ASIC seeks better compliance with asset-holding requirements in funds management and custodial services

ASIC today released a report entitled 'Review of compliance with asset holding requirements'. The report outlines ASIC's findings following an extensive review of compliance by custodians and responsible entities of managed investment schemes with the asset holding requirements imposed by ASIC Regulatory Guide 133 Managed investments and custodial or depository services: Holding assets (RG 133).

In 2013, ASIC released a revised version of RG 133, which sets out our policy in relation to the holding of assets, as well as two related class orders which set out the legal requirements for asset holding, Class Order 13/1409 Holding assets: Standards for responsible entities and Class Order 13/1410 Holding assets: Standards for providers of custodial and depository services.

In late 2016 and early 2017, ASIC reviewed compliance by the industry with RG 133 and the class orders, identifying 21 entities for the review - both responsible entities and custodians.
In some areas compliance with RG 133 fell short of expectations, with a generally poor level of understanding of the relevant requirements. Several entities did not appear to have revised their custody agreements to comply with the new RG 133 requirements. More fundamentally, some entities with a dual responsible entity and custodial function were unable to demonstrate adequate functional separation. In addition, some entities were inadequately resourced in terms of compliance capacity, including that they did give the appropriate level of commitment and priority to the selection and monitoring of custodians.

As a result of the review, ASIC has required a significant number of the entities to undertake corrective action to address these concerns. Furthermore several entities reviewed will now be subject to separate surveillance.

ASIC intends that compliance by the financial services industry with RG 133 and the class orders will remain a priority. ASIC Commissioner John Price said, 'Responsible entities and custodians play a crucial role in ensuring the overall health of our financial system. Their conduct influences levels of investor trust and confidence.

'The custody - or safekeeping - of assets is a critical function. Without appropriate safeguards by the asset holder, either a responsible entity or a custodian, there is a potential threat to investors' assets. Adequate resources and an appropriate risk management framework are therefore necessary for asset holders, to ensure that their safekeeping and related functions are properly performed.'

ASIC acknowledges the cooperative approach taken by the entities selected for the review.

"17-193MR ASIC seeks better compliance with asset-holding requirements in funds management and custodial services | ASIC - Australian Securities and Investments Commission", Asic.gov.au, 2017. [Online]. Available: http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-193mr-asic-seeks-better-compliance-with-asset-holding-requirements-in-funds-management-and-custodial-services/. [Accessed: 22- Jun- 2017].`

High time to extend compulsory super to all workers

We must scrap the $450-a-month income threshold that is excluding a growing number of casual and contract workers, a disproportionate number of whom are women, from our world-class compulsory superannuation system.

It's commonly said that Australia's super system is the envy of the world. Successive governments, looking down the barrel of an ageing population over the past 25 years, have supported a mandatory, concessionally taxed savings scheme to reduce reliance on the age pension and, ideally, replace it with income from private savings.

As enviable as our superannuation scheme is, however, it is not perfect. It remains the responsibility of government to review the operation and application of policy constantly to ensure that we are best serving all Australians, by providing them the opportunity to save adequately for retirement.

There are elements of the scheme that need urgent attention; most notably, the $450-a-month income threshold before workers are eligible for guaranteed 9.5 per cent superannuation contributions via their employer.

Changing workforce

As it stands, if an employee earns less than $450, before tax, in a calendar month, an employer is not obligated to accrue and pay any superannuation on their behalf. This is regardless of the employee's classification and even if the employee has multiple jobs for which their overall income exceeds the threshold.

It is increasingly common for individuals to earn income from multiple jobs. This means a growing number of workers who overall earn significantly more than the $450 a month receive no superannuation guarantee payments, because the obligation is never triggered for any of their employers.

In a modern economy, the $450-a-month threshold for the super guarantee represents a failure of government to keep superannuation in line with its intended policy outcomes.

Outdated relic

The $450-a-month income threshold is a relic. It is no coincidence that $450 a month extrapolated to a yearly income is $5400. This was the tax-free threshold in 1992, the year compulsory superannuation was introduced.

The tax-free threshold in 2017 is $18,200, yet the income threshold for the compulsory payment of superannuation guarantee has not changed in 25 years. This makes no sense.

As the government works towards a mature superannuation system – one that allows Australians to generate a retirement income from private savings that can supplement or substitute the age pension – it must amend the Superannuation Guarantee (Administration) Act 1992 to remove the $450-a-month income threshold and allow super to be accrued from the first dollar earned.

J. Hume, "High time to extend compulsory super to all workers", Investmentmagazine.com.au, 2017. [Online]. Available: https://investmentmagazine.com.au/2017/06/high-time-to-extend-compulsory-super-to-all-workers/. [Accessed: 22- Jun- 2017].

Land owned before CGT, but can a recent house built on it be CGT-free?

Naturally, a taxpayer will assume that when they build a house, that building will not qualify for CGT exemption until it becomes that taxpayer's "main residence".

There is however a section of the regulations that allows that taxpayer to extend the period of the main residence exemption so that this is initiated during the period when they are building or repairing the dwelling and not living in it.

In part, this is enabled because the term "main residence" is not clinically defined in the legislation. The ATO provides the following general guidance on the factors that may be relevant in working out whether a property is a taxpayer's main residence:

- The length of time you live there – there is no minimum time a person has to live in a home before it is considered to be their main residence
- Whether you and your family lives there
- Whether you have moved your personal belongings into the home
- The address to which your mail is delivered
- Your address on the electoral roll
- The connection of services (for example, phone, gas or electricity)
- Your intention in occupying the dwelling.

Generally, a mere intention to construct or occupy a dwelling as the taxpayer's main residence – without actually doing so – is not sufficient to categorise the building as the taxpayer's main residence.

The wiggle room with regard to the extension of the CGT-free period has to do with subsection s118-150(2), and a choice that can be made under this subsection. This can allow the taxpayer to treat the property as their main residence for CGT purposes prior to moving in, while the construction or renovation work is still being completed.

A recent Tax Determination (TD 2017/13) deals with this. The operation of this part of the legislation is also to be dealt with as part of the Monthly Tax Update webinar in early June.

"Land owned before CGT, but can a recent house built on it be CGT-free?", Breaking tax and super news - Tax & Super Australia, 2017. [Online]. Available: http://taxandsupernewsroom.com.au/index.php/2017/05/30/land-owned-cgt-can-recent-house-built-cgt-free/. [Accessed: 22- Jun- 2017].