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New superannuation splitting laws

The superannuation splitting laws, more particularly Part VIIIIB of the *Family Law Act 1975* (FLA), enables married couples and de facto couples to split their superannuation interest on relationship breakdown. In such a case, the superannuation interest can be split based on a percentage-only interest or a fixed amount as agreed by the parties and the Family Law Court.

New regulations have been made to replace the methods for valuing a non-member spouse's entitlement when the superannuation interest is payable under a percentage-only interest in a superannuation fund or an approved deposit fund (*Family Law (Superannuation) Amendment Regulations 2010 (No.1)*).

Superannuation payments under a percentage-only interest can only be divided by a court order or an agreement under Part VIIIIB of the FLA.

Orders and agreements can divide superannuation payable under a percentage-only interest in a superannuation fund in one of two ways. The explanatory statement explains that while the two ways formerly used correctly valued the non-member spouse's entitlement, they would, in most cases, have undervalued the entitlement if the court order or the agreement had used the other method.

As such, the new clause 3 of Schedule 1A provides new methods for valuing the non-member spouse's entitlement payable under a percentage-only interest under a court order or agreement dividing superannuation payments. These methods will give the spouse the portion of each payment calculated by applying the percentage specified in the order or agreement to that payment.

Commencement date

The regulations commenced on 26 May 2010.

Background

The superannuation splitting laws enable couples to split their superannuation in a family law property settlement on relationship breakdown.

The laws apply to:

- married (or formerly married) couples, and
- de facto couples, in most States and Territories, whose relationship broke down on or after 1 March 2009.

The laws will, from 1 July 2010, apply to South Australian de facto couples, where their relationship breaks down on or after that date.

The laws do not apply to de facto couples in Western Australia.

The laws apply to de facto couples as part of the new property settlement regime for de facto couples under *the Family Law Act 1975* (the Family Law Act), which commenced in 2009. The new regime only applies to de facto couples whose relationship had a geographical connection with New South Wales, Victoria, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory, Norfolk Island, Christmas Island or the Cocos (Keeling) Islands. The new regime will also apply, from 1 July 2010, to de facto couples whose relationship had a geographical connection with South Australia.

Although the new regime only applies to de facto couples whose de facto relationship broke down on or after 1 March 2009, couples who separated before that date may choose that the new regime, including its superannuation splitting laws, applies to them.

Source:

Family Law (Superannuation) Amendment Regulations 2010 (No.1):

[http://www.comlaw.gov.au/ComLaw/legislation/LegislativeInstrument1.nsf/0/5C652883F9445C4FCA25772E0005489D/\\$file/0928715A100128EV.pdf](http://www.comlaw.gov.au/ComLaw/legislation/LegislativeInstrument1.nsf/0/5C652883F9445C4FCA25772E0005489D/$file/0928715A100128EV.pdf)

Explanatory Statement:

<http://www.comlaw.gov.au/ComLaw/legislation/LegislativeInstrument1.nsf/asmade/bynumber/B2D94A4C429D2570CA257726001BAAC1?OpenDocument>

Attorney General website:

http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Superannuation_Superannuation



Annual Levies on APRA Regulated Entities

On 27 May 2010, Treasury released for public comment Annual Levies on APRA Regulated Entities: Discussion Paper on 2010 11 Proposal:

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1816>

The purpose of this paper is to seek industry views on the proposed financial sector levies to apply for the 2010-11 financial year.

The paper indicates that the financial sector levies are set to cover the operational costs of the Australian Prudential Regulation Authority (APRA), as well as certain market integrity and consumer protection functions undertaken by the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO).

The paper also adds that the relevant ASIC costs include the operations of the Superannuation Complaints Tribunal.

The paper can be accessed by clicking on this link:

http://www.treasury.gov.au/documents/1816/PDF/Annual_Levies_APRA_Regulated_Entities.pdf

Interested parties can make submissions by Friday 11 June 2010.

Source:

Treasury, Annual levies on APRA-regulated entities: Discussion Paper on 2010-2011 Proposal, May 2010.

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1816>

Superannuation fund investment in certain limited recourse borrowing arrangements

Section 67 of the *Superannuation Industry (Supervision) Act 1993* (the Act) prohibits trustees of regulated superannuation funds from borrowing money or maintaining a borrowing of money subject to specific exceptions. One exception, introduced in 2007, permits superannuation fund trustees to borrow money on a limited recourse basis, provided certain conditions are met, to acquire any asset a fund is not prohibited from acquiring directly.

Since these amendments, market developments have led to practices that raise prudential concerns with the use of such limited recourse borrowing arrangements by superannuation funds.

Schedule 1 of the Superannuation Industry (Supervision) Amendment Bill 2010 amends the Act with the purpose of reducing the risks for superannuation funds investing in limited recourse borrowing arrangements. Schedule 1 also amends the Act to resolve uncertainty with the application of the borrowing exemption in light of concerns raised in consultations on the Bill.

Please note that this Bill has not yet become legislation.

Source:

Superannuation Industry (Supervision) Amendment Bill 2010:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4368_first/toc_pdf/10107b01.pdf;fileType%3Dapplication%2Fpdf

aonmastertrust.com.au

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