aware that the reduction in the superannuation concessional contributions caps for 2009-2010 and later financial years may affect how notional taxed contributions are reported.

Background

Following the 2009/10 Budget announcement, concessional contributions caps have been reduced as follows:

- ↳ a reduction of the concessional superannuation contributions cap from \$50,000 to \$25,000 (indexed) for the under 50 years old for the 2009-10 financial year.
- ↳ a reduction of the transitional concessional contributions cap from \$100,000 to \$50,000 (not indexed) for those aged 50 years old or older for the 2009-10 to 2011-12 financial years.

As a result of the reduction in the concessional contributions caps, the *Income Tax Assessment Regulations 1997* (the regulations) have been amended to provide transitional arrangements to certain members of defined benefit funds.

[http://fedlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/D0516AA4A610DA5FCA2575F500827D02/\\$file/IncomeTaxAssessment1997.pdf](http://fedlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/D0516AA4A610DA5FCA2575F500827D02/$file/IncomeTaxAssessment1997.pdf)

Contributions made into defined benefit funds are not always linked to individual members. The concessional contributions amount for a member of a defined benefit fund is not calculated on the actual contributions made to the fund but on 'notional taxed contributions'. The notional taxed contributions are the contributions that are determined by the trustee to be notional taxed contributions, using the method set out in Schedule 1A of the regulations.

The new regulations provide that notional taxed contributions exceeding the concessional contributions cap will be treated as though they are equal to the cap, provided certain conditions are met (s 292-170.05). This means that a member will not be liable for excess contributions tax on these contributions if the conditions are met.

The transitional arrangements only apply if a member was a member of a defined benefit fund on 5 September 2006 (s 292-170.05).

A condition to the transitional arrangements is that between 5 September 2006 and the time at which the new entrant rate for the defined benefit member is calculated, the rules of the superannuation fund have not changed to improve the member's benefit (s 292-170.05 (2)(a)).



However particular changes to the rules will still allow the transitional arrangements to continue, for example if the change relates to the method of calculating superannuation salary that increases a benefit as a result of a change that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992* (s 292-170.05 (4)(b)).

A member can transfer from a defined benefit fund to another defined benefit fund and still may be entitled to transitional arrangements, only if the member has moved to a new benefit category that does not provide the member with an improved level of benefit (s 292-170.05 (2)(b)(ii)). Provided that this requirement is met, the member may retain the transitional arrangements in the new fund.

Sources

Income Tax Assessment Regulations 1997

The Australian Taxation Office, Defined Benefits Funds.

<http://www.ato.gov.au/superfunds/content.asp?doc=/content/00094535.htm>

Association of Superannuation Funds of Australia, ASFA Action 380, Superannuation Clearing House bill enters parliament, 11 February 2010.

aonmastertrust.com.au

The information in this factsheet is general in nature. Your personal objectives, financial situation or needs were not taken into account when preparing this information. You may want to seek independent advice before making any decisions about your super.

This factsheet was prepared by Aon Consulting Pty Limited (ABN 48 002 288 646, AFSL 236667) and issued by Aon Superannuation Pty Limited (ABN 83 057 982 822, AFSL 237465) as trustee for the Aon Master Trust (ABN 68 964 712 340).

© 2010 Aon Consulting Pty Limited.

AONAMT018 0210 ISS192