

## What the Regulators say -

### The SMSF Professionals' Association of Australia 2008 National Conference

The SMSF Professionals' Association of Australia Ltd (SPAA) is the peak professional body representing SMSF professionals throughout Australia.

SPAA's core focus and objective is to raise the standard of advice provided by all professionals to the SMSF industry. The association is committed to promoting a high standard of education among SMSF Professionals and assisting them to work within the regulatory framework, which in turn will help the industry to self-regulate and promote best practice.

SuperGuardian has a strong association with SPAA, and actively supports its core objectives.

The SPAA 2008 national conference held 12–14 March in Brisbane attracted 1000 Industry Specialists including SMSF Administrators, Accountants, Auditors, Actuaries, Lawyers and Financial Planners. The conference contained 2 ½ days of strategic and technical training, as well as an update on SPAA's recent activity with the Australian Taxation Office and ASIC.

We attended the national conference and in this newsletter, give you a summary of what the Regulators had to say. In our next newsletter we will focus on the technical aspects of the conference.

### Senator the Hon Minister Nick Sherry Superannuation & Corporate Law

Delegates were keen to hear from Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law in the Rudd Labour Government, in particular if the new Minister had any major plans/overhauls to the 'better super' regime in the near future.

Minister Sherry stated, *"Since the introduction of compulsory superannuation, individual superannuation balances have grown to the point where today they represent for many people, their most significant asset aside from the family home."*

*Government, having rightly mandated individuals to save for retirement, provides tax concessions, estimated in the latest*

*Tax Expenditures Statement to be around \$26.8 billion in 2007-08, and directs the individual savings of around \$60 billion a year largely into the hands of private sector financial institutions governed by trustee entities.*

*In late 2007 the total system contained around \$1.2 trillion.*

*Superannuation represents long term savings that are not generally accessible until at least age 55. Issues such as governance, dispute resolution and compensation, safety, diversified investment and operational costs are important concerns for Government.*

*It is absolutely vital in our system that trustees are well placed to minimise problems before they occur and minimise the need for regulators having to embark on sometimes onerous or intrusive oversight. Prevention is the best form of cure".*

A recent survey by the ATO found that 21% of participating Trustees had a 'low to medium' or 'low' knowledge of their obligations which has suggested a need for further education of Trustees.

The same survey indicated that over 30% of new Trustees could not provide an explanation of the sole purpose test, and more than 15% did not have an investment strategy in place.

*"The Government is concerned where individuals are subjected to aggressive marketing that they may be persuaded to establish an SMSF without being aware of their roles and responsibilities and without appreciating any of the costs involved.*

*Another area of concern is asset allocation within SMSFs, with many SMSFs overweight in cash, debt securities and term deposits – well beyond what would be considered reasonable in a long-term diversified investment strategy. Generally it is funds with a balance of less than \$200,000 that show this characteristic" says Sherry.*

And so the Government has indicated increase focus on SMSFs with balances less than \$200,000. They will also focus on Early Access Schemes that seek to encourage people to access their superannuation early.

The good news is Transition to Retirement Pensions, seen by many professionals as 'too good to be true' will continue for the foreseeable future – a move that has Accountants and Financial Planners somewhat relieved.

On 13 February 2008 the Government introduced legislation into parliament to make superannuation lump sum payments tax free when paid to persons suffering from a terminal medical condition – a welcomed move for ill persons to help relieve their financial stress.

## Jeremy Cooper Deputy Chairman, ASIC

Investor education is a common message and focus for ASIC, who claim only around 20 per cent of Australians receive any formal advice on investments.

ASIC's aim is to analyse the quality of advice given to Investors, the amount of disclosure and its complexity for Investors.

Cooper highlighted that technology, the use of internet and lengthy PDF versions of documents all deterred Investors from taking the time required to properly review disclosure statements and the information contained in them.

Their aim is to see all versions of disclosure statements simplified for the common Investor – with easier access to information, detailed diagrams and explanation of information.

Cooper says the rapid growth in SMSFs make them a target for schemes and scams and ASIC will continue its work via its Investor Taskforce who will start formulating plans from July 1 to help retail investors better understand risk and potential scams.

## Michael D'Ascenzo Commissioner of Taxation, ATO

Michael D'Ascenzo, Commissioner of Taxation for the Australian Taxation Office stated *"the rate of growth in self managed super funds has been remarkable. In 2007, 47,000 new funds were established bringing the total number to 372,000. In the two years to June 2007 assets in self managed super funds increased by around \$130 billion to almost \$300 billion – a rise of 76%.*

*The sharp rise in self managed super fund numbers means that there's a lot more trustees with their 'learner plates' on, and there are risks around making sound investment decisions. The assets in the funds have grown significantly but they remain 'off limits' until the trustees reach the preservation age, and this may still be some time off.*

*Combined, these two features show the important need of all trustees – not just new trustees and prospective trustees – to properly understand superannuation and the rules that apply.*

*For trustees of self managed super funds, the law prescribes the type of investments that are likely to leave them with their intended retirement income. So it is important they know their obligations and that they follow them. Breaches of the rules may leave them short on retirement.*

*Not surprisingly, with the strong growth in the number of new trustees we're spearheading efforts to ensure that new trustees get off to a better start; to raise the capability of approved auditors; and to improve the effectiveness of our work", says D'Ascenzo.*

## Areas of ATO Focus

### Loans to Others

Loans made by SMSFs to others account for 30% of the audit cases currently under investigation and may constitute 'illegal early access'.

### Non-allowable Assets

Among the 85 enforceable undertakings made by SMSFs in the past year, exceeding the 5% limit on in-house assets was the most common trigger.

### Excess Contributions

More than 200 people have notified the ATO that they made contributions over the \$1million cap during the transitional period. Many of these people have received transitional release authorities, allowing them to withdraw excess contributions without penalties.

The ATO have already identified a substantial number of cases where it appears the transitional contribution cap has been exceeded, and where the relevant trustees have not come forward. They will be in touch with a number of these trustees and penalties may apply, so they recommend trustees come forward voluntarily to sort things out.

### Rectifying reported Breaches

Lack of urgency in rectifying breaches identified in auditor contravention reports is unfortunately more uncommon than desirable. Whilst 50% of breaches reported are already rectified, only 25% are actioned after ATO follow up and 25% still fail to rectify despite ATO contact. These cases are escalated for an enforcement action and the fund faces a range of penalties.

### Unreported tax on source of funds

The strong flow of funds into self managed super has prompted the ATO to examine their sources to identify tax payers who have under-reported or concealed sources of income.

They are also investigating cases where property has been contributed into the SMSF without paying capital gains tax on the transfer.

### Addressing Compliance Issues

Additional Government funding has been provided to step up compliance activity with over 300 officers involved in a range of compliance issues including:

- Increased reviews and audits – a total of 11,000 audits will be completed this financial year
- A focus on new Trustees – with a survey of over 3000 trustees to better understand their knowledge about their roles and responsibilities
- Improving lodgement behaviour – Only around 70% of SMSFs lodged their 2006 tax return on time and a similar

trend is continuing for 2007. In 2007/08 all funds that fail to meet their lodgement deadlines on time will be contacted by the ATO."

### Prevention is better than a cure

The ATO are keen to help trustees get on the right path early on and have taken several measures to assist.

They have developed a SMSF fund start-up kit which will be provided to all new trustees, along with a new booklet which will be released in the coming weeks entitled 'How your self managed super fund is regulated'.

The ATO are also upgrading the content on their website with SMSF information presented in practical guidance rather than legal text.

They are ensuring new fund trustees understand their roles and responsibilities by providing written confirmation that they understand their obligations, which is now required by law.

### Auditing the Auditors

The ATO are reviewing and auditing around 900 approved auditors this financial year. Specific issues identified with approved auditors include:

- Failure to follow basic auditing standards and in particular keeping proper records
- Failure to report contraventions
- Lack of independence where auditors also act as a trustee's accountant and/or financial planner

D'Ascenzo says "safeguarding retirement income should be an objective that is common to trustees, to approved auditors, to professional bodies, to ASIC and to the ATO. Our broad range of education, support and compliance activities are designed to support this common goal".

## SPAA/SuperGuardian Scholarship Award

With the ongoing growth and increased number of new SMSFs in Australia is the need for an increase in SMSF Professionals.

There is a lack of experienced Accountants, Financial Planners and other Professionals in the SMSF arena. Over the past 12 months alone, SuperGuardian has added 13 Accountants to our team and such demand means we need to grow, train and develop our staff from within.

Last year, SuperGuardian, in conjunction with SPAA launched the Inaugural SMSF Scholarship. The scholarship is a 3 year commitment by an accounting graduate to work for SuperGuardian and specialise in SMSF. In return, we provide them with ongoing training and professional development.

One aspect vital to the success of the scholarship program is access to quality post-graduate study. We utilise the Professional Certificate in Self Managed Super Funds through

Adelaide University. The content is excellent and we commend SPAA for their time and effort contributed to developing the course and content.

Jason Poser is the 2008 SMSF Scholarship Award Winner. Jason graduated from Adelaide University with a Bachelor of Commerce majoring in accounting. His selection was made based on academic achievement as he averaged high distinctions, and won the CPA Australia award for the highest grade in Management Accounting in 2007. This and his desire to specialise in superannuation saw him selected as the award recipient.

On behalf of SPAA and SuperGuardian, congratulations!



Pictured above: Former Essendon Captain James Hird presenting the scholarship award to SuperGuardian Accountant Jason Poser on March 13 2008 at the SPAA National Conference held at the Brisbane Convention Centre.

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