Infringement notice

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 4 July 2014

Unique identification code: B780711

TO: Esuperfund Pty Ltd
ACN 120 328 770
HWT Tower
Level 23 40 City Road
SOUTHBANK VIC 3006

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* **(ASIC Act)**.

2. ASIC has reasonable grounds to believe that Esuperfund Pty Ltd **(Esuper)** has contravened an infringement notice provision as follows:

   Between 31 January 2014 and 8 May 2014, Esuper contravened section 12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations (in the same form or substantially the same form as **Annexure A** – article titled "9 Benefits of Setting Up A Self Managed Super Fund" **(Article)**) on its website http://esuperfund.com.au as to the uses or benefits of the services offered by Esuper, being the establishment of self-managed superannuation funds **(SMSFs)**.

Particulars

(a) The Article contained a representation (under the heading "Benefit 4: Ownership") that in the near future, major retail and industry superannuation funds will experience payout difficulties due to insufficient liquidity as baby boomers begin to retire and worker contributions are insufficient to meet retiree withdrawals **(Payout Representation)**. The Payout Representation contained in the Article was false or misleading because it was based on the author's opinion and not a "recent analysis" as suggested in the Article.

(b) The Article contained a further representation (also under the heading "Benefit 4: Ownership") that a person who holds their superannuation in an SMSF is the owner of all of the assets held by the SMSF and is able to decide when they can access their own superannuation benefit **(Ownership Representation)**. The Ownership Representation contained in the Article was false or misleading because it failed to take into account the fact that a member of an SMSF can generally only access their superannuation benefit upon reaching preservation age and meeting a specific condition of release.

(c) The Article contained a further representation (under the heading "Benefit 7: Taxation Benefits") that when a person commences a Simple Account Based Pension or Transition to Retirement Pension:

(i) that person can generate unlimited income and capital gains and pay no tax on those earnings because after commencing receipt of a pension, the "SMSF tax rate" drops to nil;

(ii) the SMSF is entitled to receive franking credits on Australian share dividends in cash from the ATO; and

(iii) any company tax paid is refundable to the SMSF, which differs where superannuation is held in industry or retail superannuation funds, as those types of funds can decide how to allocate tax refunds or retain them,

(**Taxation Representation**).

The Taxation Representation was false or misleading because:

(i) as a whole, it gave the impression that the tax implications for benefits held in SMSFs were advantageous compared with the tax implications for benefits held in industry and retail superannuation funds, which is factually incorrect as the taxation rules for superannuation in pension phase are the same for all types of superannuation funds (including SMSFs);

(ii) it gave the impression that a person who held their superannuation in an industry or retail superannuation fund had no control over their tax refunds, which is factually incorrect as some APRA-regulated superannuation products do allow members to manage their tax refunds; and

(iii) it gave the impression that a special tax rate was applied to SMSFs, which is factually incorrect – tax rates apply to superannuation generally and not just to SMSFs.

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is $10,200.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):

(a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and

(b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 (the consumer protection provisions of the ASIC Act, whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is $1.7 million.

Time for payment

7. The time for payment is:

   (a) within 28 days beginning on the day after the day on which the notice is issued to you; or

   (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.

9. If you wish to apply for an extension of time to pay the penalty specified in this notice, it should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

10. Within 28 days beginning on the day after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.

11. Evidence or information that you or your representative give to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.

13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.

14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:

    (a) must be in writing; and

    (b) must include the unique identification code set out at the top of this notice; and

    (c) must include your reasons for making the application; and

    (d) may be made by forwarding your application to ASIC at the address in paragraph 16.

16. You may contact ASIC in relation to this notice by contacting:

contact:	**Alana Giles**
by mail:	**Australian Securities and Investments Commission** **GPO Box 9827** **Melbourne VIC 3000**
or by facsimile:	**03 9280 3444**
or by email:	**ACLInfringementNotices@asic.gov.au**

Peter Kell

Signature of delegate issuing the notice

Peter Kell
as a delegate of the Australian Securities and Investments Commission

ANNEXURE A

Article titled "9 Benefits of Setting Up A Self Managed Super Fund"

9 Benefits of Setting Up A Self Managed Super Fund

There are approximately ONE MILLION Australians who are currently managing their own SMSF This figure is increasing dramatically each year and there is a reason for it.

Why SMSF?

A SMSF has a number of specific benefits that Industry Super funds do not provide. Let us have a closer look at the features of a SMSF.

Benefit 1: Total Control

A SMSF gives you total control of your Super by allowing you to choose where you invest your Super Benefit Invest in Shares, Property, Term Deposits, Cash, CFDs and more! Many of our clients who are disappointed with their Superfund's performance or simply think that they can do a better job investing their Super Benefit themselves are choosing to establish and manage their own SMSF.

Benefit 2: Lower Fees

SMSFs can be the most cost effective type of Superannuation Fund, particularly considering ESUPERFUND's low annual fee of $699 fixed irrespective of your Super balance. This is unique in comparison to other Superannuation Funds whose fees increase as your Super balance grows. For example, a Superannuation Fund charging 1% in fees will double their fees from $2,000 to $4,000 per annum when your Super Benefit doubles from $200,000 to $400,000, whilst our fee remains fixed at $699 This represents a Fee Saving of up to 80%!

Benefit 3: Add thousands to your Final Super Payout

Consider that an average retail Superfund can charge up to 2% p.a. in fees and that you will pay around $500,000 in fees over your working life. With ESUPERFUND's fixed annual fee of $699 you can expect to pay closer to $60,000 in fees over your working life. That's a fee saving and extra Super in Retirement of over $400,000!

The earlier you start your Self Managed Super, the more you save towards your retirement life. It is really amazing!

For more on how fee savings can affect your final super payout click here.

Benefit 4: Ownership

A recent analysis indicated that sometime in the near future major Retail and Industry Superfunds will experience payout difficulties due to insufficient liquidity as baby boomers begin to retire and worker contributions are insufficient to meet retiree withdrawals The reason that this can occur is that you are not the owner of the assets in a retail and industry Fund You simply have an entitlement in the Fund assets as a Member. It may be that this risk is exaggerated but it is a risk nonetheless you can do without A SMSF eliminates this risk entirely Why?

Because in a SMSF you are the owner of all SMSF assets and you decide when you can access your own Super Benefit.

Benefit 5: Consolidate Multiple Member Accounts

A SMSF can have up to 4 Members and each of these Members can contribute to the one SMSF This means that instead of each Member paying separate fees in their Fund (or in multiple Funds) you can rollover and consolidate 4 persons Super Benefits, which can then be managed under the

You may also like:

- The Minimum SMSF Balance Myth
- How a SMSF Works
- How Investing in Property in a SMSF Works
- What You Can Invest in with Your SMSF

Learn more about SMSF?
Download our Free Information Package Now

Get Information Package

We value your privacy

one SMSF Importantly, whether your SMSF has 1,2,3 or 4 Members our annual fee does not change!

Benefit 6: Accumulation and Pension Fund in one

With Retail and Industry Funds your benefit is typically invested separately in a Pension or Accumulation Account This means that when you wish to drawdown your Super Benefit as a Pension your Super Benefit will need to be transferred to a separate Pension Account and any additional contributions you make will be added to a completely separate Accumulation Account Each Account is managed separately with separate investments and a separate fee structure Usually the more Funds you have the more fees you pay! A SMSF is a Pension and Accumulation Fund in one You can commence a Pension and continue contributing to the same SMSF. There is no need to split your Super Benefit into multiple Funds.

Benefit 7: Taxation Benefits

When you commence a Simple Account Based Pension or Transition to Retirement Pension, the SMSF tax rate falls to NIL on earnings and capital gains

This means that you can generate unlimited income and capital gains and will pay NO tax on them after you commencing pension.

This also
means that your SMSF is entitled to receive any franking credits on Australian Share Dividends in cash from the ATO Given that the company has paid 30% tax and your SMSF tax rate in pension mode is Nil, the entire 30% tax paid is refundable to your SMSF This is not the same in Retail and Industry Superfunds that can decide how to allocate the tax refund or retain it if they choose.

Benefit 8: Consolidate Investments

It is possible for Members to make contributions of assets into a SMSF instead of cash (called in specie contributions) Importantly only certain assets listed in the super regulations can be transferred in specie by a Member to a SMSF, such as Shares, Managed Funds and Commercial Property In specie transfers allow you to consolidate your Family Assets under the one SMSF tax advantaged umbrella We note that taxation and capital gains tax issues should be considered and these are considered here.

Benefit 9: Succession Planning

A SMSF allows you to conveniently and legally pass a Members Super Benefit to their beneficiaries in the event of the Members death. This can keep your SMSF assets under the same SMSF tax advantaged umbrella even after a Members Death For more information click here.

For more information to help you decide whether a SMSF is right for you, register to receive our free SMSF information package here

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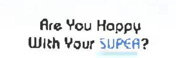

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Looking to Start a Self Managed Super Fund? See How Easy It Is!

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Say No to Time-Consuming Admin Learn How We Make Running a SMSF Simple

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Not Sure How to Use Your Super to Buy Property? Find out the Answers Today

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Starting a Pension Doesn't Need to be Complicated Learn How We Handle It

General Advice Warning