



Temporary Residents' Superannuation Measure – Scheduled Statement Days 2009 year and onwards

Explanatory Statement

General outline of Instrument:

The Instrument sets out the scheduled statement days which apply to superannuation providers who receive from the Commissioner a written notice in relation to the superannuation interest of certain former temporary residents issued under section 20C of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* ('the section 20C notice').

The scheduled statement days set the due dates by which superannuation providers must lodge statements required under section 20E of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* after a section 20C notice has been issued to them.

The scheduled statement days also set the due dates for payment, where required, of an amount in respect of the superannuation interest of the former temporary resident identified in the section 20C notice, by the superannuation provider to the Commissioner in accordance with section 20F of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

With the exception of the first scheduled statement day, the subsequent scheduled statement days specified in the Instrument align with current unclaimed money statement and payment due dates under Part 3 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The first scheduled statement day has been set at a later date to assist all stakeholders in the initial implementation of the measure.

The Instrument will be a Legislative Instrument for the purposes of the *Legislative Instruments Act 2003* and it is legally binding on the Commissioner of Taxation.

Date of effect:

The Instrument is effective from the day after it is registered.

What this Instrument is about:

The Commissioner must issue a superannuation provider a written notice ('the section 20C notice') if the Commissioner is satisfied that:

- there are reasonable grounds for believing that a particular person has a superannuation interest in the fund; and
- the person used to be the holder of a temporary visa (unless the visa is prescribed by the regulations); and
- at least 6 months have passed since the person ceased to hold the visa and left Australia; and
- the person:
 - is not the holder of a temporary visa, or permanent visa, and
 - is not an Australian citizen, or a New Zealand citizen; and
 - has not made a valid application for a permanent visa that has been finally determined.

This written notice is a 'section 20C notice'.

If a superannuation provider receives a section 20C notice from the Commissioner, the superannuation provider, or a person who keeps particulars for or on behalf of the superannuation provider, is required to give the Commissioner a statement, in the approved form, by the end of:

- the next scheduled statement day after the notice is given; or
- the following scheduled statement day if the section 20C notice is given less than 28 days before the next scheduled statement day; or
- a later time determined by the Commissioner in accordance with section 388-55 in Schedule 1 of the *Taxation Administration Act 1953*.

In addition, a superannuation provider, or a person who keeps particulars for or on behalf of the superannuation provider, is required to determine any amount in respect of the superannuation interest of the former temporary resident identified in the section 20C notice payable to the Commissioner as calculated under section 20F of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The excess amount is due and payable to the Commissioner by the end of:

- the next scheduled statement day after the notice is given; or
- the following scheduled statement day if the section 20C notice is given less than 28 days before the next scheduled statement day; or
- if, as set out under the Superannuation (Unclaimed Money and Lost Members) Regulations 1999, a later day than either of the days specified above is identified, then that later day; or
- a later time determined by the Commissioner in accordance with section 255-10 in Schedule 1 of the *Taxation Administration Act 1953*.

The purpose of this Instrument is to set the scheduled statement days. The Legislative Instrument determines the first scheduled statement day shall be 15 June 2009, and each subsequent scheduled statement day shall be 31 October and 30 April.

This Legislative Instrument will apply from the date of effect and future periods until the Commissioner issues a replacement Instrument determining the scheduled statement days.

The effect of this Instrument:

The effect of this Instrument is that superannuation providers have guidance on the scheduled statements days, and therefore the date by which they must lodge statements and the date by which they must pay the excess to the Commissioner. The excess as stated in s20F is, in general terms, the amount that would have been payable from the fund to the person if the person had requested payment in connection with their departure from Australia, disregarding withholding amounts from departing Australia superannuation payments (s20F(4)).

Compliance cost impact:

No change/low. An assessment of the compliance cost impact indicates that the impact will be minimal for both implementation and ongoing compliance costs. The instrument is of a minor or routine nature.

Background:

The temporary residents' superannuation measure took effect from 18 December 2008.

The Instrument sets out the scheduled statement days which determine the due date for lodgment of statements and the due date for payments to the Commissioner.

Consultation:

The overall development of the administrative design of the temporary resident's superannuation measure has been developed in consultation with industry representatives. In particular consultation has occurred with members of the Superannuation Funds Working Group and other industry representatives in conjunction with Treasury.

In light of comments from the superannuation industry, the first scheduled statement day has been set at a time later than the reporting of unclaimed superannuation money.

The subsequent scheduled statement days determined in this Legislative Instrument, result in the reporting and payment obligations of superannuation providers for the temporary residents' superannuation measure will align with the current reporting and payment obligations of superannuation providers in relation to unclaimed superannuation money.

Neil Olesen
Deputy Commissioner of Taxation
25th March 2009
