SuperGuardian™

Superannuation administration made simple!

YOUR GUARDIAN

Issue: July 2004

We thought June was a big month for super. July has brought a plethora of super news!

"It's Your Money…But Not Yet!"

This is Commissioner Michael Carmody's message to SMSF trustees in a booklet just released by the ATO.

The booklet, entitled "DIY super - It's your money …but not yet!", which can be found on the ATO's website, puts the self managed super industry into context in Australia today, discusses trustee obligations, and warns on the Tax Office's move away from help and education, towards active compliance.

Mr Carmody says that the ATO wants to ensure that trustees, auditors, tax practitioners and financial advisers are aware of the rules governing self managed funds. The ATO is keen to make sure not only that money held in self managed super is managed effectively and available for retirement, but also that all tax obligations are met. Accordingly, the Tax Office intends to step up their audit programme, particularly on "high-risk funds".

A PDF version of this booklet can be downloaded from www.ato.gov.au

The New Pension Rules (revisited!)

The ATO released Draft Superannuation Determination SD 2004/D1 on 7 July 2004. The Determination represents the considered views of the ATO in relation to the provision of a defined benefit pension by an SMSF post 11 May 2004.

Subject to the transitional rules announced (see below), a SMSF may provide a new defined benefit pension if:

- The SMSF was established before 12 May 2004; and
- ***The governing rules of the SMSF have not been amended on or after 12 May 2004 to provide for payment of the pension.***

Furthermore, an SMSF cannot provide a defined benefit pension, even if its governing rules allow for the payment of defined benefit pensions, if they do not set out the terms and conditions of the defined benefit pension proposed to be paid.

However, a transitional rule will apply until 30 June 2005. Until that date an SMSF may provide a defined benefit pension to a person only if:

- The person was a member of the fund on 11 May 2004;
- Before 1 July 2005, the person retires on or after attaining age 55 or attains age 65;
- The person becomes entitled to be paid a defined benefit pension after 11 May 2004 and before 1 July 2005; and
- The first pension payment is made within 12 months after the day when the person became entitled to the defined benefit pension.

Where an SMSF had begun to pay a defined benefit pension before 12 May 2004 in accordance with its governing rules the fund can continue to pay that pension.

Post 20 September 2004

Significant changes to the characteristics of complying pensions are also due to take effect, from 20 September 2004. The introduction of the new market linked complying pension, and the reduction in Centrelink's asset test exemption (from 100% down to 50% for all complying pensions) are the major changes which have been regularly discussed. Beneficial changes have also been made to the characteristics of the existing life expectancy based (fixed term and lifetime) complying pensions.

For lifetime pensions, the 'Guarantee Period' will be increased from 10 years to the lesser of 20 years and the primary pensioner's life expectancy rounded up.

For fixed term pensions, the method of determining the term of the pension has been adjusted, and, subject to the preservation rules, the pensions may now be commenced at any age (rather than at age pension age which was the previous requirement).

However, if a fixed term complying pension or a lifetime complying pension is commenced, it is required to have an annual solvency test, which determines whether the fund has sufficient assets to continue paying the pension for its term. In the past, if a pension did not pass this test, the pension would be restarted at a lower pension income level. From 30 June 2005, funds will no longer have the ability to recommence the pension at the lower level. If the pension does not meet the requirements of the solvency test after 30 June 2005, the pension will have to be converted to another pension that meets the "complying pension standards". In this circumstance, we would presume the remaining assets could be used to commence a market linked complying pension from the SMSF. Alternatively the assets could be rolled over to start a lifetime or fixed term pension from a life office.

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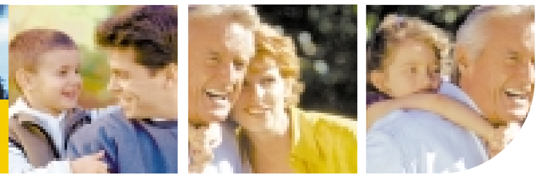

The table below summarises the state of play post 19/9/04

	Lifetime Pensions	Fixed Term Pensions (Life Expectancy Pensions)	Market Linked Income Stream
Guarantee Period	Lesser of 20 years and the primary pensioner's life expectancy at commencement	n/a	n/a
Minimum Term of Pension	n/a	Life expectancy of primary pensioner at commencement	Life expectancy of primary pensioner at commencement
Maximum Term of Pension	n/a	Life expectancy for age of 5 years younger than age of either primary or reversionary pensioner at commencement	Life expectancy for age of 5 years younger than age of either primary or reversionary pensioner at commencement
Minimum Age	Any age (subject to preservation rules)	Any age (subject to preservation rules)	Any age (subject to preservation rules)

The Impact of the Super Safety Act on Auditor & Actuary Responsibilities

As mentioned in our June newsletter, the Superannuation Safety Amendment Act 2004 has increased the reporting obligations of approved auditors and actuaries, commencing from 1 July 2004.

The new rules are in addition to already existing obligations to report all contraventions or potential contraventions of SIS, or unsatisfactory or potentially unsatisfactory financial positions, to the trustees.

The Tax Office has released a publication titled Self Managed Superannuation Funds - Audit Report. This report replaces the Superannuation Circular Responsibilities of the Approved Auditor previously released annually. The new publication details the new auditor and actuary obligations as well as instructions for completing an auditor/actuary contravention report. The report must be in the form approved by the Commissioner.

The contraventions of sections and regulations of the SIS act and regulations that must be reported to the ATO are listed in Table 2 of the instructions. It is worth noting that under the new provisions, materiality is not a consideration. Any contravention of a section or regulation listed in the table must be reported to the Tax Office **regardless of the amount involved.** Any contraventions of sections and regulations not listed in the table should also be reported if it is considered that the contravention will affect the interests of the members or it is considered that giving the information will assist the Tax Office in performing its functions under the SIS Act.

Did You Know?

The membership spread among self managed super funds is:

One member 21%
Two members 65%
Three members 7%
Four members 7%

ATO Loses Split Super Test Case

The Administrative Appeals Tribunal (AAT) has decided that Part IVA of the ITAA 1936 did not apply to an arrangement where a service company was established and controlled by the taxpayer and his wife.

The company paid salary and wages to them as well as made super contributions on their behalf. The super contributions made for the wife of the taxpayer were in excess of the salary paid to her. The Commissioner of Taxation argued that the arrangement was a scheme where the dominant purpose was to avoid tax.

The AAT decided that the arrangement, which included the payment of salaries and super contributions in excess of the salary paid to the wife, did not provide a tax benefit as envisaged by Part IVA.

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Legislation Update

The following legislation has now been passed:

Super Contributions Surcharge

The reduction in the surcharge has now been legislated, with one amendment. The reduction to 7.5% for the 2006/07 was rejected by the Australian Democrats. The super surcharge rate for 2004/05 is 12% and will be further reduced to 10% from 1 July 2005.

Overseas Super

The tax on transfer of overseas superannuation has been reduced from 1 July 2004, and the payment arrangements have been made fairer, encouraging the transfer of superannuation into Australia.

Co-contributions

The Government's co-contribution scheme, as outlined in our May newsletter was passed, without amendment.

Choice of Super

After years in deadlock, the Government and Australian Democrats have finally reached agreement, and Choice of Fund will come into effect on 1 July 2005. The choice model put forward in the Bill is a full choice arrangement whereby a member can elect for contributions to be made to any fund.

The contributions impacted are those required under Superannuation Guarantee legislation. As a result failure to comply will be a breach of the Superannuation Guarantee provisions. All current employees at 1 July 2005 are to be given notification of fund choice by 29 July 2005 by their employer.

Where a contribution is made in accordance with a legislated requirement, state industrial award or workplace agreement, the choice requirements will be taken to have been met.

Contribution Criteria from 1/7/2004:

0 - 64 (inclusive)	An individual may make contributions whether or not they are gainfully employed and take a tax deduction if applicable (10% rule test).
65 - 69 (inclusive)	An individual may contribute if they are gainfully employed at least 40 hours in a period of not more than 30 consecutive days in that financial year. They do not need to be employed at the time of the contribution. Their employer or another person may contribute if the contributions are mandatory (SG or industrial award/certified agreement).
70 - 74 (inclusive)	Same as for 65 - 69 but no tax deductibility allowed.
75 and over	An individual cannot make contributions. An employer may make industrial award/certified agreement contributions (no SG after 70).

Compulsory Cashing from 1/7/2004

Age	Condition
65 - 74 (inclusive)	Member ceases to be gainfully employed for at least 240 hours in the previous financial year.
75 and over	Member who reaches age 75 on or after 1/7/2004 must cash benefits. Member who was 75 prior to 1/7/2004 and ceases to work at least 30 hours per week must cash benefits.

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