

## Schedule 1 – Amendments to *Superannuation Industry (Supervision) Act 1993 (Cth)*

### 109 Investments of superannuation entity to be made and maintained on arm's length basis

- (1) A trustee (other than the trustee of a regulated superannuation fund with no more than 6 members or self managed superannuation fund) or investment manager of a superannuation entity must not invest in that capacity unless:
- (a) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction; or
  - (b) both:
    - (i) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are not dealing with each other at arm's length in respect of the transaction; and
    - (ii) the terms and conditions of the transaction are no more favourable to the other party than those which it is reasonable to expect would apply if the trustee or investment manager, as the case may be, were dealing with the other party at arm's length in the same circumstances.

(1A) If:

- (a) a trustee (other than the trustee of a regulated superannuation fund with no more than 6 members or self managed superannuation fund) or investment manager of a superannuation entity invests in that capacity; and
- (b) at any time during the term of the investment the trustee or investment manager is required to deal in respect of the investment with another party that is not at arm's length with the trustee or investment manager;

the trustee or investment manager must deal with the other party in the same manner as if the other party were at arm's length with the trustee or investment manager.

(1B) A trustee of a regulated superannuation fund with no more than 6 members or self managed superannuation fund must deal with another party to a transaction at arm's length in respect of the transaction.

- (2) Subsections (1) and (1A) are civil penalty provisions as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, those subsections. Division 3 of Part 21 does not apply to Subsection (1B).
- (3) A contravention of subsection (1), ~~or (1A)~~ or (1B) does not affect the validity of a transaction.

## **Schedule 2 – Amendments to *Income Tax Assessment Act 1997* (Cth)**

[Drafting note: the below reflects the provisions as they were before the 2019 amendments were enacted]

## **Schedule 2 – Amendments to *Income Tax Assessment Act 1997* (Cth)**

### **Subsection 295-550(1)**

Repeal the subsection, substitute:

- (1) An amount of \*ordinary income or \*statutory income is ***non-arm's length income*** of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust (other than an amount to which subsection (2) applies or an amount \*derived by the entity in the capacity of beneficiary of a trust) if:
- (a) it is derived from a \*scheme the parties to which were not dealing with each other at \*arm's length in relation to the scheme; and
  - (b) that amount is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme.

### **Subsection 295-550(5)**

Repeal the subsection, substitute:

- (5) Other income \*derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is ***non-arm's length income*** of the entity if:
- (a) the entity acquired the entitlement under a \*scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at \*arm's length; and
  - (b) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length.

### **Subsection 295-550(7)**

Repeal the subsection.