23 March 2020

Dana Fleming
Assistant Commissioner, SMSF Segment
Superannuation and Employer Obligations
Australian Taxation Office

Email: Dana.Fleming@ato.gov.au

Dear Dana,

Thank you for the opportunity on Friday to discuss various issues and concerns for the SMSF sector arising from the economic implications of the COVID-19 pandemic health crisis.

Further to that call, I am writing to you regarding the current economic instability affecting SMSF members, resulting from the crisis. I acknowledge the measures that the ATO has already announced to help many individuals and businesses which are adversely affected by the financial ramifications of the crisis.

Lodgement deadline for SMSF Annual Returns

With many small and large businesses moving to working from home arrangements and some businesses dependent on offshore processing centres, we believe it is important that an extension in lodgement deadlines be considered due to the material impact on SMSF lodgement productivity.

It is likely, many SMSF advisers will be focussed on supporting their clients and their own businesses during the next few months. This will undoubtedly have an impact on the timely lodgement of SMSF Annual Returns.

We note that a delay was announced for individuals who were affected by the bushfire crisis, and we believe similar relief should apply. We also note that the ATO recently extended SMSF lodgements for 2016–17 SMSF annual returns so that SMSF trustees and their advisers could focus on the implementation of extensive superannuation changes and this was effective.

Accordingly, we request that there should be a general relaxation in the lodgement deadline for SMSF Annual Returns until 30 June 2020 and a willingness for specific deferrals until later in 2020 where specific extenuating circumstances warrant such a deferral.

In addition, concessions should be made for individuals who do not lodge on time for certain new measures or sanctions to be applied such as a refrain from changing the status of the SMSF on Super Fund Lookup (SFLU) to 'Regulation details removed'.

In addition, we are now experiencing high volumes of concern from members on the following issues:

Rent concessions

We understand banks are now offering concessions for their loans including deferral of scheduled loan repayments, waiving fees, and temporary interest-only periods.

We expect landlords will offer rent concessions to tenants. We believe this will now be a standard feature of many commercial market arm's length operations.

We recommend the ATO provide relief or guidance that allows SMSF landlords to provide for a temporary rent concession for all affected industries (including retail and tourism) which will not breach non arm's length rules. Without this concession, many tenants will be unable to continue renting through this economic crisis.

Consideration for in-house asset breach relief

SMSF members have also expressed concern for their retirement balances, the possibility that accounts will not return to pre-crisis levels for an extended period of time and the obligation to continually sell assets during this period to meet the payments requirements.

Given the large fall in superannuation balances, SMSF trustees may be in potential breach of the 5% in-house asset rules, where an in-house asset can't be more than 5% of your fund's total assets. In the event that this limit is exceeded, section 82 of the SIS Act provides procedures which must be followed by the trustees of the SMSF to reduce the level of in-house assets within 12 months.

In 2009, the ATO responded to the GFC by indicating funds still needed to prepare a plan to rectify the breach but were unlikely to take action if a plan was not executed because the market recovered.

We recommend the ATO actively monitor this issue to help SMSF trustees avoid breaching the in-house asset rules due to the large volatility in financial markets.

Potential impact of a macroeconomic shock on Transfer Balance Caps

The Association also highlights the following statements in the explanatory memorandum implementing the Transfer Balance Cap.

> *3.102 During consultation on the amendments, stakeholders raised concerns about the potential impact of a macroeconomic shock that reduces the value of individuals' retirement phase interests. Stakeholders were concerned that, under the amendments, individuals that have already used their transfer balance cap would be prevented from replenishing their retirement phase interests for their investment losses.*
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> *3.103 The Government will review the impact of the transfer balance cap in the event of a macroeconomic shock that substantially affects retirement incomes. The review would be expected to seek advice from the Council of Financial Regulators to understand the magnitude and financial market implications of the macroeconomic shock and actuarial advice from the Australian Government Actuary to inform what response, if any may be required. This approach is consistent with the Government's response to the Review of Retirement Incomes, announced in the 2016-17 Budget, that advice from the Australian Government Actuary will be sought in the event of a significant economic shock in relation to whether changes should be made to minimum drawdown requirements.*

We believe the current macroeconomic shock warrants a review of ATO discretionary powers around Transfer Balance Cap arrangements. This may allow superannuation members the opportunity to replenish their pension accounts despite the fact they have maximised their current $1.6 million Transfer Balance Cap.

These arrangements would be most appropriate to be implemented for the 2020/21 financial year.

Implementation and administrative issues

We note the Government's announcements yesterday and have provided the attached public response. We note the statement in the fact sheet regarding early release of superannuation monies that separate arrangements will apply for SMSFs. We look forward to working with you and other official agencies on how these rules and proposed administrative arrangements will apply to members of SMSFs.

If you have any questions, please do not hesitate in contacting us.

Yours sincerely,

John L Maroney

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Media Release

SMSF Association endorses Government's latest stimulus package

22 March 2020: The SMSF Association supports the Federal Government's latest stimulus package announced today, particularly those measures that will assist self-managed super fund trustees cope with the economic and social upheaval caused by COVID-19 (coronavirus).

SMSF Association CEO John Maroney says: "The country is in unchartered waters, so we fully endorse the new measures the Government has committed to in a bid to ameliorate the economic fallout from COVID-19.

"The Association has been calling for a temporary reduction in superannuation minimum drawdown rates in recognition of the share market volatility that has seen the Australian market fall more than 30 per cent since its record peak on 20 February this year.

"So, by implementing this important measure on drawdown rates the Government is giving SMSF trustees the discretion and flexibility to better manage their superannuation assets in these testing times.

"The Association is also fully supportive of the changes to the deeming rates to reflect the fall in the cash rate to a record low of 0.25%. Many age pensioners, in particular, will benefit from this change. The decision to temporarily double Newstart is also welcome."

Maroney says the Association also supports the Government's move to allow eligible people to have limited early access to their superannuation.

"In the past it has been our strong view that access to superannuation should be a 'last resort' option, and that the strict rules preventing people from drawing down their superannuation was the correct approach.

“But we appreciate these are extraordinary times where people could suffer enormous hardship, so, in these circumstances, they should be able to access some of their superannuation where they meet the eligibility criteria.

“It’s imperative that the Government ensures that there are clear rules in place to ensure only those in genuine hardship can have early access to their superannuation. We look forward to working with the Government on how these rules and proposed administrative arrangements will apply to members of self-managed superannuation funds.”

About the SMSF Association:

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of 1.1 million SMSF members and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisers and education resources for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF members and provides them access to independent education materials to assist them in the running of their SMSF.

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