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JUNE 2014 NEWSLETTER

The Federal Governments, both past and current, have implemented changes that will come into effect from 1 July 2014. It is important that both Trustees and Accountants assisting those Trustees are aware of the changes. We have identified the following issues that we believe are important.

CHANGES TO PENALTIES FOR BREACHES OF THE SIS ACT

These changes were proposed by the previous Labor government to come into effect from 1 July 2013. The legislation lapsed when parliament was prorogued, but was reintroduced by the present government. They now come into effect from 1 July 2014.

- From 1 July 2014, where a fund is in breach of the legislation, the Commissioner of Taxation can now impose penalties upon <u>each</u> Trustee of the Fund. Where the Trustee is a company, all directors will be jointly liable. Because each Trustee can be penalised, the overall penalty could be higher where a fund has individual Trustees.
- The penalties can include a fine and/or a requirement for the Trustee to undertake training. The new Trustees' declaration may need to be signed.
- Fines can range from 5 to 60 penalty units for each breach. Each penalty unit is currently $170. Penalties can therefore range from $850 to $10,200 for each Trustee for each breach.
- As an example, the penalty for late lodgement of a Fund's Annual return will be 5 penalty units, which will equate to $850.
- Where the same breach occurs on several occasions during the year, each is regarded as a separate breach and penalties can be incurred for each breach.
- Where a breach has occurred prior to 1 July, 2014 but has not been rectified by that date, the new penalty regime may be applied to the breach.
- The penalty must be paid by the Trustee individually, not by the Fund.

SUPER STREAM – THE ELECTRONIC TRANSFER OF DATA

- The new electronic data transfer system will commence from 1 July 2014 and will apply to all superannuation funds including Self-managed Superannuation Funds.
- It will relate to payments to Funds by employers and to payments between Funds.
- For employers with greater than 20 employees, the system will commence from 1 July 2014. These employers will not make payments to SMSFs that do not have an Electronic Messaging Provider.
- The system will apply to all employers from 1 July 2015.
- An exemption will apply to payments coming from related party employers.

- The system will also apply to roll-overs both from and to other Funds from January 2015.
- A list of available Electronic Messaging Providers is available from the ATO website. A Google search of "ATO SuperStream SMSF messaging providers" will provide access to the website.

VALUATION OF ASSETS

Most Trustees will now be aware that SIS Regulation 8.02B requires **ALL** assets to be reported at Market Value. Section 10 of the SIS Act defines the term Market Value as "the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
b) that the sale occurred after proper marketing of the asset;
c) that the buyer and the seller acted knowledgably and prudently in relation to the sale."

Each Trustee must provide evidence as to how the value was ascertained. Failure to do so may lead to a qualified audit. It may also be requested by the ATO.
Failure to report all assets at market value is now a reportable contravention.

INSURANCE

Trustees will be aware of the requirement to consider the insurance needs of members following changes to SIS Regulation 4.09 relating to the Fund's Investment Strategy. Trustees should be considering the cost and tax deductibility of premiums, taxation of benefits and the age of members among other things.

From 1 July, 2014, more controls come into effect on the type of insurances a Fund will be able to offer members. The changes will not affect policies already in place prior to that date. Any new insurance must now provide that claims will meet a condition of release if paid. The new conditions are as follows:

- **Death and terminal illness** – there has been no change regarding this type of policy.
- **Total and permanent disablement** – From 1 July 2014, this type of cover can only be for "any occupation", not occupation specific cover.
- **Temporary incapacity (income protection)** – Payment is only available where the member ceases to receive any gain or reward for the period of incapacity. This means that a Fund member is not entitled to any benefit if they are between jobs due to matters like unemployment, retrenchment, redundancy or between contracts. Cover is also only permitted for the period of incapacity, so predetermined monthly benefits such as 6-month benefit for a heart attack may be in excess of the period of incapacity and therefore not permitted.
- **Trauma insurance** – This cover is no longer permitted.
- **Grandfathering** – Where a member has existing cover as at 30 June, 2014, that cover can continue but all new cover must comply with the changed legislation.