

SuperFocus is our monthly employer update on changes within super and how they might impact your company and employees.



SuperFocus

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Super funds to weather financial crisis

Given the fact that over \$1.1 trillion of super money is invested in the financial markets, it's pertinent to examine how super funds are holding up amidst the current climate.

The Superannuation Stakeholder Group (SSG) – a group of 10 of Australia's finance bodies representing investment markets, super funds and financial advisers – recently released a communiqué detailing what Australian super fund members should expect in terms of returns and expectations for market recovery.

The communiqué highlights the strength of the Australian super industry relative to many other countries and positively points to our strong regulatory framework and trustee appointment in super funds. The SSG believes that these fundamentals will help to ensure that super funds successfully weather the financial crisis and recover any losses over the longer term.

For a copy of the communiqué, entitled "Superannuation in the Context of the Global Financial Crisis", visit www.aist.asn.au

Margin lending reforms

With the transfer of margin lending regulation from the States to the Commonwealth last year, Senator Nick Sherry, Minister for Superannuation and Corporate Law, has decided to overhaul the super fund industry and margin lending regime simultaneously.

The Government's Financial Services Working Group (FSWG) has recently initiated industry consultations to ensure a single, standard, national regulation and supervision of margin lending by 1 July 2009. The aim is to provide greater investor protection and allow cost savings for product providers.

As with super fund Product Disclosure Statements (PDS), one of the tasks assigned to the FSWG is to produce a new, short-form, easy to read PDS. Disclosures will include fees and charges, including commissions paid by providers to advisers selling margin loan products.

National super clearing house

In line with their 2008 Budget commitments, the Government has invited industry comment on the implementation of a national and optional clearing house for super contribution payments.

The clearing house would operate by redirecting employee contributions electronically remitted by an employer to the designated super fund. Since small businesses (ie those with up to 20 employees) comprise 90% of businesses across Australia, the Government's preferred model would be to provide clearing house facilities free of charge to this sector and charge a fee for service to larger businesses.

Some of the Government's arguments in their November 2008 Discussion Paper included:

- reduction in administration costs;
- less red tape;

- ability for small businesses to deal directly with the clearing house;
- improvement in member returns due to quicker processing times and, therefore, faster investment of contributions into member accounts; and
- reducing the number of lost member accounts, which continues to rise annually.

Numerous technical issues need to be reconciled prior to the scheduled establishment of the national clearing house from 1 July 2009, such as whether a single provider or multiple providers should be responsible for this facility and the obligations of employers and the clearing house. We'll keep you posted as to developments.

Unclaimed super and temporary residents

The Temporary Residents' Superannuation Legislation Act 2008 became effective on 18 December 2008. Under the Act, if a temporary resident working in Australia on visa class 457 leaves the country, without claiming their super within six months of departing, an employer must remit the money to the Australian Taxation Office (ATO).

If your business employs individuals on a temporary visa, who have now left Australia and are no longer holding the relevant visa, you've no doubt received communication from the ATO requesting the transfer of any unclaimed monies.

The Legislation does not apply to the following individuals:

- Australian and New Zealand citizens;
- holders of a permanent or temporary visas;
- former temporary residents who have left Australia and are receiving an income stream; and
- holders of retirement visas 405 and 410.

The withholding tax for departing temporary residents is 35% for any taxable component and 45% for any untaxed component.

Remember, the departing member can still claim their super at any time in the future either from the employer or the ATO.

Same-sex relationships recognised

The Same-Sex Relationships (Equal Treatment in Commonwealth Laws-Superannuation) Act 2008 was enacted on 4 December 2008. Its purpose is to eliminate discrimination against same-sex couples and their children in the Commonwealth defined benefit superannuation schemes and in related taxation and regulatory legislation.

Prior to the Act and the associated amendment of the Superannuation Industry (Supervision) Act 1993, if a super fund member were to die, his or her same-sex partner or their children would not be entitled to any reversionary death benefit.

The Minister for Superannuation and Corporate Law, Senator Nick Sherry, has urged Australian super funds to also embrace



this framework for their members to promote equality for all Australians.

While many super funds already recognise same-sex relationships as interdependent couples, the new legislation makes it easier for funds to more effectively administer these member accounts. It should be noted, however, that the final decision to pay a death benefit to a deceased member's same-sex partner or dependent children remains with the fund's trustee, subject to the fund's Trust Deed.

New definitions for "spouse" and "child"

The reforms to same-sex relationships and the amended Superannuation Industry (Supervision) Act 1993 discussed above, have resulted in the following changes to the definitions of "spouse" and "child" for the purposes of super:

A "spouse" now includes an individual who:

- is in a relationship with another person, where the relationship is registered under prescribed State or Territory laws (whether of the same or opposite sex); or
- although not legally married to a person, lives with them on a genuine domestic basis in a relationship as a couple (regardless of whether they are the same or opposite sex).

The definition of a "child" now includes:

- the person's adopted, step or ex-nuptial child;
- a child of the person's spouse; and
- a child of the person within the meaning of the Family Law Act 1975, which effectively includes:
 - a child born to a woman through artificial insemination while the woman was married to or in a de facto relationship with an opposite-sex or same-sex person; or
 - a child who was conceived through surrogacy and deemed to be the child of a person under State or Territory court order.

Changes to government benefits for same-sex couples

The changes to same-sex legislation also result in changes to certain government benefits as follows. Unless otherwise stated, the effective date for change is 1 July 2009:

Dependent Spouse Tax Offset

Same-sex partners are now eligible to claim the Dependent Spouse Tax Offset. This could provide taxpayers with a maximum offset of \$2,100, provided they earn less than \$150,000 pa and their partner is either not working or earning a low income.

Medicare Safety Net

Same-sex partners and their children can now register as a

family and potentially claim back more of their non-hospital medical expenses under the Medicare safety net rules.

In addition, a 20% tax offset can also be claimed, where net medical expenses for same-sex partners and their children exceed \$1,500.

CGT Rollover Relief

The Capital Gains Tax rollover relief is simply a strategy of deferring paying any CGT liability. The new legislation allows same-sex couples to benefit from the rollover relief in the event their relationship breaks down. Rollover relief may also apply to assets transferred out of a self managed super fund.

Medicare Levy Surcharge

Same-sex couples will now be assessed against the threshold for families (\$140,000) and not singles (\$70,000). This is really only an issue if the couple does not have private health insurance and are relying on Medicare for their medical expenses. If the latter, the potential scenario is that the lower income person ends up being liable for the Surcharge, if their income and their partner's income exceeds the family surcharge threshold.

Social Security and Family Assistance

Same-sex couples and their children are now eligible for the same rates of social security and family assistance payments as opposite-sex de facto couples. This means the combined income and assets of the couple will generally be means tested for Centrelink purposes.

Centrelink has advised that existing customers in a same-sex relationship should notify them of their circumstances by 1 July 2009. Failure to do so may result in customers having to repay any overpayments.

Some of the specific benefits that same-sex couples are now entitled to include:

- partner concession cards;
- bereavement benefits should one partner die; and
- an exemption of the family home from the Assets Test should one partner enter nursing home care and the other continues to reside in the family home.

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