



SMSF Regulator's Bulletin

The use of reserves by self-managed superannuation funds

Relying on this Bulletin

Self-Managed Superannuation Fund Regulator's Bulletins outline our concerns about new and emerging arrangements that pose potential risks to SMSF trustees and their members from a superannuation regulatory and / or income tax perspective. To the extent that this Bulletin provides guidance to you, and you apply it in good faith to your own circumstances, the Commissioner will administer the law in accordance with the guidance outlined in this Bulletin.

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What has caught our attention?

1. The Commissioner considers that any need to maintain reserves in self-managed superannuation funds (SMSFs) is distinct from the need to maintain reserves in superannuation funds regulated by the Australian Prudential Regulation Authority (APRA). For example, some reserves in large APRA funds are intended to spread potential costs across different 'generations' of members. This is different to SMSFs which by their nature only have a small membership.
2. Therefore, it is expected that the use of reserves by SMSFs will be in limited circumstances and only for specific and legitimate purposes. Where an SMSF purports to hold an amount in a reserve as opposed to allocating directly to a member's superannuation interest for the benefit of the member and their beneficiaries, outside these circumstances we will consider whether the trustee is acting in accordance with their obligations under the *Superannuation Industry (Supervision) Act 1993* (SISA).
3. Following the introduction of the Government's Superannuation Reform measures announced in the 2016–17 Budget, we are concerned that some SMSFs may implement strategies utilising reserves that are designed to circumvent restrictions imposed in the superannuation and income tax legislation and thereby weaken the integrity of these measures.

4. The use of reserves by SMSFs outside limited and legitimate circumstances may suggest that they are being used as part of a broader strategy to circumvent these restrictions. We will closely scrutinise such arrangements and consider the potential application of the sole purpose test under section 62 of the SISA and Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936).

What are our concerns?

5. While the SISA acknowledges the use of reserves by a superannuation fund, the Commissioner will closely scrutinise arrangements where amounts within an SMSF are held in a reserve as opposed to being allocated directly to a member's superannuation interest. The use of a reserve in an SMSF may raise the following regulatory concerns:

- (a) whether the use of a 'general' reserve to which a trustee allocates amounts (for example, earnings) without a clearly articulated purpose that gives effect to a strategy consistent with the SMSF's investment strategy and ability to discharge its liabilities is a reserve permitted by section 115 of the SISA
- (b) whether the use of a reserve or an account by the trustee adheres to the sole purpose test in section 62 of the SISA. Section 62 requires the trustee of an SMSF to ensure the fund is maintained solely for one or more specified purposes. An SMSF must be maintained in a manner that complies with the sole purpose test at all times while the SMSF is in existence. This extends to all activities undertaken by the SMSF, including acquiring and investing fund assets, employing and using fund assets and paying benefits. For further information, refer to Self Managed Superannuation Fund Ruling SMSFR 2008/2 *Self Managed Superannuation Funds: the application of the sole purpose test in section 62 of the Superannuation Industry (Supervision) Act 1993 to the provision of benefits other than retirement, employment termination or death benefits*, and
- (c) whether the trustee of the SMSF has satisfied paragraph 52B(2)(g) of the SISA which requires trustees to formulate, review regularly and give effect to a strategy for the prudential management of reserves consistent with the fund's investment strategy and its capacity to discharge liabilities. Refer also to regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994* (SISR).

6. We are also concerned with the potential use of reserves or other accounts by SMSF trustees as a means of circumventing restrictions imposed in the superannuation and income tax legislation introduced by the Superannuation Reform measures that were announced in the 2016-17 Budget. Part IVA of the ITAA 1936 applies to a scheme if a tax benefit has been obtained in connection with the scheme and the main purpose of a person who participated in the scheme, or a part of it, was to enable a taxpayer to obtain that tax benefit. The types of arrangements that the Commissioner will scrutinise carefully with a view to determining whether Part IVA of the ITAA 1936 applies will include (but not be limited to):

- (a) the intentional use of a reserve to reduce a member's total superannuation balance to enable them to make non-concessional contributions without breaching their non-concessional contributions' cap. The earnings from these non-concessional contributions may be taxed at a lower tax rate than would have been the case if the earnings were derived outside of the concessional tax superannuation environment

- (b) the intentional use of a reserve to reduce a member's total superannuation balance below \$500,000 in order to allow the member to access the catch-up concessional contributions arrangements. This may allow the member to either claim a higher personal superannuation contributions deduction or have a higher amount of their salary and wage income subject to a salary sacrifice arrangement for an income year. Further, the earnings from these concessional contributions may be taxed at a lower tax rate than would have been the case if the earnings were derived outside of the concessional taxed superannuation environment
- (c) the intentional use of a reserve to reduce the balance of a member's transfer balance account below the member's transfer balance cap to allow the member to allocate a greater amount to retirement phase and thereby having a greater amount of earnings within the SMSF being exempt current pension income, and
- (d) the intentional use of a reserve to reduce a member's total superannuation balance below \$1.6 million in order to allow the SMSF to use the segregated method to calculate its exempt current pension income.

What are we doing?

7. We will not apply compliance resources to review arrangements entered into by SMSFs as described in this Bulletin before 1 July 2017 provided that:

- (a) the reserve was permitted by section 115 of the SISA and the governing rules of the SMSF, and
- (b) the facts and circumstances do not indicate that the use of the reserve by the trustee was a means of circumventing the restrictions imposed by the Government's Superannuation Reform measures announced in the 2016-17 Budget.

8. SMSF trustees should be aware that an amount allocated from a reserve before and after 1 July 2017 will generally be counted as a concessional contribution unless otherwise excluded because certain conditions are met.

9. We will continue to monitor the use of reserves by SMSFs. Any unexplained increases in the creation of new reserves, in the balances of existing reserves maintained by SMSFs or allocation of amounts from a reserve directly into the retirement phase is likely to attract close scrutiny from us

10. Further explanation regarding our concerns on the use of reserves by SMSFs is provided in the Appendix attached to this Bulletin.

What should you do?

11. If you are considering using reserves in your SMSF, we strongly encourage you to seek independent professional advice or approach us for advice before doing so.

Commissioner of Taxation
15 March 2018

Appendix

What is a 'reserve'?

12. A reserve is commonly understood to be an account held within a superannuation fund that holds amounts that have not been allocated to a particular member. Such accounts have been used by superannuation funds for a number of different purposes. For both superannuation and income tax purposes, it is necessary to first determine whether such an account held by superannuation fund is a genuine reserve as opposed to a general account or mere accounting practice of the fund.

13. The term 'reserve' is referred to in both the superannuation regulatory provisions and income tax provisions. What constitutes a reserve under these provisions may differ and affect a range of matters including those relating to the operation of the fund and taxation consequences faced by members. These are further explained below.

What is a reserve under superannuation law?

14. Subregulation 1.03(1) of the SISR provides that 'reserves, in relation to a superannuation entity, means reserves maintained under section 115 of the Act'. Section 115 of the SISA states that the trustee of a superannuation entity may maintain a reserve for a particular purpose provided the governing rules of the entity do not prohibit the maintenance of a reserve for that purpose.

15. It is therefore necessary for an SMSF that uses a reserve to be able to clearly articulate the purpose for the reserve. Further, where reserves are kept, the trustee must formulate and give effect to a strategy for their prudential management that is consistent with the entity's investment strategy and its ability to discharge its liabilities as and when they fall due as required by paragraph 52B(2)(g) of the SISA.

16. This requirement is consistent with those imposed on trustees of registrable superannuation entities (RSE). APRA has issued *Prudential Practice Guide SPG 222 Management of reserves* to assist RSE licensees comply with the requirements of the SISA and outline acceptable practices for the management of reserves ([SPG 222](#)).

17. SPG 222 describes reserves as 'monies forming part of the net assets of the RSE that have been set aside for a clearly stated purpose'. Further, it indicates that reserves are largely concerned with contingent events as opposed to accrued expenses and provisions for administration expenses and taxation which are liabilities of the fund that arise from past events.

18. This is consistent with *Re VBN and APRA (No 5)* [2006] AATA 710 in which the Administrative Appeals Tribunal considered at [442] that the ordinary meaning of the term 'reserve' conveyed the notion of funds and assets being put aside to meet future contingencies and demands.

19. SPG 222 also states that reserves in superannuation funds are monies that have not been allocated to members but that not all unallocated monies are reserves. SPG 222 indicates that unallocated monies that are not reserves include defined benefit fund surpluses and 'accounting constructs' such as suspense accounts used to record contributions and roll-overs pending allocation to members.

20. For the purposes of the SISA and SISR, the views applied by APRA on the meaning of reserves are equally applicable to SMSFs. Therefore, we consider that any accounts held by an SMSF that are not consistent with the meaning of reserve as described in SPG 222 are not 'reserves' for the purposes of SISA and SISR.

21. Trustees should be aware that the term 'reserve' is often used within parts of the superannuation industry to describe accounts that are not consistent with the meaning of reserve as described in SPG 222. For example, contributions 'reserve' is often used to describe the accounts used to record contributions pending allocation to members. In such cases, these accounts are not reserves for the purposes of the SISA and SISR.

What is a reserve under income tax law?

22. There is no definition of 'reserve' in the *Income Tax Assessment Act 1997* (ITAA 1997) or the *Income Tax Assessment Regulations 1997* (ITAR 1997). Determining whether an amount is held in a reserve under income tax legislation is relevant to the application of a number of provisions including those relating to concessional contributions and therefore affect a member's liability to excess concessional contributions tax.

23. We consider the meaning of 'reserve' as used in regulation 291-25.01 of the ITAR 1997 has a wider meaning for the purposes of determining excess concessional contributions under Division 291 of the ITAA 1997 than the meaning for the purposes of the SISA and SISR. For further explanation refer to ATO Interpretative Decision [ATO ID 2015/21 Superannuation ECT: concessional contributions - reserve](#).

24. Trustees should also be aware of our views outlined in ATO Interpretative Decision [ATO ID 2015/22 Superannuation ECT: concessional contributions - allocation from 'pension reserve account' supporting 'complying lifetime pension'](#) in respect to the pension account and pension reserve account maintained by the trustee of an SMSF in relation to a complying lifetime pension (under subregulation 1.06(2) of the SISR). The pension account and the pension reserve account are taken together to represent a 'reserve' for the purposes of regulation 291-25.01 of the ITAR 1997.

25. However, the amounts in these accounts comprise an amount available to the trustee, not the member, to satisfy the trustee's liability to pay the complying lifetime pension. We do not consider the amounts in these accounts are 'reserves' for the purposes of the SISA and SISR.

Why are we concerned with the use of reserves in self-managed superannuation funds?

26. The Commissioner considers that any need to maintain reserves in SMSFs is distinct from the need to maintain reserves in superannuation funds regulated by APRA. For example, some reserves in large APRA funds are intended to spread potential costs across different 'generations' of members. This is different to SMSFs which by their nature only have a small and limited membership. Therefore, it is expected that trustees of SMSFs will only use reserves in limited circumstances.

27. We will closely scrutinise arrangements involving the use of a reserve or other accounts outside these circumstances. The use of a reserve in an SMSF may raise the following regulatory concerns:

- whether the use of a ‘general’ reserve to which a trustee allocates amounts (for example, earnings) without a clearly articulated purpose that gives effect to a strategy consistent with the SMSF’s investment strategy and ability to discharge its liabilities is a reserve permitted by section 115 of the SISA
- whether the use of a reserve or an account by the trustee adheres to the sole purpose test in section 62 of the SISA. Section 62 requires the trustee of an SMSF to ensure the fund is maintained solely for one or more specified purposes. An SMSF must be maintained in a manner that complies with the sole purpose test at all times while the SMSF is in existence. This extends to all activities undertaken by the SMSF, including acquiring and investing fund assets, employing and using fund assets and paying benefits. For further information, refer to [SMSFR 2008/2](#), and
- whether the trustee of the SMSF has satisfied paragraph 52B(2)(g) of the SISA which requires trustees to formulate, review regularly and give effect to a strategy for the prudential management of reserves consistent with the fund’s investment strategy and its capacity to discharge liabilities. Refer also to regulation 4.09 of the SISR.

28. We are also concerned with the potential use of reserves or other accounts by SMSF trustees as a means of circumventing restrictions imposed in the superannuation and income tax legislation introduced by the Superannuation Reform measures. These measures were announced in the 2016-17 Budget and implemented with the intention to improve the integrity of the superannuation system so it is used for its intended core purpose of providing an income to Australians in their retirement and not to be used for wealth accumulation, tax minimisation or as an estate planning vehicle (see the Explanatory Memorandum to the [Treasury Laws Amendment \(Fair and Sustainable Superannuation\) Bill 2016](#) and the [Joint media release on 15 September 2016 by the Minister for Revenue and Financial Services and the Treasurer](#))

29. For this purpose the Superannuation Reform measures introduced limits on the amounts of capital within superannuation that can be transferred to the retirement phase (transfer balance cap) and limits on the amount of contributions that can be made to superannuation (lowering of the concessional contributions cap and introduction of total superannuation balance to limit other contributions). Rules were also introduced which limit when an SMSF can use the segregated method to calculate their exempt current pension income for an income year by reference to a member’s total superannuation balance.

30. Additional legislation and amendments for the Superannuation Reform measures were introduced in the [Treasury Laws Amendment \(2017 Measures No .2\) Act 2017](#). In the Second Reading Speech to the Treasury Laws Amendment (2017 Measures No. 2) Bill 2017 it was stated:

During the course of consultation, concerns were raised that reserves could be used to circumvent changes in the Superannuation Taxation Reform Package. The schedule does not make changes to the current treatment of reserves. The Australian Taxation Office will continue to monitor the use of reserves to ensure that they are not being used to circumvent the law.

31. In the context of Superannuation Reform measures, the creation and maintenance of a reserve or reserve type account may raise concerns that it is a step in a scheme to achieve potential tax benefits to which Part IVA of the ITAA 1936 may apply.

What are the potential issues that may raise Part IVA?

32. Part IVA of the ITAA 1936 applies to a scheme if a tax benefit has been obtained in connection with the scheme and the main purpose of a person who participated in the scheme, or a part of it, was to enable a taxpayer to obtain that tax benefit. Tax benefits include:

- the non-inclusion of an amount in a taxpayer's assessable income for an income year that, apart from the scheme, would or might reasonably be expected to be, included in their assessable income, and
- a deduction being allowable to a taxpayer in relation to an income year that, apart from the scheme, would not or might reasonably be expected not to be, allowable to the taxpayer.

33. The types of arrangements that the Commissioner will scrutinise carefully with a view to determining whether Part IVA of the ITAA 1936 applies will include (but not be limited to):

- the intentional use of a reserve to reduce a member's total superannuation balance to enable them to make non-concessional contributions without breaching their non-concessional contributions cap. The earnings from these non-concessional contributions may be taxed at a lower tax rate than would have been the case if the earnings were derived outside of the concessional taxed superannuation environment
- the intentional use of a reserve to reduce a member's total superannuation balance below \$500,000 in order to allow the member to access the catch-up concessional contributions arrangements. This may allow the member to either claim a higher personal superannuation contributions deduction or have a higher amount of their salary and wage income subject to a salary sacrifice arrangement for an income year. Further, the earnings from these concessional contributions may be taxed at a lower tax rate than would have been the case if the earnings were derived outside of the concessional taxed superannuation environment
- the intentional use of a reserve to reduce the balance of a member's transfer balance account below the member's transfer balance cap to allow the member to allocate a greater amount to retirement phase and thereby having a greater amount of earnings within the SMSF being exempt current pension income, and
- the intentional use of a reserve to reduce a member's total superannuation balance below \$1.6 million in order to allow the SMSF to use the segregated method to calculate its exempt current pension income.

For further information on Part IVA refer to –
[Part-IVA--the-general-anti-avoidance-rule-for-income-tax/](#)

Can I use an administration reserve?

34. An administration reserve is referred to in SPG 222 as one being used to fund future administration and operational expenses. This is different to an accounting provision for administration expenses arising from past events which is not a reserve.

35. An SMSF is a closely held entity with limited membership and does not have the large changing membership base of an APRA regulated fund where it is prudent to spread possible future administration and operational costs across different generations of fund members. For an SMSF, administration and operational costs should be met from the net assets of the fund as the costs arise.

36. Additionally, an SMSF is intended to operate to ensure the provision of benefits for current members and does not have the same issues of allocating costs across future generations of members. The reserving of these administration costs for contingent events can be distinguished from accounts established for accrued expenses and provisions for taxation and administration expenses which are for costs arising from past events.

37. We consider that it is unnecessary for an SMSF to maintain this reserve. An SMSF that purports to maintain a reserve or other account for this purpose may be required to demonstrate that the use of the reserve or account is not part of a strategy employed for the primary purpose of circumventing restrictions in the superannuation and income tax laws and obtaining a tax advantage to which Part IVA of the ITAA 1936 could apply.

Can I use an investment reserve?

38. An investment reserve is referred to in SPG 222 as one being used to smooth the impact of market fluctuations. Reserves for investment smoothing are considered to be unnecessary in SMSFs as investment gains and losses should be reflected in the members' accounts in the years they occur. As an SMSF generally has a limited membership base (both in terms of the number of members and the lifetime of those members), smoothing of returns over the period of membership is unnecessary as the profits and losses will ultimately be met by the same members over their membership with the same net result.

39. Where investment earnings do not result in members' benefit being increased, and not reflecting the true value that would be available to pay benefits to the member, it is likely the withholding of investment returns, in the circumstances of an SMSF, is inconsistent with the sole purpose test in section 62 of the SISA. This is particularly demonstrated where a member of the SMSF dies and the unallocated amounts retained in the investment reserve are unable to be cashed as a death benefit to a beneficiary of the deceased member.

40. We consider that it is unnecessary for an SMSF to maintain this reserve. An SMSF that purports to maintain a reserve or other account for this purpose may be required to demonstrate that the use of the reserve or account is not part of a strategy employed for the primary purpose of circumventing restrictions in the superannuation and income tax laws and obtaining a tax advantage to which Part IVA of the ITAA 1936 could apply.

Can I use an operational risk reserve?

41. SPG 222 refers to an operational risk reserve as one used to meet RSE's Operational Risk Financial Requirement (ORFR) target amount.

42. Operational risk reserves are not necessary in SMSFs as the trustee is not required to meet the ORFR target amount set by APRA. Prudential Standard SPS 114 defines an 'operational risk' as the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events. By virtue of SMSF trustees and members being the same person, they are in the best position to act in a way to protect their own interests from such risks, negating the need for this type of reserves.

43. We consider that it is unnecessary for an SMSF to maintain this reserve. An SMSF that purports to maintain a reserve or other account for this purpose may be required to demonstrate that the use of the reserve or account is not part of a strategy employed for the primary purpose of circumventing restrictions in the superannuation and income tax laws and obtaining a tax advantage to which Part IVA of the ITAA 1936 could apply.

Can I use a reserve to hold unallocated contributions?

44. We understand the suspense accounts used to hold contributions pending their allocation under Division 7.2 of the SISR to an accumulation interest of a member are commonly referred to as 'reserves'. Consistent with APRA's views in SPG 222, we do not consider that these accounts are reserves for the purposes of the SISA and SISR.

45. However, we consider that the meaning of 'reserve' is broader for the purposes of regulation 291-25.01 of the ITAR 1997 and for that purpose, would include an amount held in this type of suspense account. The inclusion of these contributions in either concessional contributions or as non-concessional contributions is not dependent on the amount being allocated from a 'reserve'. These contributions are included in concessional contributions through subregulation 291-25.01(2) of the ITAR 1997 or non-concessional contributions through subregulation 292-90.01(2) of the ITAR 1997 (see Taxation Determination TD 2013/22 *Income tax: 'concessional contributions' – allocation of a superannuation contribution with effect from a day in the financial year after the financial year in which the contribution was made*).

46. SMSF trustees are able to accept contributions to these accounts pending allocation to the relevant member in accordance with Division 7.2 of the SISR.

Can I use a reserve in relation to a pension under regulations 1.06(2), 1.06(6) and 1.06(7) of the SISR?

47. Accounts such as the 'pension account' and 'pension reserve account' described in ATO ID 2015/22 set up by an SMSF in relation to a pension that satisfies the requirements of subregulation 1.06(2), 1.06(6) or 1.06(7) of the SISR together comprise a 'reserve' for the purposes of regulation 291-25.01 of the ITAR 1997.

48. SMSF trustees are able to maintain 'pension reserve accounts' while the SMSF continues to pay a pension that satisfies the requirements of subregulation 1.06(2), 1.06(6) or 1.06(7) of the SISR. The amounts in these accounts comprise an amount available to the trustee, not the member, to satisfy the trustee's liability to pay the complying pension.

Can I use a reserve to back an account-based pension?

49. A pension reserve account cannot be maintained to support an account-based pension described in paragraph 1.06(9A)(a) of the SISR. The payment of benefits from these types of pensions is determined by the balance of the member's account and not a fixed payment as required for a pension that satisfies the requirements of subregulation 1.06(2), 1.06(6) or 1.06(7) of the SISR. A trustee's liability with respect to the payment of benefits from account-based pensions is limited to the member's pension account balance.

50. An attempt to utilise a reserve or account to support an account-based pension (that is, make allocations from that reserve or account to increase the capital of an account-based pension or paying an amount from the reserve or account meet the pension liabilities arising from an account-based pension) would indicate a strategy to intentionally reduce the member's total superannuation balance and/or the balance of the member's transfer balance account.

Can I allocate an amount directly out of my reserve into my account-based pension?

51. We are aware of scenarios where an SMSF that provides a flexi-pension to a member may have a pension account and/or a pension reserve account with balances that are in excess of the maximum amount that may be commuted under regulation 1.06(6) of the SISR. Where the flexi-pension has been commuted in full, the trustee may (subject to the applicable trust deed) allocate the excess amounts from the reserve to all of the members of the fund in a fair and reasonable manner.

52. Any allocations made during the financial year that together comprise 5% or more of a member's total interest in the superannuation fund will be a concessional contribution and count towards the member's concessional contributions cap. An allocation cannot be made from the reserve to an existing account-based pension. This strategy would attempt to gain a tax advantage by allocating capital into the retirement phase without triggering a transfer balance credit to the member, thereby having a greater amount of earnings being exempt current pension income.

Can I use a self-insurance reserve?

53. SPG 222 refers to a self-insurance reserve as one used in funds that are permitted to self-insure. We consider that a self-insurance reserve would not be maintained in an SMSF because of the prohibition imposed by regulation 4.07E of the SISR. From 1 July 2016 (subject to certain circumstances that had an earlier start date), a trustee of a regulated superannuation fund may only provide an insured benefit to members of the fund if the provision of the benefit is fully supported by an insurance policy provided by an insurer.

Can I use a reserve as part of an arrangement involving insurance cover for a member of the fund?

54. Regulation 4.09 of the SISR requires trustees to consider whether the fund should hold a contract of insurance that provides insurance cover for one or more members of the fund. We are concerned that some SMSFs may have implemented a strategy where the trustee uses a reserve or an account to pay insurance premiums and receive insurance proceeds as a means of circumventing the restrictions on the types of insurance that can be held by superannuation funds.

55. Subregulation 4.07D(2) of the SISR provides that a trustee of a regulated superannuation fund must not provide an insured benefit in relation to a member of the fund unless the insured event is consistent with a specified condition of release (death, terminal medical condition, permanent incapacity, temporary incapacity). An 'insured benefit' for a member, means a right, other than an anti-detriment payment, for the member's benefits to be increased on the realisation of a risk (see regulation 4.07C of the SISR).

56. The strategy that we are concerned with involves a trustee of an SMSF taking out an insurance policy over a fund member in circumstances where the premiums from the insurance policy are sourced from a reserve or other account held by the trustee and the proceeds from the insurance policy are paid into the reserve or other account held by the trustee.

57. This strategy appears to attempt to circumvent the policy intent that the introduction of the applicable operating standard will limit trustees to only taking out risk insurance policies for the provision to beneficiaries of insured benefits that satisfy the condition of release in the SISR for death, terminal medical condition, permanent incapacity and temporary incapacity.

58. Further to the concerns that this strategy may be seen to circumvent the intended policy outcome, we consider that the adoption of this strategy would be inconsistent with the sole purpose test in section 62 of the SISA where the purpose of taking out the insurance policy over a fund member is not to increase the member's interest in the fund but rather to ensure that the trustee can satisfy certain obligations it may have, for example, under a borrowing arrangement with respect to assets of the fund.

Can I continue to hold an anti-detriment reserve?

59. We acknowledge that some SMSFs may maintain anti-detriment reserves or other accounts to pay an additional superannuation lump sum to the spouse, former spouse or child of a deceased member as a result of the income tax deduction provided under former section 295-485 of the ITAA 1997 to the trustee of the SMSF.

60. The deduction is no longer available in relation to these superannuation lump sums paid on or after 1 July 2019 or where the deceased member died on or after 1 July 2017. As the deduction has been removed, there is no longer a need to create this type of reserve or account from 1 July 2019.

61. Existing reserve levels may be progressively distributed to members bearing in mind the implications of allocations from 'reserves', as defined for the purposes of concessional contributions, under regulation 291-25.01 of the ITAR 1997.

References

Related Rulings/Determinations

- SMSFR 2008/2
- TD 2013/22

Legislative References

- ITAA 1936
- ITAA 1936 Pt IVA
- ITAA 1997
- ITAA 1997 Div 291
- ITAA 1997 295-485 (repealed)
- ITAR 1997
- ITAR 1997 291-25.01
- ITAR 1997 291-25.01(2)
- ITAR 1997 292-90.01(2)
- SISA 1993
- SISA 1993 62
- SISA 1993 52B(2)(g)
- SISA 1993 115
- SISR 1994
- SISR 1994 1.03(1)
- SISR 1994 1.06(2)
- SISR 1994 1.06(6)
- SISR 1994 1.06(7)
- SISR 1994 1.06(9A)(a)
- SISR 1994 4.07C
- SISR 1994 4.07D(2)

- SISR 1994 4.07E
- SISR 1994 4.09
- SISR 1994 Div 7.2
- Treasury Laws Amendment (2017 Measures No.2) Act 2017

Case references

- Re VBN and APRA (No 5) [2006] AATA 710

Other references

- ATO ID 2015/21
- ATO ID 2015/22
- APRA Prudential Practice Guide SPG 222: Management of reserves
- APRA Prudential Standard SPS 114
- Second Reading Speech to the Treasury Laws Amendment (2017 Measures No. 2) Bill 2017
- Explanatory Memorandum to the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016
- Joint Media Release by Minister for Revenue and Financial Services and The Treasurer 15 September 2016

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