Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures)Act2012

No. 158, 2012

An Act to amend the law relating to superannuation and taxation, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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No. 158, 2012

An Act to amend the law relating to superannuation and taxation, and for other purposes

[*Assented to 28 November 2012*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 November 2012
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	28 November 2012
3. Schedule 1, Part 2	1 October 2011.	1 October 2011
4. Schedule 1, Part 3	The day this Act receives the Royal Assent.	28 November 2012
5. Schedule 2	31 January 2013.	31 January 2013
6. Schedule 3	The day this Act receives the Royal Assent.	28 November 2012
7. Schedule 4, Part 1, Division 1	The day after this Act receives the Royal Assent.	29 November 2012
8. Schedule 4, Part 1, Division 2	Immediately after the commencement of the provision(s) covered by table item 5.	31 January 2013
9. Schedule 4, Part 1, Division 3	The day after this Act receives the Royal Assent.	29 November 2012
10. Schedule 4, Parts 2 and 3	The day after this Act receives the Royal Assent.	29 November 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Merging superannuation funds

Part 1—Extending the application of Division 310

Income Tax Assessment Act 1997

1 Section 310-1 (note 1)

Repeal the note, substitute:

Note 1: This Division applies to mergers happening between 24 December 2008 and 30 June 2011 (or, in certain cases, 30 September 2011), or between 1 October 2011 and 1 July 2017 (see Part 3 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*).

2 Section 310-1 (note 2)

Omit "1 July 2013", substitute "1 July 2019".

Tax Laws Amendment (2009 Measures No. 6) Act 2010

3 Subsection 2(1) (table item 4)

Repeal the item, substitute:

4. Schedule 2, Parts 4 and 5	1 July 2019.	1 July 2019

4 Subitem11(1) of Schedule 2

After "30 June 2011", insert ", or during the period starting on 1 October 2011 and ending at the end of 1 July 2017".

Part 2—Further amendments of Division 310

Income Tax Assessment Act 1997

5 Subsection 310-10(1)

Omit "*complying superannuation fund", substitute "*complying superannuation fund (other than a *self managed superannuation fund)".

6 Subparagraphs 310-35(1)(b)(i) and (ii)

Omit "for that earlier year", substitute "for the transfer year".

7 Paragraph 310-40(1)(b)

Omit "an amount", substitute "for the purposes of section 36-15, an amount".

8 Subparagraphs 310-40(1)(b)(i) and (ii)

Omit "for that earlier year", substitute "for the income year immediately prior to the transfer year".

9 At the end of subsection 310-40(1)

Add:

; and(c) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:

(i) if the receiving entity is a life insurance company—a tax loss of the complying superannuation/FHSA class incurred by the receiving entity for the transfer year; and

(ii) otherwise—a tax loss incurred by the receiving entity for the transfer year.

10 Section 310-50

Repeal the section, substitute:

310-50 Choosing the form of the assets roll-over

(1) An entity that chooses a roll-over under this Subdivision must choose the form of the roll-over that applies to each of the following:

(a) the original assets that are not *revenue assets;
(b) the original assets that are revenue assets.

(2) In respect of original assets that are not *revenue assets, the entity choosing the roll-over must choose either section 310-55 (global asset approach) or 310-60 (individual asset approach) to apply to the original assets and the corresponding received assets.

(3) In respect of original assets that are *revenue assets, the entity choosing the roll-over must choose either section 310-65 (global asset approach) or 310-70 (individual asset approach) to apply to the original assets and the corresponding received assets.

Note: The entity choosing the form of the roll-over may choose different forms of roll-over for its CGT assets and revenue assets.

11 Subsection 310-55(1) (note)

Omit "subsection 310-50(1)", substitute "subsection 310-50(2)".

12 Subsection 310-60(1)

Omit "*capital loss", substitute "*capital gain or *capital loss".

13 Subsection 310-60(1) (note)

Repeal the note, substitute:

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

14 Subsection 310-60(2)

Omit "*capital loss", substitute "*capital gain or *capital loss".

15 Subsection 310-60(3)

Repeal the subsection, substitute:

(3) The transferring entity's *capital proceeds from the transfer event are taken to be an amount equal to:
(a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or
(b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

16 Subsection 310-65(1) (note)

Omit “subsection 310-50(2)”, substitute “subsection 310-50(3)”.

17 Subsection 310-70(1)

Omit “incurs a *tax loss”, substitute “derives assessable income (other than a *capital gain) or incurs a *tax loss”.

18 Subsection 310-70(1) (note)

Repeal the note, substitute:

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

Part 3—Application provision

19 Application provision

The amendments made by this Schedule apply in relation to a transferring entity and a receiving entity if:

(a) the condition in subsection 310-10(3), 310-15(3) or 310-20(3) of the *Income Tax Assessment Act 1997* for those entities is satisfied; and

(b) all the transfer events (if any) referred to in subsection 310-45(2) of that Act for those entities happen;

during the period starting on 1 October 2011 and ending at the end of 1 July 2017.

Note 1: The effect of paragraph (a) is that all of the members of the original fund will need to become members of a continuing fund during this period.

Note 2: The effect of paragraph (b) is that the transferring fund needs to cease to hold all relevant assets during this period.

Schedule 2—Approved SMSF auditors

Part 1—Main amendments

Superannuation Industry (Supervision) Act 1993

1 Paragraph 6(1)(a)

Omit "the Commissioner of Taxation by paragraph (e) or (g)", substitute "ASIC by paragraph (da) or the Commissioner of Taxation by paragraph (e), (ea) or (g)".

2 After paragraph 6(1)(d)

Insert:

(da) ASIC also has the general administration of Part 16 (other than Division 2 and section 128P) to the extent that it relates to auditors of self managed superannuation funds; and

3 Subparagraph 6(1)(e)(v)

Repeal the subparagraph, substitute:

(v) Division 2 of Part 16 and section 128P;

(vi) Part 17 (other than section 140);

(vii) Parts 21 and 24;

(viii) Divisions 2, 3, 4 and 5 of Part 25A; and

4 After paragraph 6(1)(e)

Insert:

(ea) the Commissioner of Taxation also has the general administration of Part 16 (other than section 128N) to the extent that:

(i) it relates to self managed superannuation funds; and

(ii) that administration is not conferred on ASIC by paragraph (da); and

5 Subsection 10(1) (definition of *approved auditor*)

Repeal the definition, substitute:

approved auditor:

(a) in relation to a superannuation entity that is a self managed superannuation fund—means an approved SMSF auditor; or

(b) in relation to any other superannuation entity—means a person included in a class of persons specified in regulations made for the purposes of this definition, but does not include a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D; or

(c) in any other case—means any person covered by paragraph (a) or (b).

6 Subsection 10(1)

Insert:

approved SMSF auditor means a person who is registered under section 128B, but does not include:

(a) a person for whom an order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, is in force under section 130F; or

(b) a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D.

7 Subsection 10(1)

Insert:

SMSF auditor number, of an approved SMSF auditor, means the number stated under paragraph 128B(6)(b) in a certificate under subsection 128B(6) relating to the auditor's registration under section 128B.

8 Subsection 10(1)

Insert:

suspended SMSF auditor means a person for whom an order suspending a person's registration as an approved SMSF auditor is in force under section 130F.

9 After Division 1 of Part 16

Insert:

Division 1A—Approved SMSF auditors

Subdivision A—Registration of approved SMSF auditors

128A Application for registration as an approved SMSF auditor

(1) A natural person who is an Australian resident may apply to the Regulator for registration as an approved SMSF auditor.

(2) The application must be in the approved form.

Note: The approved form may require electronic lodgement of the application: see sections 11A and 11B.

(3) The Regulator may request the applicant to give to the Regulator further information relating to the application within a specified time.

(4) The applicant is taken to have withdrawn the application if he or she does not give the further information within that time.

128B Registration as an approved SMSF auditor

Obligation to register

(1) The Regulator must grant an application under section 128A and register the applicant as an approved SMSF auditor if:
  (a) the applicant:
    (i) has the qualifications prescribed by the regulations; and
    (ii) has the practical experience prescribed by the regulations; and
    (iii) has passed a competency examination in accordance with section 128C; and
  (b) the Regulator is satisfied that the applicant:
    (i) is capable of performing the duties of an approved SMSF auditor; and
    (ii) is unlikely to contravene the obligations of an approved SMSF auditor under Subdivision B; and
    (iii) is otherwise a fit and proper person to be an approved SMSF auditor.

Discretion to register

(2) If the applicant does not meet one or more of the requirements of paragraph (1)(a), the Regulator may grant the application if the applicant meets the requirements of paragraph (1)(b).

Refusal of applications

(3) If the applicant does not meet the requirements of paragraph (1)(b), the Regulator must refuse the application.

(4) Despite subsections (1) and (2), the Regulator must refuse the application if the applicant is:
   (a) a person for whom a disqualification order or a suspension order is in force under section 130F; or
   (b) a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D.

(5) If the Regulator refuses the application, the Regulator must, not later than 14 days after the decision, give to the applicant a notice in writing setting out the decision and the reasons for it.

Certificate of registration

(6) If the Regulator grants the application, the Regulator must, not later than 14 days after granting the application, issue to the applicant a certificate:
   (a) stating that the applicant has been registered as an approved SMSF auditor; and
   (b) stating the applicant's SMSF auditor number; and
   (c) specifying the day the application was granted.

(7) A failure to comply with subsection (6) does not affect the validity of the decision.

Duration of registration

(8) A registration under this section takes effect at the beginning of the day specified in the certificate as the day the application is granted and remains in force (except while the registration is suspended) until:
   (a) the Regulator cancels the registration under section 128E; or

(b) an order disqualifying the person who is registered from being an approved SMSF auditor comes into force under section 130F; or

(c) an order disqualifying the person who is registered from being or acting as an auditor of all superannuation entities comes into force under section 130D; or

(d) the person who is registered dies.

128C Competency examinations

The applicant is taken to pass a competency examination in accordance with this section if:

(a) in the 12 month period prior to his or her application under section 128A, the applicant passes an examination conducted by or on behalf of the Regulator for the purposes of this section; and

(b) the applicant has not, during that period, undertaken and failed to pass such an examination on 2 previous occasions.

128D Conditions on registration

(1) The Regulator may, at any time, by giving written notice to a person:

(a) impose conditions, or additional conditions, on the person's registration as an approved SMSF auditor; or

(b) vary or revoke conditions imposed on the registration.

(2) The Regulator may do so:

(a) on its own initiative; or

(b) on application by the person if:

(i) the person is an approved SMSF auditor; and

(ii) the application is accompanied by any documents prescribed by the regulations.

(3) Without limiting the conditions that the Regulator may impose under this section, those conditions, or those conditions as varied, may require one or more of the following:

(a) that the person complete a course of education or training specified in the notice;

(b) that the person undertake and pass a competency examination within a period specified by the Regulator.

128E Cancelling registration

(1) The Regulator may cancel a person's registration as an approved SMSF auditor if the person requests the Regulator to do so. The request must be in writing.

(2) The Regulator may cancel a person's registration as an approved SMSF auditor if the Regulator is satisfied that the person:
  (a) has failed to comply with a condition imposed under section 128D on the person's registration; or
  (b) has not performed any significant audit work during a continuous period of 5 years, and, as a result, has ceased to have the practical experience necessary for carrying out audits of self managed superannuation funds under this Act; or
  (c) has failed to comply with the person's obligation to give the Regulator a statement under section 128G; or
  (d) has ceased to be an Australian resident.

(3) The Regulator must, not later than 14 days after deciding to cancel the registration, give the person a written notice setting out the decision and the reasons for it.

(4) The decision takes effect at the end of the day the notice is given to the person.

(5) A failure to comply with subsection (3) does not affect the validity of the decision.

Subdivision B—Obligations of approved SMSF auditors

128F Professional obligations of approved SMSF auditors

An approved SMSF auditor must:
  (a) complete the continuing professional development requirements prescribed by the regulations; and
  (b) hold a current policy of professional indemnity insurance, of a level prescribed by the regulations, for claims that may be

made against the auditor in connection with audits of self managed superannuation funds; and

(c) comply with:

(i) any competency standards that the Regulator determines under section 128Q; and

(ii) any auditing standards, made by the Auditing and Assurance Standards Board under section 336 of the *Corporations Act 2001*, that are applicable to the duties of an approved SMSF auditor under this Act; and

(iii) any auditing and assurance standards, formulated by the Auditing and Assurance Standards Board under section 227B of the *Australian Securities and Investments Commission Act 2001*, that are applicable to those duties; and

(d) comply with the auditor independence requirements prescribed by the regulations.

128G Annual statements

(1) An approved SMSF auditor or suspended SMSF auditor must, within 30 days after the end of:

(a) the 12 month period beginning on the day the auditor's registration as an approved SMSF auditor took effect; and

(b) each subsequent 12 month period;

give to the Regulator a statement relating to that period.

(2) The statement must be in the approved form.

(3) The Regulator may, at any time before the statement is due, extend (or further extend) the period for giving the statement.

Note: The approved form may require electronic lodgement of the statement: see sections 11A and 11B.

128H Notification of certain matters

If:

(a) an approved SMSF auditor ceases:

(i) to practise as an auditor of self managed superannuation funds; or

(ii) to be an Australian resident; or

(b) a suspended SMSF auditor ceases to be an Australian resident; or

(c) a change occurs in any matter particulars of which are required by paragraph 128J(2)(a), (c) or (d) to be entered in the Register of Approved SMSF Auditors in relation to an approved SMSF auditor or suspended SMSF auditor; or

(d) a change occurs in any contact details that were included:

(i) in the application of an approved SMSF auditor or suspended SMSF auditor, under section 128A, for registration as an approved SMSF auditor; or

(ii) in particulars previously given under this paragraph in relation to an approved SMSF auditor or suspended SMSF auditor;

the approved SMSF auditor or suspended SMSF auditor must, not later than 21 days after the occurrence of the event concerned, give to the Regulator, in the approved form, particulars of that event.

Note: The approved form may require electronic lodgement of the particulars: see sections 11A and 11B.

Subdivision C—Registers

128J Register of Approved SMSF Auditors

(1) The Regulator must cause a Register of Approved SMSF Auditors to be kept for the purposes of this Act.

(2) The Regulator must cause the entry in the Register of the following particulars relating to each person who is an approved SMSF auditor or suspended SMSF auditor:

(a) the person's name;

(b) the day the person's registration took effect;

(c) the address of the principal place where the person practises as an auditor of self managed superannuation funds;

(d) if the person practises as an auditor or a member of a firm, or under a name or style other than the person's own name—the name of the firm, or the name or style under which he or she so practises;

(e) particulars of any suspension of the person's registration.

The Regulator may cause the entry in the Register of such other particulars relating to the person as the Regulator considers appropriate.

(3) If the person ceases to be an approved SMSF auditor (for a reason other than the person becoming a suspended SMSF auditor), the Regulator must cause to be removed from the Register the person's name and any other particulars relating to the person that are entered in the Register.

(4) A person may inspect and make copies of, or take extracts from, the Register.

128K Register of Disqualified SMSF Auditors

(1) The Regulator must cause a Register of Disqualified SMSF Auditors to be kept for the purposes of this Act.

(2) The Regulator must cause the entry in the Register of the name, and the contact details last known to the Regulator, of each person for whom an order disqualifying the person from being an approved SMSF auditor is in force under section 130F.

(3) If the order is revoked, the Regulator must cause to be removed from the Register the person's name and any other particulars relating to the person that are entered in the Register.

(4) A person may inspect and make copies of, or take extracts from, the Register.

Subdivision D—Fees

128L Fees imposed under the *Superannuation Auditor Registration Imposition Act 2012*

(1) A fee imposed under the *Superannuation Auditor Registration Imposition Act 2012* is payable for the matters mentioned in an item in column 1 of the table. The fee is payable by the person referred to in the corresponding item in column 2 of the table.

Fees imposed under the *Superannuation Auditor Registration Imposition Act 2012*		
Item	**Column 1** **A fee payable for ...**	**Column 2** **Is payable by ...**
1	Applying for registration as an approved SMSF auditor	The applicant
2	Undertaking a competency examination in accordance with section 128C	The person undertaking the examination
3	Giving to the Regulator a statement under section 128G	The person giving the statement
4	Giving to the Regulator a statement under section 128G within 1 month after it fell due (in addition to the fee payable because of item 3)	The person giving the statement
5	Giving to the Regulator a statement under section 128G more than 1 month after it fell due (in addition to the fee payable because of item 3)	The person giving the statement
6	Giving to the Regulator particulars under section 128H within 1 month after they fell due	The person giving the particulars
7	Giving to the Regulator particulars under section 128H more than 1 month after they fell due	The person giving the particulars
8	Inspecting or searching a register that the Regulator keeps under this Division	The person who makes a request to inspect or search the register

(2) The fee is payable to the Regulator on behalf of the Commonwealth.

(3) The fee is due and payable on the day prescribed by the regulations for the purposes of this subsection.

(4) The Regulator may, on behalf of the Commonwealth, waive the payment of the whole or a part of the fee, on the Regulator's own initiative or on written application by a person.

(5) If a fee is payable under this section for a matter (other than a matter referred to in item 8 of the table in subsection (1)), the

matter is taken, for the purposes of this Act (other than section 128J), not to have occurred until the fee is paid.

(6) The Regulator may, on behalf of the Commonwealth, recover a debt due under this section.

(7) Nothing in a law passed before the commencement of this section exempts a person from liability to pay a fee under this section.

(8) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability:
   (a) to pay taxes under laws of the Commonwealth; or
   (b) to pay certain taxes under those laws that include fees payable under this section;

   is not to be construed as exempting the person from liability to pay fees payable under this section, unless the law or provision expressly exempts a person from liability to pay such fees.

128M Fees for inspection or search

(1) If a fee is payable under section 128L for a matter referred to in item 8 of the table in subsection 128L(1) that involves the Regulator doing an act, the Regulator may refuse to do the act until the fee is paid.

(2) To avoid doubt, nothing in this Division, and nothing done under this Division:
   (a) imposes on the Regulator a duty to allow the inspection or search of a register, or to make available information; or
   (b) confers a right to inspect or search a register or to have information made available;

   except so far as such a duty or right would, but for the effect of this section, exist under a provision of this Act (other than a provision of this Division) or under some other law.

Subdivision E—Miscellaneous

128N ASIC may disclose information to the Commissioner of Taxation

ASIC may disclose information, given to it in or in connection with the performance of its functions or the exercise of its powers under

this Part or Part 25, to the Commissioner of Taxation for the purpose of administering the provisions of this Act.

Note: A disclosure of information permitted by this section is an authorised disclosure for the purposes of subsection 127(2) of the *Australian Securities and Investments Commission Act 2001*.

128P Commissioner of Taxation may refer matters to ASIC

(1) If the Commissioner of Taxation is of the opinion that:
  (a) an approved SMSF auditor is not a fit and proper person to be an approved SMSF auditor; or
  (b) in relation to the conduct of an audit of a self managed superannuation fund—a person has contravened this Act or the regulations, or a person who conducted, or is conducting, the audit has failed to carry out or perform adequately and properly:
    (i) the duties of an auditor under this Act or the regulations; or
    (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
    (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*;

the Commissioner of Taxation may refer the details of the matter to ASIC.

(2) The Commissioner of Taxation may exercise the power under subsection (1) in relation to an approved SMSF auditor whether or not an order disqualifying or suspending the approved SMSF auditor has been made under section 130F.

(3) If, under subsection (1), the Commissioner of Taxation refers details of a matter to ASIC, the Commissioner of Taxation must, as soon as practicable but, in any event, not later than 14 days after the referral, by notice in writing given to the auditor or person concerned, inform the auditor or person:
  (a) of the fact that a matter has been referred under subsection (1); and
  (b) of the nature of the matter so referred.

128Q Competency standards

(1) The Regulator may, by legislative instrument, determine competency standards to be complied with by all approved SMSF auditors.

(2) A competency standard may impose different requirements to be complied with in different situations or in respect of different activities.

(3) Without limiting the matters in relation to which the Regulator may determine a competency standard, a competency standard may provide for matters relating to any of the following:
  (a) the conduct of audits;
  (b) the professional obligations of approved SMSF auditors;
  (c) knowledge of laws applying to approved SMSF auditors;
  (d) compliance with laws applying to approved SMSF auditors.

(4) A competency standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

(5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.

10 After section 130E

Insert:

130F Approved SMSF auditors—disqualification and suspension orders

Application of section

(1) This section applies to the extent that the Regulator is ASIC.

Disqualification orders and suspension orders

(2) The Regulator may make a written order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, if:

(a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
  (i) the duties of an auditor under this Act or the regulations; or
  (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or
  (iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the person has failed to comply with a condition, or additional condition, imposed under section 128D on the person's registration as an approved SMSF auditor; or

(c) the person has made a false declaration in:
  (i) an application for registration as an approved SMSF auditor; or
  (ii) a statement given to the Regulator under section 128G; or

(d) the person is otherwise not a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

Note: For offences relating to persons disqualified or suspended under this section, see section 131C.

(3) The Regulator must give a copy of the order to the person.

Date of effect

(4) The order takes effect on the day specified in the order. The specified day must be within the 28 day period beginning on the day on which the order was made.

Gazettal

(5) If the Regulator's decision is to make an order under this section disqualifying a person from being an approved SMSF auditor, the Regulator must cause a copy of the order to be published in the *Gazette* as soon as practicable after it is made.

(6) If the Regulator's decision to make the disqualification order is varied or revoked by the Regulator as a result of a reconsideration under subsection 344(4), the Regulator must cause a notice of the

variation or revocation to be published in the *Gazette* as soon as practicable after the decision to vary or revoke the order is made.

(7) If:
  (a) the Regulator's decision to make the disqualification order is confirmed or varied by the Regulator as a result of a reconsideration under subsection 344(4); and
  (b) the decision as so confirmed or varied is varied or set aside by the Administrative Appeals Tribunal;

the Regulator must cause a notice of the Tribunal's decision to be published in the *Gazette* as soon as practicable after it is made.

Revocation

(8) The Regulator may revoke an order under this section. The Regulator's power to revoke may be exercised:
  (a) on the Regulator's own initiative; or
  (b) on written application made by the person disqualified or suspended.

Revocation—decision on application

(9) If an application is made for the revocation of the order, the Regulator must decide to:
  (a) revoke the order; or
  (b) refuse to revoke the order.

Revocation—grounds

(10) The Regulator must not revoke the order unless the Regulator is satisfied that the person concerned:
  (a) is likely to carry out and perform adequately and properly the duties of an approved SMSF auditor under this Act or the regulations; and
  (b) is otherwise a fit and proper person to be an approved SMSF auditor for the purposes of this Act.

Revocation—date of effect

(11) A revocation of the order takes effect on the day the revocation is made.

Revocation—reasons for refusing to revoke

(12) If the Regulator decides to refuse an application for revocation of the order, the Regulator must cause to be given to the applicant a written notice setting out the decision and giving the reasons for the decision.

Gazettal

(13) If the order that the Regulator revokes under subsection (8) is an order disqualifying a person from being an approved SMSF auditor, the Regulator must cause particulars of the revocation to be published in the *Gazette* as soon as practicable after it occurs.

Part 2—Other amendments

Superannuation Industry (Supervision) Act 1993

11 After subsection 6(2)

Insert:

(2AA) Despite paragraph (2)(b):

(a) powers and duties conferred on ASIC by section 255 are conferred only in relation to persons who are relevant persons in relation to superannuation entities; and

(b) powers and duties conferred on ASIC by section 256 are conferred only in relation to the affairs of superannuation entities.

12 After subsection 6(2A)

Insert:

(2AB) Despite subsection (2A), powers and duties conferred on the Commissioner of Taxation by Divisions 4 to 8 of Part 25 (other than section 285) are conferred only in relation to:

(a) persons who are relevant persons in relation to superannuation entities; and

(b) the affairs of superannuation entities.

13 Subsection 10(1)

Insert:

Australian resident means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

14 Subsection 10(1) (definition of *relevant person*)

Repeal the definition, substitute:

relevant person means:

(a) in relation to a fund or trust:

(i) if the trustee or an investment manager of the fund or trust is or includes an individual—that individual; or

(ii) if the trustee or an investment manager of the fund or trust is or includes a body corporate—a responsible officer of that body corporate; or

(iii) an auditor of the fund or trust; or

(iv) an actuary of the fund or trust; or

(v) a person who is a custodian in relation to the fund or trust; or

(b) in relation to an approved SMSF auditor:

(i) the approved SMSF auditor; or

(ii) a person who is a relevant person under paragraph (a) in relation to a self managed superannuation fund of which the approved SMSF auditor is or was an auditor; or

(c) in relation to an audit of a self managed superannuation fund:

(i) the person who is conducting, or conducted, the audit; or

(ii) a person who is a relevant person under paragraph (a) in relation to the self managed superannuation fund.

15 Subsection 10(1) (after paragraph (rb) of the definition of *reviewable decision*)

Insert:

(rc) a decision of the Regulator under section 128B refusing an application made under section 128A; or

(rd) a decision of the Regulator under section 128D imposing or varying conditions, or additional conditions, on a person's registration as an approved SMSF auditor; or

(re) a decision of the Regulator refusing an application to vary or revoke conditions, or additional conditions, imposed under section 128D on a person's registration as an approved SMSF auditor; or

(rf) a decision of the Regulator under subsection 128E(2) cancelling a person's registration as an approved SMSF auditor; or

(rg) a decision of the Regulator refusing an application to waive the payment of the whole or a part of a fee under subsection 128L(4); or

(rh) a decision of the Regulator to make an order under subsection 130F(2); or

(ri) a decision of the Regulator refusing an application to revoke an order under subsection 130F(8); or

16 At the end of subsection 35C(1)

Add:

Note: If the superannuation entity is a self managed superannuation fund, the person appointed must be an approved SMSF auditor.

17 Subsection 35C(1A)

After “a superannuation entity”, insert “that is not a self managed superannuation fund”.

18 After paragraph 35C(5)(b)

Insert:

(ba) must, if it is approved for a superannuation entity that is a self managed superannuation fund, include a statement by the auditor as to the extent of the auditor’s compliance with the auditor independence requirements referred to in paragraph 128F(d); and

19 Subsection 35C(7)

Repeal the subsection, substitute:

(7) The auditor commits an offence if:

(a) the auditor contravenes subsection (6); and

(b) the entity is not a self managed superannuation fund; and

(c) the auditor is not an approved SMSF auditor.

Penalty: Imprisonment for 6 months.

20 Section 131 (heading)

Repeal the heading, substitute:

131 Actuaries—disqualification orders

21 Subsection 131(1)

Omit “approved auditor or” (first occurring).

22 Subparagraphs 131(1)(a)(i) and (ii)

Omit “an auditor or an actuary (as the case requires)”, substitute “an actuary”.

23 Subparagraph 131(1)(a)(iii)

Omit “an auditor or actuary (as the case requires)”, substitute “an actuary”.

24 Paragraph 131(1)(b)

Omit “approved auditor or”.

25 Subsection 131(4A)

Omit “APRA’s”, substitute “the Regulator’s”.

26 Subsection 131(4A)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

27 Paragraph 131(4B)(a)

Omit “APRA’s”, substitute “the Regulator’s”.

28 Subsection 131(4B)

Omit “APRA” (wherever occurring), substitute “the Regulator”.

29 Paragraph 131(7)(a)

Omit “an auditor or actuary (as the case requires)”, substitute “an actuary”.

30 Paragraph 131(7)(b)

Omit “an approved auditor or actuary (as the case requires)”, substitute “an actuary”.

31 Subsection 131AA(1)

After “superannuation entity” (first occurring), insert “that is not a self managed superannuation fund”.

32 Subsection 131A(1)

After “an approved auditor” (first occurring), insert “(other than an approved SMSF auditor)”.

33 Paragraph 131A(1)(b)

Omit “or an actuary”, substitute “of a superannuation entity that is not a self managed superannuation fund, or to be an actuary,”.

34 Subsection 131B(1)

Omit “is guilty of”, substitute “commits”.

35 Subsection 131B(2)

Repeal the subsection, substitute:

(2) A person commits an offence if:
  (a) the person holds themself out as an approved SMSF auditor; and
  (b) the person is not an approved SMSF auditor.

Penalty: 50 penalty units.

(2A) A person commits an offence if:
  (a) the person holds themself out as an approved auditor of a kind other than an approved SMSF auditor; and
  (b) the person is not such an approved auditor.

Penalty: 50 penalty units.

36 Subsection 131B(3)

Omit “Subsections (1) and (2)”, substitute “Subsections (1), (2) and (2A)”.

37 Subparagraph 131C(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the person is disqualified or suspended under section 130F from being an approved SMSF auditor; or
(iii) the person is disqualified under section 131 from being an actuary; and

38 At the end of paragraph 131C(1)(c)

Add “or suspended”.

39 Subparagraph 131C(2)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the person is disqualified or suspended under section 130F from being an approved SMSF auditor; or

(iii) the person is disqualified under section 131 from being an actuary; and

40 At the end of paragraph 131C(2)(c)

Add “or suspended”.

41 Part 25 (heading)

Repeal the heading, substitute:

Part 25—Monitoring and investigation

42 Paragraph 253(a)

After “superannuation entities”, insert “, approved SMSF auditors and audits of self managed superannuation funds”.

43 Paragraph 253(c)

After “a superannuation entity”, insert “or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund,”.

44 At the end of section 253

Add:

Note 1: Sections 254 and 264, and Division 3, apply only to monitoring or investigating superannuation entities. They do not apply to monitoring or investigating approved SMSF auditors or to the conduct of audits of self managed superannuation funds.

Note 2: ASIC’s powers and duties as the Regulator under sections 255 and 256 apply only to monitoring superannuation entities: see subsection 6(2AA). They do not apply to monitoring approved SMSF auditors or to the conduct of audits of self managed superannuation funds.

Note 3: The Commissioner of Taxation’s powers and duties as the Regulator under Divisions 4 to 8 (other than section 285) apply only to investigating superannuation entities: see subsection 6(2AB).

45 Section 253A

Omit “a fund or trust”, substitute “a fund, trust or approved SMSF auditor, or in relation to an audit of a self managed superannuation fund,”.

46 Section 253A

Omit “the fund or trust”, substitute “the fund, trust, auditor or audit”.

47 Division 2 of Part 25 (heading)

Repeal the heading, substitute:

Division 2—Monitoring

48 Subsection 255(1)

Repeal the subsection, substitute:

(1) For the purposes of this Act, the Regulator or an authorised person may, by written notice to:
  (a) a relevant person in relation to a superannuation entity or approved SMSF auditor; or
  (b) a relevant person in relation to an audit of a self managed superannuation fund;

  require the relevant person to produce to the Regulator or an authorised person, at such reasonable time and reasonable place as are specified in a notice, any books relating to the affairs of the entity, auditor or audit.

49 Subsection 255(4)

Repeal the subsection, substitute:

(4) The powers of the Regulator or an authorised person under this section may be exercised in relation to a superannuation entity or an approved SMSF auditor, or in relation to an audit of a self managed superannuation fund, even though an investigation is being conducted, under section 263, of:
  (a) the whole or a part of the affairs of the entity or auditor; or
  (b) the whole or a part of the conduct of the audit.

50 Subsection 256(1)

After “a superannuation entity”, insert “or approved SMSF auditor, or relating to the conduct of an audit of a self managed superannuation fund,”.

51 Paragraph 256(1)(a)

After “those affairs” (first occurring), insert “or the conduct of that audit,”.

52 Paragraph 256(1)(a)

After “those affairs” (second occurring), insert “or the conduct of that audit”.

53 Section 263 (heading)

Repeal the heading, substitute:

263 Investigations of superannuation entities, approved SMSF auditors and the conduct of certain audits

54 After subsection 263(1)

Insert:

(1A) If it appears to the Regulator that a contravention of this Act or the regulations may have occurred or be occurring in relation to an approved SMSF auditor, the Regulator may, by written notice to the auditor, tell the auditor that the Regulator proposes to conduct an investigation of the whole or a part of the affairs of the auditor.

(1B) If it appears to the Regulator that a contravention of this Act or the regulations may have occurred or be occurring in relation to the conduct of an audit of a self managed superannuation fund, the Regulator may, by written notice to a person who conducted, or who is conducting, the audit, tell the person that the Regulator proposes to conduct an investigation of the whole or a part of the conduct of the audit.

55 Subsection 263(2)

Repeal the subsection, substitute:

(2) The following provisions of this Division apply:
- (a) in relation to a superannuation entity if a notice is given under subsection (1) to a trustee of the entity;
- (b) in relation to an approved SMSF auditor if a notice is given under subsection (1A) to the auditor;
- (c) in relation to a person who conducted, or who is conducting, an audit of a self managed superannuation fund, if a notice is given under subsection (1B) to the person.

56 Subsection 265(1)

Repeal the subsection, substitute:

(1) The Regulator may, in writing, appoint a member of the staff of the Regulator, or a member of the staff of the other Regulator, to be an inspector for the purposes of the conduct of investigations under this Division in relation to:

(a) the affairs of superannuation entities and approved SMSF auditors; and

(b) the conduct of audits of self managed superannuation funds.

57 Section 268

After “a superannuation entity”, insert “or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund”.

58 Paragraph 268(a)

After “the entity”, insert “or auditor, or to the audit,”.

59 Paragraph 268(a)

After “those affairs”, insert “or that audit”.

60 Section 269

After “a superannuation entity”, insert “or approved SMSF auditor, or the conduct of an audit of a self managed superannuation fund”.

61 Paragraph 269(a)

After “the entity”, insert “, auditor or audit”.

62 Paragraph 269(b)

After “those affairs”, insert “or that audit”.

63 Paragraph 270(a)

Repeal the paragraph, substitute:

(a) who is, or has been, a relevant person in relation to:

(i) a superannuation entity or approved SMSF auditor whose affairs or a part of whose affairs the Regulator is investigating; or

(ii) an audit of a self managed superannuation fund the conduct of which, or a part of the conduct of which, the Regulator is investigating; or

64 Paragraph 270(b)

After “that entity”, insert “, auditor or audit”.

65 Paragraph 284(3)(a)

Repeal the paragraph, substitute:

(a) must give a copy of the report to:

(i) each trustee of the superannuation entity to which the investigation related; or

(ii) the approved SMSF auditor to whom the investigation related; or

(iii) the person who conducted, or is conducting, the audit to which the investigation related; and

66 Subsection 284(5)

Repeal the subsection, substitute:

(5) ASIC and the Commissioner of Taxation must give each other a copy of any report they prepare under this section in relation to:

(a) a self managed superannuation fund; or

(b) an approved SMSF auditor; or

(c) a person who conducted, or is conducting, an audit of a self managed superannuation fund.

67 Subsection 294(1)

Repeal the subsection, substitute:

(1) A copy of, or an extract from, a book relating to:

(a) affairs of a superannuation entity or approved SMSF auditor; or

(b) conduct of an audit of a self managed superannuation fund;

is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the original book, as the case may be, whether or not the copy or extract was made under section 273.

68 Subsection 344(12)

After “(rb),”, insert “(rc), (rd), (re), (rf), (rg), (rh), (ri),”.

Taxation Administration Act 1953

69 Subsection 355-65(3) in Schedule 1 (after table item 6)

Insert:

6A	the Australian Securities and Investments Commission	is for the purpose of administering Part 16 of the *Superannuation Industry (Supervision) Act 1993*.

Part 3—Application and transitional provisions

70 Approved auditors of self managed superannuation funds

(1) If, immediately before 31 January 2013, a person was an approved auditor of a self managed superannuation fund, the *Superannuation Industry (Supervision) Act 1993* as amended by this Schedule applies in relation to the person as if the person became an approved SMSF auditor on 31 January 2013.

(2) Subitem (1) does not prevent the person applying, under section 128A of that Act as so amended, for registration as an approved SMSF auditor.

(3) This item continues to apply to the person until:

(a) registration of the person as an approved SMSF auditor under section 128B of that Act as so amended takes effect; or

(b) the end of 30 June 2013;

whichever happens earlier.

(4) While this item applies to the person, section 128J of that Act as so amended does not require particulars relating to the person to be entered in the Register of Approved SMSF Auditors.

71 Applications before 1 July 2013 for registration as an approved SMSF auditor

(1) A person who, before 1 July 2013, applies for registration as an approved SMSF auditor is taken, in the circumstances prescribed by a regulation, to have met the one or more requirements of paragraph 128B(1)(a) of the *Superannuation Industry (Supervision) Act 1993*, as amended by this Schedule, prescribed by that regulation.

(2) This item does not affect the operation of subsection 128B(2) of that Act as so amended.

72 Approved auditors of superannuation entities that are not self managed superannuation funds

(1) The amendment made by item 5 of this Schedule does not affect the continuity of any regulations made for the purposes of the definition of

approved auditor in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993* that are in force immediately before this item commences.

(2) However, this item does not apply to the extent that those regulations apply to an auditor of a self managed superannuation fund.

73 Auditors previously disqualified under section 131

(1) If:

(a) immediately before 31 January 2013, a person was a person in respect of whom an order (a ***section 131 order***) is in force under section 131 of the *Superannuation Industry (Supervision) Act 1993*; and

(b) immediately before the order came into force, the person was an approved auditor within the meaning of that Act;

on and after that day, the person is taken, for the purposes of that Act as amended by this Schedule, to be a person for whom an order (a ***section 130F order***) disqualifying a person from being an approved SMSF auditor is in force under section 130F.

(2) If:

(a) before 31 January 2013, an application was made, as mentioned in subsection 131(6) of the *Superannuation Industry (Supervision) Act 1993*, for the revocation of the section 131 order; and

(b) a decision on the application was not made before that day;

on and after that day, an application is taken, for the purposes of that Act as amended by this Schedule, to have been made, as mentioned in subsection 130F(9) of that Act as so amended, for the revocation of the section 130F order.

(3) If:

(a) before 31 January 2013, a request was made, under subsection 344(1) of the *Superannuation Industry (Supervision) Act 1993*, for reconsideration of a decision refusing to revoke the section 131 order; and

(b) a decision on the request was not made before that day;

on and after that day, a request is taken, for the purposes of that Act as amended by this Schedule, to have been made, under subsection 344(1) of that Act as so amended, for reconsideration of a decision refusing to revoke the section 130F order.

(4) If:

(a) before 31 January 2013, an application was made, under subsection 344(8) of the *Superannuation Industry (Supervision) Act 1993*, for review of a decision under subsection 344(4) of that Act relating to the section 131 order; and

(b) a decision on the application was not made before that day;

on and after that day, an application is taken, for the purposes of that Act as amended by this Schedule, to have been made, under subsection 344(8) of that Act as so amended, for review of a corresponding decision relating to the section 130F order.

74 Enforcement of undertakings

If:

(a) before 31 January 2013, the Commissioner of Taxation accepted an undertaking, under subsection 262A(1) of the *Superannuation Industry (Supervision) Act 1993*, given by an approved auditor; and

(b) the undertaking was still in force immediately before that day;

on and after that day, the undertaking is taken, for the purposes of that Act as amended by this Schedule, to have been accepted by ASIC under that subsection of that Act as so amended.

75 Inspectors

If a person was an inspector immediately before 31 January 2013, the person's appointment as an inspector continues after that day as if it were an appointment for the purposes of the conduct of investigations, under Division 4 of Part 25 of the *Superannuation Industry (Supervision) Act 1993* as amended by this Schedule, in relation to:

(a) the affairs of superannuation entities and approved SMSF auditors; and

(b) the conduct of audits of self managed superannuation funds.

76 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Part to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Schedule 3—Expanded superannuation reporting

Taxation Administration Act 1953

1 Subdivision 390-A in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 390-A—Member information statements and roll-over superannuation benefit statements

2 Section 390-5 in Schedule 1 (heading)

Repeal the heading, substitute:

390-5 Member information statements

3 Subsections 390-5(1), (2) and (3) in Schedule 1

Repeal the subsections, substitute:

(1) A *superannuation provider in relation to a *superannuation plan must give the Commissioner a statement in relation to an individual if the individual held a *superannuation interest in the plan at any time during the period specified in a determination under subsection (6).

Note 1: Section 286-75 provides an administrative penalty for breach of this subsection.

Note 2: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section.

4 Paragraph 390-5(9)(a) in Schedule 1

After “relating to the contributions”, insert “made to the *superannuation plan”.

5 Paragraph 390-5(9)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) the *value of any *superannuation interest, or superannuation account, the individual held in the superannuation plan at a particular time;

(c) if no contributions were made to the superannuation plan in respect of the individual during the period—a statement to that effect.

6 After subsection 390-5(9) in Schedule 1

Insert:

(9A) Treat the following as contributions for the purposes of this section:

(a) *notional taxed contributions in relation to a *defined benefit interest in the *superannuation plan;

(b) amounts, mentioned in subsection 292-25(3) or paragraph 292-90(4)(a) of the *Income Tax Assessment Act 1997*, allocated by the *superannuation provider in relation to the superannuation plan;

(c) amounts mentioned in paragraph 292-90(4)(c) of that Act.

7 Paragraph 390-5(11)(c) in Schedule 1

Omit “in respect of whom the contributions are made”, substitute “who holds the *superannuation interest in the plan”.

8 Subparagraph 390-5(11)(c)(ii) in Schedule 1

Omit “who made at least some of the contributions”.

9 Application provision

The amendments made by this Schedule apply in relation to periods starting on and after 1 July 2012.

Schedule 4—Improving efficiency and data quality in the superannuation system

Part 1—Superannuation Industry (Supervision) Act 1993

Division 1—Information register for data and payment standards

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

data and payment regulations and standards relating to RSAs has the same meaning as in the *Retirement Savings Accounts Act 1997*.

2 Subsection 10(1)

Insert:

eligible superannuation entity means a regulated superannuation fund or an approved deposit fund.

3 Subsection 10(1)

Insert:

superannuation data and payment regulations and standards means:

(a) the regulations made under section 34K; and

(b) the standards issued by the Commissioner of Taxation under that section.

4 Division 4 of Part 3B (heading)

Repeal the heading, substitute:

Division 4—Information

5 Before section 34X

Insert:

Subdivision A—Correction and rectification of information

6 At the end of Division 4 of Part 3B

Add:

Subdivision B—Register of information about certain funds and schemes

34Y Register of information about certain funds and schemes

(1) The Commissioner of Taxation must keep a register of information for the purposes of this Part.

(2) The Commissioner of Taxation is to keep the register by electronic means.

(3) The register is not a legislative instrument.

(4) The Commissioner of Taxation may cause the contents of all or part of the register to be made available to:
  (a) entities that must comply with the superannuation data and payment regulations and standards; and
  (b) entities that must comply with the data and payment regulations and standards relating to RSAs; and
  (c) exempt public sector superannuation schemes.

Contents of the register

(5) The register must contain the information given to the Commissioner of Taxation in accordance with section 34Z.

(6) The trustee of an exempt public sector superannuation scheme may give the Commissioner of Taxation information that both:
  (a) relates to the scheme; and
  (b) is of the kind given to the Commissioner of Taxation in accordance with section 34Z.

The Commissioner of Taxation may include that information on the register.

34Z Trustees to provide information for inclusion in register

(1) The following matters may be prescribed by regulation:

(a) information that is required to be given to the Commissioner of Taxation in accordance with this section in relation to prescribed eligible superannuation entities;

(b) the manner and form (including electronic form) in which the prescribed information is to be provided;

(c) the time at which, or period within which, the prescribed information is to be provided.

(2) Each trustee of a prescribed eligible superannuation entity must ensure that the prescribed information in relation to the entity is given to the Commissioner of Taxation in accordance with the regulation.

Contravening requirement to give information

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 25 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

7 Application

(1) The register provided for by Subdivision B of Division 4 of Part 3B of the *Superannuation Industry (Supervision) Act 1993*, as inserted by this Schedule, is to be kept from 1 July 2013.

(2) A regulation made for the purposes of subsection 34Z(1) of the *Superannuation Industry (Supervision) Act 1993*, as inserted by this Schedule, must not prescribe a time by which information is to be provided to the Commissioner of Taxation that is before 1 March 2013.

Division 2—Monitoring

Superannuation Industry (Supervision) Act 1993

8 After subsection 6(2AB)

Insert:

(2AC) Nothing in subsection (2AB) limits the powers and duties conferred on the Commissioner of Taxation by Part 25 (as mentioned in subsection (2A)) in relation to contributing employers.

Note: The Commissioner of Taxation's powers and duties under Part 25 in relation to contributing employers are found in sections 255 and 256, with related provisions in Divisions 7, 8 and 9 of that Part.

9 Subsection 10(1)

Insert:

contributing employer means an employer having obligations under Part 3B (about the superannuation data and payment regulations and standards).

10 After paragraph 253(a)

Insert:

(aa) to ensure that the Regulator has sufficient power to monitor employers' compliance with Part 3B (superannuation data and payment regulations and standards) (Division 2); and

11 Section 253 (at the end of note 3)

Add: "However, this does not affect any powers and duties the Commissioner of Taxation has under this Part in relation to contributing employers: see subsection 6(2AC)".

12 At the end of paragraph 255(1)(b)

Add "or".

13 After paragraph 255(1)(b)

Insert:

(c) a contributing employer;

14 Subsection 255(1)

Omit "require the relevant person", substitute "require the relevant person, or the contributing employer,".

15 At the end of subsection 255(1)

Add ", or to the obligations of the contributing employer under Part 3B".

16 Subsection 256(1)

Repeal the subsection, substitute:

(1) For the purposes of this Act, an authorised person may enter, at any reasonable time, any premises at which the person has reason to believe books are kept relating to:
  (a) the affairs of a superannuation entity or approved SMSF auditor; or
  (b) the conduct of an audit of a self managed superannuation fund; or
  (c) the obligations of a contributing employer under Part 3B.

(1A) The authorised person may:
  (a) inspect any book found on the premises:
    (i) that relates to those affairs, the conduct of that audit or those obligations; or
    (ii) that the authorised person believes on reasonable grounds to relate to those affairs, the conduct of that audit or those obligations; and
  (b) make copies of, or take extracts from, any such book.

17 At the end of Division 2 of Part 25

Add:

256A Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to a contributing employer were, by express provision, confined to a contributing employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

18 At the end of section 287

Add:

(5) This section does not apply to a person who is a contributing employer if the requirement mentioned in subsection (1) relates to the obligations of the contributing employer under Part 3B.

Division 3—Tax file numbers

Superannuation Industry (Supervision) Act 1993

19 At the end of Division 1 of Part 25A

Add:

299CA Use of tax file number to validate information

(1) This section applies if, after the commencement of this section, an employee:

(a) quotes his or her tax file number to his or her employer in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts; or

(b) quotes his or her tax file number to his or her employer in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936*.

Note: Division 3 of Part VA of the *Income Tax Assessment Act 1936* deals with quotation of tax file numbers by recipients of eligible PAYG payments.

(2) The employer may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner of Taxation to validate information about the person under section 299TE.

20 After section 299LA

Insert:

299LB Use of tax file number to validate information

(1) This section applies if a person who is a beneficiary of an eligible superannuation entity, or of a regulated exempt public sector superannuation scheme, or an applicant to become such a beneficiary, quotes his or her tax file number to a trustee of the entity or scheme in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.

(2) The trustee may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the

Commissioner of Taxation to validate information about the person under section 299TD.

21 Division 3A of Part 25A (heading)

Repeal the heading, substitute:

Division 3A—Commissioner of Taxation may issue notices about tax file numbers

22 Subsection 299TA(1)

After "Commissioner", insert "of Taxation (the ***Commissioner***)".

23 Subsection 299TB(1)

After "Commissioner", insert "of Taxation (the ***Commissioner***)".

24 At the end of Division 3A of Part 25A

Add:

299TC Commissioner of Taxation may inform trustee of tax file number

(1) The Commissioner of Taxation (the ***Commissioner***) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme notice of the tax file number of a person if the Commissioner is satisfied that:

(a) the person is a beneficiary of the eligible superannuation entity or the regulated exempt public sector superannuation scheme, or an applicant to become such a beneficiary; and

(b) the person has quoted (for superannuation purposes) (within the meaning of the *Income Tax Assessment Act 1997*) his or her tax file number to another person.

(2) However if, before the time the Commissioner gives the notice, the person specifically requests the trustee not to record the person's tax file number:

(a) the notice is to be disregarded; and

(b) section 299SA does not apply to deem the person to have quoted the tax file number to the trustee when the notice was given.

Note: A consequence is that provisions that require or permit a trustee to record or use a validly quoted tax file number do not apply.

299TD Validation notice—beneficiaries of eligible superannuation entities

(1) The Commissioner of Taxation (the ***Commissioner***) may give the trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme a notice under subsection (2) if:

(a) the trustee gives the Commissioner information that the trustee believes to be:

(i) the full name, tax file number and date of birth of a person; or

(ii) the full name, tax file number, date of birth and address of a person; and

(b) the Commissioner is satisfied that:

(i) the person is a beneficiary of the entity or scheme, or an applicant to become such a beneficiary; and

(ii) the trustee is giving the information to the Commissioner in connection with the operation of the entity or scheme; and

(c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.

(2) The notice must state whether or not the Commissioner is able to validate the information given.

(3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under section 299TB.

299TE Validation notice—employees

(1) The Commissioner of Taxation (the ***Commissioner***) may give an employer a notice under subsection (2) if:

(a) the employer gives the Commissioner information that the employer believes to be:

(i) the full name, tax file number and date of birth of a person; or

(ii) the full name, tax file number, date of birth and address of a person; and

(b) the Commissioner is satisfied that:

(i) the person is an employee of the employer for whose benefit a contribution to an eligible superannuation entity or a regulated exempt public sector superannuation scheme is to be made; and

(ii) the employer is giving the information to the Commissioner in connection with the operation of the entity or scheme; and

(iii) that use by the employer of the tax file number complies with section 299CA; and

(c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.

(2) The notice must state whether or not the Commissioner is able to validate the information given.

(3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under subsection202CE(3) of the *Income Tax Assessment Act 1936*.

299TF Commissioner of Taxation may provide electronic interface

The Commissioner of Taxation may use an electronic interface to receive information and give notices under this Division.

Part 2—Retirement Savings Accounts Act 1997

Division 1—Information register for data and payment standards

Retirement Savings Accounts Act 1997

25 Section 16

Insert:

data and payment regulations and standards relating to RSAs means:

(a) the regulations made under section 45B; and

(b) the standards issued by the Commissioner of Taxation under that section.

26 Section 16

Insert:

superannuation data and payment regulations and standards has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

27 Division 4 of Part 4A (heading)

Repeal the heading, substitute:

Division 4—Information

28 Before section 45P

Insert:

Subdivision A—Correction and rectification of information

29 At the end of Division 4 of Part 4A

Add:

Subdivision B—Register of information about certain RSAs

45Q Register of information about certain RSAs

(1) The Commissioner of Taxation must keep a register of information for the purposes of this Part.

(2) The Commissioner of Taxation is to keep the register by electronic means.

(3) The register is not a legislative instrument.

(4) The Commissioner of Taxation may cause the contents of all or part of the register to be made available to entities that must comply with:
  (a) the data and payment regulations and standards relating to RSAs; or
  (b) the superannuation data and payment regulations and standards.

Contents of the register

(5) The register must contain the information given to the Commissioner of Taxation in accordance with section 45R.

(6) The Commissioner of Taxation is to combine the register kept under this section with the register kept under section 34Y of the *Superannuation Industry (Supervision) Act 1993*.

45R RSA providers to provide information for inclusion in register

(1) The following matters may be prescribed by regulation:
  (a) information that is required to be given to the Commissioner of Taxation in accordance with this section in relation to prescribed RSAs;
  (b) the manner and form (including electronic form) in which the prescribed information is to be provided;
  (c) the time at which, or period within which, the prescribed information is to be provided.

(2) The RSA provider of a prescribed RSA must give the prescribed information in relation to the RSA to the Commissioner of Taxation in accordance with the regulation.

Contravening requirement to give information

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 25 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

30 Application

(1) The register provided for by Subdivision B of Division 4 of Part 4A of the *Retirement Savings Accounts Act 1997*, as inserted by this Schedule, is to be kept from 1 July 2013.

(2) A regulation made for the purposes of subsection 45S(1) of the *Retirement Savings Accounts Act 1997*, as inserted by this Schedule, must not prescribe a time by which information is to be provided to the Commissioner of Taxation that is before 1 March 2013.

Division 2—Monitoring

Retirement Savings Accounts Act 1997

31 After subsection 3(2)

Insert:

(2A) Powers and duties are also conferred by Part 10 on the Commissioner of Taxation for the purposes of the administration of the provisions he or she administers.

Note: Generally, the Commissioner of Taxation is not referred to in these provisions, Regulator is used instead. See the definition of ***Regulator*** in section 16.

32 Section 16

Insert:

contributing employer means an employer having obligations under Part 4A (about the data and payment regulations and standards relating to RSAs).

33 Part 10 (heading)

Repeal the heading, substitute:

Part 10—Monitoring and investigation

34 After paragraph 91(a)

Insert:

(aa) to ensure that the Regulator has sufficient power to monitor employers' compliance with Part 4A (data and payment regulations and standards relating to RSAs) (Division 2); and

35 Division 2 of Part 10 (heading)

Repeal the heading, substitute:

Division 2—Monitoring

36 After subsection 93(1)

Insert:

(1A) For the purposes of this Act, the Regulator or an authorised person may, by written notice to a contributing employer, require the contributing employer to produce to the Regulator or an authorised person, at such reasonable time and reasonable place as are specified in a notice, any books relating to the obligations of the contributing employer under Part 4A.

37 Subsection 93(2)

After "(1)", insert "or (1A)".

38 Subsection 94(1)

After "provision of RSAs", insert "or obligations of a contributing employer under Part 4A".

39 Paragraph 94(1)(a)

After "provision of RSAs" (wherever occurring), insert "or those obligations".

40 At the end of Division 2 of Part 10

Add:

94A Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to a contributing employer were, by express provision, confined to a contributing employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

41 At the end of section 117

Add:

(5) This section does not apply to a person who is a contributing employer if the requirement mentioned in subsection (1) relates to the obligations of the contributing employer under Part 4A.

Division 3—Tax file numbers

Retirement Savings Accounts Act 1997

42 At the end of Division 2 of Part 11

Add:

133A Use of tax file number to validate information

(1) This section applies if, after the commencement of this section, an employee:

(a) quotes his or her tax file number to his or her employer in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts; or

(b) quotes his or her tax file number to his or her employer in connection with the operation of Division 3 of Part VA of the *Income Tax Assessment Act 1936*.

Note: Division 3 of Part VA of the *Income Tax Assessment Act 1936* deals with quotation of tax file numbers by recipients of eligible PAYG payments.

(2) The employer may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner of Taxation to validate information about the person under section 143E.

43 After section 137A

Insert:

137B Use of tax file number to validate information

(1) This section applies if:

(a) a holder of an RSA; or

(b) a person applying to become such a holder;

quotes his or her tax file number to the RSA provider in connection with the operation, or the possible future operation, of this Act and the other Superannuation Acts.

(2) The RSA provider may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner of Taxation to validate information about the person under section 143D.

44 Division 4A of Part 11 (heading)

Repeal the heading, substitute:

Division 4A—Commissioner of Taxation may issue notices about tax file numbers

45 Subsection 143A(1)

After "Commissioner of Taxation", insert "(the ***Commissioner***)".

46 Subsection 143B(1)

After "Commissioner", insert "of Taxation (the ***Commissioner***)".

47 At the end of Division 4A of Part 11

Add:

143C Commissioner of Taxation may inform RSA provider of tax file number

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider notice of the tax file number of a person if the Commissioner is satisfied that:

(a) the person is a holder of an RSA provided by the RSA provider, or a person applying to become such a holder; and

(b) the person has quoted (for superannuation purposes) (within the meaning of the *Income Tax Assessment Act 1997*) his or her tax file number to another person.

(2) However if, before the time the Commissioner gives the notice, the person specifically requests the provider not to record the person's tax file number:

(a) the notice is to be disregarded; and

(b) section 140A does not apply to deem the person to have quoted the tax file number to the provider when the notice was given.

Note: A consequence is that provisions that require or permit a provider to record or use a validly quoted tax file number do not apply.

143D Validation notice—holders of RSAs

(1) The Commissioner of Taxation (the ***Commissioner***) may give an RSA provider a notice under subsection (2) if:

(a) the RSA provider gives the Commissioner information that the RSA provider believes to be:

(i) the full name, tax file number and date of birth of a person; or

(ii) the full name, tax file number, date of birth and address of a person; and

(b) the Commissioner is satisfied that:

(i) the person is a holder of an RSA provided by the RSA provider, or a person applying to become such a holder; and

(ii) the RSA provider is giving the information to the Commissioner in connection with the operation of the RSA; and

(c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.

(2) The notice must state whether or not the Commissioner is able to validate the information given.

(3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under section 143B.

143E Validation notice—employees

(1) The Commissioner of Taxation (the ***Commissioner***) may give an employer a notice under subsection (2) if:
  (a) the employer gives the Commissioner information that the employer believes to be:
    (i) the full name, tax file number and date of birth of a person; or
    (ii) the full name, tax file number, date of birth and address of a person; and
  (b) the Commissioner is satisfied that:
    (i) the person is an employee of the employer for whose benefit a contribution to an RSA is to be made; and
    (ii) the employer is giving the information to the Commissioner in connection with the operation of the RSA; and
    (iii) that use by the employer of the tax file number complies with section 133A; and
  (c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.

(2) The notice must state whether or not the Commissioner is able to validate the information given.

(3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under subsection202CE(3) of the *Income Tax Assessment Act 1936*.

143F Commissioner of Taxation may provide electronic interface

The Commissioner of Taxation may use an electronic interface to receive information and give notices under this Division.

Part 3—Minor amendments relating to eligible superannuation entities

Income Tax Assessment Act 1936

48 Subsection 202DH(2)

Repeal the subsection, substitute:

(2) In this section and section 202DHA:

eligible superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated exempt public sector superannuation scheme has the same meaning as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

49 Subsection 202DJ(2) (definitions of *eligible superannuation entity* and *regulated exempt public sector superannuation scheme*)

Repeal the definitions.

50 Subsection 202DJ(2)

Insert:

eligible superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

51 Subsection 202DJ(2) (definitions of *holder, RSA and RSA provider*)

Repeal the definitions.

52 Subsection 202DJ(2)

Insert:

regulated exempt public sector superannuation scheme has the same meaning as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

Retirement Savings Accounts Act 1997

53 Section 16 (definition of *eligible superannuation entity*)

Repeal the definition, substitute:

> ***eligible superannuation entity*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Superannuation Industry (Supervision) Act 1993

54 Subsections 34H(1) and (2)

Omit "superannuation entities", substitute "eligible superannuation entities".

55 Paragraphs 34K(1)(a) and (b)

Omit "superannuation entities", substitute "eligible superannuation entities".

56 Subsection 34K(2)

Omit "superannuation entity", substitute "eligible superannuation entity".

57 Paragraphs 34K(3)(a) and (b)

Omit "superannuation entities", substitute "eligible superannuation entities".

58 Subsection 34K(4)

Omit "superannuation entity", substitute "eligible superannuation entity".

59 Subparagraphs 34K(5)(a)(i) and (ii)

Omit "a superannuation entity", substitute "an eligible superannuation entity".

60 Paragraph 34K(5)(b)

Omit "superannuation entity", substitute "eligible superannuation entity".

61 Section 34M (heading)

Repeal the heading, substitute:

34M Compliance requirement—trustees of eligible superannuation entities

62 Subsection 34M(1)

Omit “a superannuation entity”, substitute “an eligible superannuation entity”.

63 Subsection 34M(1)

Omit “the superannuation entity” (wherever occurring), substitute “the eligible superannuation entity”.

64 Subsection 34N(1)

Omit “a superannuation entity”, substitute “an eligible superannuation entity”.

65 Section 34P (heading)

Repeal the heading, substitute:

34P Regulator’s power to give directions in certain circumstances—trustees of eligible superannuation entities

66 Subsection 34P(1)

Omit “a superannuation entity”, substitute “an eligible superannuation entity”.

67 Subsection 34P(1)

Omit “the superannuation entity”, substitute “the eligible superannuation entity”.

68 Paragraph 34P(2)(a)

Omit “superannuation entity”, substitute “eligible superannuation entity”.

69 Subsection 34P(3)

Omit “superannuation entity”, substitute “eligible superannuation entity”.

70 Subsection 34P(4)

Omit “a superannuation entity”, substitute “an eligible superannuation entity”.

71 Subsections 34P(6), (8) and (9)

Omit “superannuation entity”, substitute “eligible superannuation entity”.

72 Section 299W (definition of *eligible superannuation entity*)

Repeal the definition.

Superannuation Legislation Amendment (Stronger Super) Act 2012

73 Paragraph 20(1)(a)

Omit “a superannuation entity”, substitute “an eligible superannuation entity”.

Taxation Administration Act 1953

74 Subsection 288-110(1) in Schedule 1 (heading)

Repeal the heading, substitute:

Liability to penalty—RSA providers and trustees of eligible superannuation entities

[*Minister's second reading speech made in—*
House of Representatives on 19 September 2012
Senate on 30 October 2012]

(176/12)