



**SEPTEMBER 2013**

## AIA 'Investor Update'

In this September 'Investor Update' we have some commentary on the Coalition paid parental leave scheme, information about changes to SMSF pensions, a comment on the recent RBA rate decisions, and an interesting thought about the ATO accessing your super to satisfy personal tax liabilities, even in bankruptcy. Enjoy the read

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### Retirees will pay for the paid parental leave scheme

**Robert Gottlieb** wrote an article published in *Business Spectator* on 19<sup>th</sup> August, explaining how retirees will suffer as a result of the Coalition's paid parental leave scheme. The scheme is funded in part by a levy on big business, offset by a fall in the company tax rate.

The article reads in part -

*So a superannuation fund obtains a franking credit equal to the tax paid by the company. Those franking credits are currently calculated at a tax rate of 30 cents in the dollar. When the Abbott-Hockey plan is introduced the franking credits will be calculated on the basis of 28.5 cent in the dollar. They are worth less and so the retirees and those saving to pay for retirement cop the bill because Abbott and Hockey have simply swapped a tax for a levy aiming to lower the franking credit.*

*It is a clear attack on the older generation to benefit the up and coming generation.*

Members should read the full article.

<http://www.businessspectator.com.au/article/2013/8/19/economy/retirees-will-pay-paid-parental-leave-scheme>

### Upcoming Events

[\[view events schedule\]](#)

#### South Sydney Discussion Group

1<sup>st</sup> October 2013 7.30pm  
Miranda Community Centre

#### Perth Equities Discussion Group

1<sup>st</sup> October 2013 7.30pm  
Wembley Downs Tennis Club

#### Blackburn Discussion Group

2<sup>nd</sup> October 2013 7.15pm  
Naturalist Club of Victoria,  
Blackburn, VIC

#### Brisbane Information Evening

2<sup>nd</sup> October 2013 1.30pm  
Broncos Leagues Club

#### Canberra Discussion Group.

7th October 2013, 7.30pm,  
Southern Cross Club, Woden, ACT

#### Melbourne Information Evening

8th October 2013 7.00pm  
Colin Nicholson & John Abernethy  
Telstra Conference Centre

#### Brisbane Managed Investments Discussion Group

15th October 2013 7.00pm  
Carindale Library

#### Adelaide Information Evening and AIA Annual Meeting

15th October 2013 7.00pm  
The German Club

**Changes for SMSF pensions****Bryce Figot – DBA Lawyers****Introduction**

There have been big changes announced recently for SMSF pensions. This article explores some of the key changes and discovers that those hardest hit by the \$100,000 limit on the pension income tax exemption may well be those left behind after the death of an SMSF pensioner, as well as SMSFs that realise assets. There has also been some positive news and pleasant surprises.

**\$100,000 limit on pension income tax exemption** To the extent SMSF income is derived by assets supporting a pension, that income is exempt from income tax. Currently, there is no limit on this exemption. However, it has recently been announced that this will change. More specifically, the Hon Bill Shorten MP has stated:

From 1 July 2014, earnings on assets supporting income streams will be tax free up to \$100,000 a year for each individual.

Earnings above \$100,000 will be taxed at the same concessional rate of 15 per cent that applies to earnings in the accumulation phase.

It has been announced that this will only affect a relatively small number of people:

For superannuation assets earning a rate of return of 5 per cent, this reform will only affect individuals with more than \$2 million in assets supporting an income stream.

Treasury estimates that around 16,000 individuals will be affected by this measure

However, in practice, we suspect that this change will end up affecting many more. For example, consider a married couple, Eric and Natalie. Each has \$1½ million in an SMSF (ie, \$3 million in total between the two of them). If the assets earn a rate of return of 5%, then consistent with the government announcement, neither will be affected. However, there are two common scenarios where they will be affected.

**Scenario 1 — SMSFs realising assets**

The first scenario where Eric and Natalie are affected is where their SMSF realises capital gains. Assume the SMSF has real estate that was purchased for \$1 million and is now worth \$1.6 million. As Eric and Natalie age,

the yield on the real estate is not enough to meet their minimum pension payments and so they liquidate the real estate in order to be able to pay the pensions. Assuming that the capital gain is a discount capital gain and that there are no capital losses, this gives rise to a net capital gain of \$400,000 (ie, [ $\$1.6 \text{ million} - \$1 \text{ million}$ ]  $\times$   $[2/3]$ ). This net capital gain forms part of the fund's assessable income. This is in addition to any other income that the fund might have, such as the 'normal' 5% yield of \$150,000 (ie,  $5\% \times \$3 \text{ million}$ ). Accordingly, total SMSF assessable income will be \$550,000 (ie,  $\$400,000 + \$150,000$ ). If Eric and Natalie's benefits are split equally, two lots of \$100,000 of the \$550,000 are exempt. However, that still leaves \$350,000 of assessable income. Assuming there are no deductions, offsets, etc, then the SMSF will probably have a tax liability of \$52,500 (ie,  $\$350,000 \times 15\%$ ).

## Planning for the 2014 Annual Conference has begun

**Sunday 3<sup>rd</sup> August  
to Wednesday 7<sup>th</sup> August 2014**

**Put the dates into your diary now!**

**Scenario 2 — Death of a spouse**

The second scenario is death.

Assume Natalie dies and her benefits in the SMSF commence to be paid to Eric by way of a pension. We suspect that this will mean that all pension income of the SMSF is attributable to Eric. However, the SMSF now has an annual tax bill of \$7,500 (ie,  $[(\$1.5 \text{ million} + \$1.5 \text{ million}) \times 5\% - \$100,000] \times 15\%$ ).

Therefore, the change can be seen to operate as a de facto death tax.

**Extension of pension exemption**

Draft tax ruling TR 2011/D3 was very controversial because it stated that a pension — and therefore the pension exemption — ceases instantly upon a pensioner's death, unless the pension is automatically reversionary. This meant that when an SMSF member died, the pension exemption may well stop and therefore if an asset carrying a large unrealised capital gain is liquidated or transferred to a dependant or the deceased's estate, a large capital gain (and thus large income tax liability) might arise for the SMSF.

However, in October 2012, the Mid-Year Economic and Fiscal Outlook announced:

The Government will amend the law to allow the tax exemption for earnings on assets supporting superannuation pensions to continue following the death of a fund member in the pension phase until the deceased member's benefits have been paid out of the fund. This change will have effect from 1 July 2012.

This was greeted very positively as it was seen as taking the 'sting' out of TR 2011/D3.

The legislation to implement this was registered on Monday 3 June in Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013 (Cth).

However, the \$100,000 cap on the pension exemption means that the extension of the pension exemption might not be a perfect solution.

Consider Elizabeth. Her SMSF owns assets with an unrealised capital gain of \$600,000. She is the only member of the SMSF and the SMSF uses all its assets to pay her a pension. Originally, TR 2011/D3 had concerned Elizabeth because upon her death, she had thought it would mean that the pension exemption would cease, and a \$600,000 capital gain would arise for the SMSF if the SMSF assets were transferred to her estate. This in turn, could cause a tax liability for the SMSF of about \$40,000 (ie,  $\$600,000 \times (2/3) \times 15\%$ ). Naturally, Elizabeth greeted the extension of the pension exemption positively as it meant that the SMSF should pay no income tax in that scenario.

However, the \$100,000 cap on the pension exemption may change this. Upon death, only the first \$100,000 of income is exempt. This might mean that Elizabeth's death might result in her SMSF having to pay income tax of \$45,000 (ie,  $[\$600,000 \times (2/3) - \$100,000] \times 15\%$ ).

Grandfathering and anti-detriment deductions Certain grandfathering provisions have been announced in respect of the \$100,000 cap on the pension exemption. The most important grandfathering provision is that assets acquired before the announcement of the cap on 5 April 2013, are exempt from the cap until mid 2024.

However, for SMSFs for whom this grandfathering does not apply — and for all SMSFs from mid 2024 — the scenarios outlined in this article might cause concern.

Such SMSFs might consider the role of anti-detriment deductions in this situation.

### A pleasant surprise

An amount that supports a pension is always to be treated as a separate superannuation interest for income tax purposes (see reg 307-200.05 of the Income Tax Assessment Regulations 1997 (Cth)). Some people might have gone to effort to ensure that — by using pensions — they had multiple interests in their SMSFs.

Under the original exposure draft of Income Tax Assessment Amendment (Superannuation Measures No. 1) Regulation 2013 (Cth), although the pension exemption would continue past death, the pension itself would not and thus any separate interests would all instantly mix together upon death.

However, the finalised version of the legislation contained a pleasant surprise. Namely, interests are effectively kept separate after death. See the new reg 307-125.02 of the Income Tax Assessment Regulations 1997 (Cth).

Failure to meet minimum pension standards The tax exempt status of current pension income for SMSFs is dependent on trustees ensuring that the minimum pension standards in the Superannuation Industry (Supervision) Regulations 1994 (Cth) are met.

If the minimum pension standards have not been met, the ATO considers that a pension ceases for income tax purposes. Furthermore, the ATO considers that the trustee has not been paying a pension at any time during that financial year. This can have a severe impact on SMSFs where, for example, a pension minimum has not been paid due to an inadvertent mistake or factors beyond the control of the trustee. In these cases a minor discrepancy can result in the pension ceasing and any sums paid during the year being treated as lump sum payments. This may require significant administrative effort and cost, including the recalculation of pension

minimums or the revaluation of assets that will support the new pension.

The ATO announced via its website in January 2013 that the above regulations would not be rigidly applied. The Commissioner's general powers of administration ('GPA') may be exercised in cases where the failure to meet the minimum pension standards was due to either an honest mistake made by the trustee resulting in a small underpayment of the minimum payment amount, or matters outside the control of the trustee.

Furthermore, in certain circumstances the trustee is able to self assess their entitlement to the exercise of the GPA. In order to be able to do so, all of the following conditions must be satisfied:

- failure to meet the minimum pension requirements was an honest mistake or was outside the control of the trustees;
- the underpayment is only small (that is, it does not exceed one-twelfth of the minimum annual pension payment);
- the entitlement to the pension exemption would have continued but for the trustee failing to pay the minimum payment amount;
- upon the trustee becoming aware that the minimum payment amount was not met for an income year, the trustee makes a catch-up payment as soon as practicable in the following income year; or treats a payment made in the current income year, as being made in that prior income year (ie, an intended prior year payment);
- had the trustee made the catch-up payment in the prior income year, the minimum pension standards would have been met; and
- the trustee treats the catch-up payment, for all other purposes, as if it were made in the prior income year.

In all other cases the trustee will need to write to the ATO and outline why they did not meet the minimum pension requirements. The ATO will then consider whether the exercise of the GPA is warranted.

### Conclusion

Significant changes have been announced in respect of SMSF pensions. This article explored some key changes and identified that the introduction of the \$100,000 pension exemption limit might end up most affecting SMSFs upon a pensioner's death and when an asset is sold or transferred. This article also outlined some positive news for SMSF trustees.

*This article is for general information only and should not be relied upon without first seeking advice from an appropriately qualified professional.*

*Note: DBA Lawyers holds SMSF CPD training at venues all around Australia and online. For more details or to register, visit*

[www.dbanetwork.com.au](http://www.dbanetwork.com.au)<<http://www.dbanetwork.com.au>> or call Marie on 03 9092 9400.



*The September edition of the **Investors Voice** magazine should have arrived in your mailbox.*

*This edition is even bigger than last, now with 24 pages of investment articles.*

### Cashing In on Victory

#### Marcus Padley

You may have noticed the following items in the press recently: UBS labels the CBA the most expensive bank in the world after it hit an all time high. ANZ, NAB and WBC all in the top six most expensive. Brokers downgrade Bank recommendations. Credit Suisse say they are adopting a more cautious stance on bank stocks. Goldman Sachs research says the yield play is looking tired.

And last week the safe income stocks started to fall, particularly the banks so the debate begins, just how far can the safe income theme continue? For a lot of pension phase investors more concerned with capital preservation than capital growth, what started as a conservative safe income investment has produced a great capital gain. But as of this week it is suddenly looking unsafe and those unexpected capital gains are suddenly looking vulnerable. So the question for everyone is "Do I cash in on Victory?"

The long term arguments for safe income stocks are very powerful but the short term is another matter and with the GFC experience still fresh in the memory banks there is a new apprehension that we are in for a painful, euphoria busting, short-term correction of some sort. So lets address the question, "What do you do when you think safe income isn't safe?"



For investors feeling vulnerable in safe income stocks there are three things to do. Either, (1) Adopt the finance industry mantra, the core of the GFC problem, the advice that says shut your eyes, focus on the long-term and trust that it'll be all right in the end. Or (2) Rotate into the "safe growth" theme or (3) Get even more conservative and rotate out of equities into something else. Let's look at those.

### 1. Shut your eyes

If there's one thing we learned from the GFC it's that the set and forget mantra was invented not to make you money but to keep clients invested in products sold by a finance industry gorging itself on fees. The job of the finance industry is to get you in not let you out so come a market correction the most commercial and lowest effort advice is always that "it'll be all right in the end". The end result is that come the correction everybody will get nailed as they were in the GFC when they lost 10 years or more of average investment returns which have still to be recovered. You can't set and forget, you can't stick your head in the sand praying it all goes up. Its rubbish. You have to do better..

### 2. Rotate into the "safe growth" theme

This is along the same lines as the "Safe Growth Hypothesis" we outlined a few weeks ago. The concept is that when safe income gets overvalued the focus goes to "safe growth" and "safe quality". The idea is that you widen your horizons from stocks paying good dividends to stocks that make good money. A dollar from capital growth is still a dollar after all, even if it isn't franked. All well and good, but looking at the sell off in the market last week, sorry, but everything got nailed, growth and income so this is not going to save you come a sell off. And anyway, some of the growth stocks have done vastly better than the income stocks in the rally and are *more* vulnerable if anything.

### 3. Get even more conservative

This is about the only real strategy that would deal with a sell off. If you consider that the real attraction of the safe income theme is the income and the safety not the capital gains (an unexpected bonus) then when everyone starts feeling unsafe then the obvious way to lock in gains and hedge against a capital loss is to reduce the equity exposure on your safe income investments and in so doing lock in the gains and hedge against a fall. How do you do that? Simple, get back into no risk low risk investments. They include term deposits, hybrids

and even bonds. Its called parking your money in case the market falls over. You won't make any money, you'll probably lose a bit after dealing costs, but at least you'll collect some income and be able to sleep at night. The biggest risk will be not making as much money as everyone else if the market keeps going up. A risk worth taking sometimes.

## RBA rate decision – more reasons to be patient

By Dr. Stephen Nash

While the RBA needs to do more, the scope for additional easing is still limited at this time, even though the Federal government has finally woken up to the fact that regional growth is declining. While lower rates had been fuelling established house price growth, not the construction that the RBA really wants, the recent decline in equity prices may soon see those gains moderate substantially. It looks like the RBA is awaiting further weakness in the Australian dollar, so as to allow the switch from mining sector growth to non-mining sector growth to proceed at a faster rate.

### Statement

The following points are evident from the statement:

- **Global growth:**

Global growth comments were much the same as the prior meeting, where the RBA noted that global growth was somewhat lower than trend, yet failed to acknowledge the recent slowdown in regional growth as we are witnessing at this time, especially a slowing in Chinese growth.

- **Financial market developments:**

In contrast to the prior statement, the RBA acknowledged the increased volatility in financial markets, as noted below, Globally, financial conditions remain very accommodative. However, a reassessment by the market of the outlook for monetary policy in the United States has seen a noticeable rise in sovereign bond yields from exceptionally low levels. Volatility in financial markets has increased and there has been some widening of credit spreads.

- **Domestic economic developments.**

Some evidence of prior easing were beginning to be felt, and the RBA acknowledged as such today, The easing in monetary policy over the past 18 months has supported interest-sensitive spending and asset values and further effects can be expected over time. The pace of borrowing has remained relatively subdued, though recently there are signs of increased demand for finance by households.

Recent declines in the Australian dollar have been wholeheartedly accepted by the RBA, as a very positive

development, as the higher currency was seen to be hampering the transition in to non-mining sector growth, The Australian dollar has depreciated by around 10 per cent since early April, although it remains at a high level. It is possible that the exchange rate will depreciate further over time, which would help to foster a rebalancing of growth in the economy. Also, the RBA noted that unemployment has increased of late and that growth has been somewhat below trend, In Australia, the recent national accounts confirmed that the economy has been growing a bit below trend over the recent period. This is expected to continue in the near term as the economy adjusts to lower levels of mining investment. The unemployment rate has edged higher over the past year and growth in labour costs has moderated.

- **Inflation:**

Even though the currency had declined, the RBA remains fairly happy to re-affirm the prospects that inflation will remain at the medium-term target levels for the next few years. As the RBA indicated in the prior minutes, inflation was observed to be declining around the world.

- **Final paragraph:**

Here, the RBA noted that further scope for easing remained apparent, At today's meeting the Board judged that the easier financial conditions now in place will contribute to a strengthening of growth over time, consistent with achieving the inflation target. It decided that the stance of monetary policy remained appropriate for the time being. The Board also judged that the inflation outlook, as currently assessed, may provide some scope for further easing, should that be required to support demand.

### Conclusion

In many ways this statement is a continuation of what we saw last month, yet the RBA did not mention the recent regional growth slowdown, as we have seen from China. As the RBA indicated several times, the final paragraph leaves the door wide open for another easing. However, we would estimate that the next easing might take some time this quarter seems about right to us at this point. In Australia, a structurally more conservative consumer is slowing the typical transmission of lower rates to activity at this point, along with a now conservative banking system, and this is what is making the prospect of even further easing tantalisingly close. Further RBA easing will be needed to encourage

borrowing, and non-mining growth, from an extremely cautious consumer who is very conservative, not to mention a banking system that is also conservative.

### Mining 2013 Resources Convention 23, 24 & 25 October 2013 Brisbane Convention & Exhibition Centre

## FREE for AIA Members!!

The Mining Resources Convention has, over the last 13 years, built a successful reputation of providing an environment for resources industry participants to address the current challenges while showcasing their upcoming exploration activities. With over 70 presentations and 100 exhibition booths, the event provides the perfect opportunity to stay informed on the current market conditions.

As one of Australia's most popular resources events, it provides the ideal environment for genuine investors to approach a diverse range of resources company executives and learn a great deal more about these companies, over and above what can be interpreted from company announcements or chat forums. The high calibre keynote presentations from some of Australia's largest institutions and highly respected resources analysts, will greatly assist investors with identifying the potential growth sectors in the near term.

It has been well publicised that the last twelve months have presented a challenging environment for the Australian resources industry. But history will show the resources industry has experienced plenty of momentum fluctuations during the last 100 years and the consistent outcome when challenged is for the resources industry to eventually bounce back to favourable terms.

The big question is when will the good times return?

The best way to stay on top of this question is to attend the Mining 2013 Resources Convention.

This event will be held on 23, 24 & 25 October 2013 at the Brisbane Convention & Exhibition Centre. This event is free to attend for **bona-fide investors ONLY who are members of the Australian Shareholders Association, Association of Independent Retirees and Australian Investors Association**. To secure your place please email Prue McPharlin on [prue@verticalevents.com.au](mailto:prue@verticalevents.com.au). Please note places are limited and are allocated on a first-come, first-served basis.

For more information on the Mining 2013 Resources Convention please visit [www.verticalevents.com.au/mining2013](http://www.verticalevents.com.au/mining2013).

### Can the ATO access a taxpayer's superannuation when bankruptcy looms?

By David Oon ([doon@dbalawyers.com.au](mailto:doon@dbalawyers.com.au)), Lawyer, and Bryce Figot ([bfigot@dbalawyers.com.au](mailto:bfigot@dbalawyers.com.au)), Director, DBA Lawyers

The generally accepted notion is that superannuation is protected on bankruptcy due to s 116(2)(d)(iii) of the *Bankruptcy Act 1966* (Cth). However, the Commissioner has recently shown a willingness to seize superannuation monies to satisfy personal tax liabilities, even where bankruptcy was looming.

These were the facts in the recent case of *Denlay v Commissioner of Taxation* [2013] FCA 307 ('*Denlay*'). The seizure of money occurred at first because the Commissioner exercised a power under s 260-5 of sch 1 to the *Taxation Administration Act 1953* (Cth) allowing for the collection of their SMSF money to satisfy the Denlays' personal tax debts. These notices are often referred to as garnishee notices.

Although the Federal Court quashed the Commissioner of Taxation's decision to 'garnishee' amounts held within the superannuation environment, this was largely the result of a fact-specific administrative law challenge mounted by the taxpayers. The case therefore only hints at what the true position is regarding the status of superannuation when a taxpayer who is personally indebted is very likely to become bankrupt.

#### The decision

The taxpayers in *Denlay* had come to the attention of the ATO as having significant money in Liechtenstein. The ATO believed the assets to be the result of the sale of property in Australia and income from business activity in Australia, particularly deep sea diving, which included exploration, pipeline laying and maintenance and treasure hunting. In 2007 and 2008, the ATO audited the taxpayers' affairs after receiving information from a former employee of the Liechtenstein Global Trust. The result was that the Commissioner amended income tax assessments for the 2002 to 2007 income years, including significant administrative penalties.

The taxpayers challenged their amended assessments in the Federal Court. While this challenge was still on foot, the Commissioner commenced a case in the Supreme Court of Queensland. Judgment against the taxpayers for their personal tax debts was obtained but then stayed in light of the still pending Federal Court appeals. The reasons for the Court granting the stay included evidence that the taxpayers had limited funds to pursue

the Federal Court appeals. The Court also considered that bankruptcy was highly likely, and had 'the potential to defeat a meritorious appeal'. Following this, the Commissioner was unsuccessful in challenging the stay.

The ATO then became aware of funds within the taxpayers' SMSF, held by BT Funds Management Ltd. On becoming aware of the diminution of these funds, the Commissioner issued a 'garnishee' notice. BT Funds Management Ltd paid the SMSF funds to the Commissioner. At the time, the appeals in the Federal Court were only part heard. The Commissioner's stated reasons for issuing the notice included:

- the taxpayers' net assets in Australia had been recently and significantly diminished;
- the reduction of funds presented a 'substantial' risk to the revenue; and
- the view formed by the Commissioner that the taxpayers probably still had access to monies outside Australia.

While the Commissioner stated in the reasons that the issue of notice was not in breach of the stay of enforcement of the judgment, this was not elaborated on in the reasons.

The taxpayers applied for judicial review of the decision to issue the garnishee notice. In the Federal Court, Logan J quashed the Commissioner's decision to issue the notice, stating that the decision to issue the notice was so unreasonable that no decision-maker, acting reasonably, could have so decided.

After stating that the law was that the Commissioner was bound to take into account certain relevant considerations, Logan J stated that the Commissioner made the decision while failing to take into account:

- the reasons that the stay of enforcement had been granted (his Honour stated that these reasons reflected a 'considered judicial value judgment');
- the merits of the tax appeals on foot; and
- the effect of the notice on the taxpayers' ability to further prosecute the appeals.

#### Is superannuation protected if a personal tax bill is unpaid?

The facts of *Denlay* are significant when considering the prospect of ATO garnishment of superannuation monies to satisfy personal tax debts. On the face of it, the Commissioner's policy in PS LA 2011/18 remains that:

A garnishee notice in respect of any tax-related liabilities may be served on a superannuation fund but it will not be effective until the tax debtor's (member's) benefits

are payable under the rules of the fund (for example, the tax debtor retires or dies).

However, Logan J's judgment made specific reference to an old conundrum, stating:

I note, in passing only, because it was not submitted to be a relevant consideration or a feature of why the decision was said to be unreasonable, that the decision-maker has not at all considered whether any of the funds garnered by the s 260-5 notices from BT Funds Management Ltd would, having regard to s 116(2)(d)(iii) of the *Bankruptcy Act 1966* (Cth), have formed part of the property of the bankrupt estates of Mr and Mrs Denlay in the event that the Commissioner were successful in any future sequestration application.

In drawing attention to this point, his Honour appeared to hint at superannuation's protected status in bankruptcy possibly being able to trump a garnishee notice. It may be that, given the right facts, raising this argument in the future could lead to resolution of the question in favour of taxpayers. In particular, in the case of taxpayers who are near to being bankrupt, the fact of superannuation's protected status on bankruptcy may mean the Commissioner is bound to take into account the special status of superannuation. This could be raised when challenging a garnishee notice.

#### ATO policy

The outcome of *Denlay* was heavily dependent on the taxpayers' facts and the inability of the Commissioner to show that all the relevant considerations were taken into account. The ATO's decision impact statement for *Denlay* stated that the ATO will continue to apply the stated policy in PS LA 2011/18 of considering whether a garnishee notice will 'significantly prejudice' any rights in pursuing tax appeals. The ATO did state, however, that they will take into account the daily living expenses of taxpayers.

#### Conclusion

The facts of *Denlay* show an increasing willingness of the Commissioner to utilise statutory powers to recover tax debts. Then, in the case of garnishee notices, the onus will be on the taxpayer to launch a legal challenge.

Despite the above, it may be that for taxpayers close to bankruptcy, superannuation's protected status on bankruptcy provides a possible defence argument against garnishee notices.

*Note: DBA Lawyers hold SMSF CPD training at venues all around Australia and online. For more details or to register, visit [www.dbanetwork.com.au](http://www.dbanetwork.com.au) or call Marie on 03 9092 9400.*

[www.dbalawyers.com.au](http://www.dbalawyers.com.au).

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**When:** Tuesday 1st October and Wednesday 2nd October 2013

**Where:** RACV Royal Pines Resort

Ross Street, Benowa

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