13 November 2020

Law Design Office
Treasury
Langton Cres
Parkes ACT 2600

Email: miscamendments@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION ON THE MISCELLANEOUS AMENDMENTS TO TREASURY PORTFOLIO LAWS 2020

The SMSF Association (SMSFA) welcomes the opportunity to provide a submission on the miscellaneous amendments to Treasury portfolio laws 2020. We focus this submission on details of the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2020.

Item 67

Item 67 prescribes a time by which annual accounts and statements must be prepared, in respect of an SMSF, in accordance with section 35B of the SIS Act 1993. Currently, no time is prescribed by the Regulations.

The proposed regulation will require SMSF financial statements to be prepared at least 45 days before the day by which lodgement of the SMSF return is due. This is the same day by which an approved SMSF auditor must be appointed.

The SMSFA has significant concerns with the proposed amendment to legislate an additional required date for financial statements to be prepared beyond the current requirements that are already prescribed in legislation, notably the SMSF Annual Return due date. It is our opinion, that providing less time for SMSF trustees and professionals to prepare financial statements will deliver no tangible benefits to the sector while being disruptive at the same time.

Firstly, we note that imposing a 45-day financial preparation timeline is not a minor amendment for the SMSF sector. The amendment goes well beyond Treasury's intention to address a technical deficiency or any legislative uncertainty. We believe such a change deserves consultation as to the policy problem that Treasury wish to solve.

It is our understanding that the policy rationale regarding this proposed change is to better formalise the current requirement trustees have to appoint an auditor. We presume that this proposal therefore aims to ensure that SMSF auditors are given sufficient time to perform the audit before an SMSFs Annual Return is due. There may be some situations where an SMSF auditor is unable to complete the audit prior to the SMSFs due date because financials were received close to the SMSF Annual Return date. However, we do not believe this is a systemic issue for the industry.

In the 2018 financial year, 90% of SMSFs lodged prior to their due date. We believe there has been no significant departure from this adherence in the subsequent years. Therefore, imparting a disruptive change that will affect many SMSFs and their current financial statement preparation processes to appease a small subset of poor behaviour is unreasonable.

We believe the policy consequence of this proposal will simply be to bring forward the already legislated SMSF lodgement date for no apparent reason or benefit. Therefore, we do not support this measure.

Additionally, from 1 October 2019, when a fund is more than two weeks late lodging its SMSF Annual Return, the ATO changes the SMSF status on 'Super Fund Lookup' to 'Regulation details removed'. This is a significant compliance incentive to ensure SMSFs are lodged on time.

While the SMSFA supports measures to improve compliance with SMSF lodgements, we believe imposing this statutory deadline and giving the SMSF industry less time to prepare their financial statements is not the appropriate response. As such, we recommend this measure is removed from the minor and technical amendments.

Practical application is unworkable

For funds where an SMSF trustee has been advised to, or one or more prior-year tax returns were outstanding, the SMSF Annual Return is due on 31 October. The proposed 45-day rule will require these SMSFs to have their financials prepared by 16 September. This is an unrealistic deadline considering many SMSF trustees will not have received their required tax statements and data feeds. In turn it will also place an unnecessary strain on SMSF professionals.

Additionally, those SMSF trustees who may have missed only one SMSF Annual Return date will be further penalised with an unrealistic deadline in a subsequent year. This will exacerbate issues for those SMSF trustees that have a genuine intent to bring their affairs up to date.

First year SMSFs have an SMSF Annual Return due date of 28 February. This will result in financials needing to be prepared by 14 January. In light of office closures, most SMSFs in this population would have to have their accounts prepared prior to Christmas, putting significant pressure on accounting firms to manage workflows in the first 6 months of a financial year.

Typically, the majority of SMSFs have a 15 May SMSF Annual Return due date and will have to have their financial statements prepared by 31 March. We believe the entire productive loss of April for SMSF accountants and administrator firms who carefully plan their workflow is unnecessary.

Tightening the preparation date for SMSFs will put a sizeable strain on the current processes SMSF firms undertake. This is likely to be unworkable for many SMSF firms and potentially counterproductive to the intention of the legislation.

Disproportionate penalties

Additionally, the penalty for breaching this requirement is $2,200. This is substantially disproportionate to any breach of this offence, particularly due to the fact that the failure to meet this deadline may not be the fault of trustee and breaching the 45-day rule may have no material impact on their SMSF audit or ATO lodgement deadlines.

The potential for compliant SMSFs who lodge their SMSF Annual Return by its due date to receive penalty for breaching the proposed 45-day rule is also inequitable. For example, an SMSF which appoints their auditor in July 2020, prepares their financials on 1 April 2021 and lodges their SMSF on 7 May 2021 will have breached the strict timelines enforced by this minor amendment and will need to apply to have a remission on their penalties.

The penalty is further disproportionate when you note the fact that an auditor is required to provide an audit report to the trustees within 28 days of having received all relevant information to undertake the audit.

Enforcement and definition issues

We also note that enforcing this amendment will be difficult. Currently, the SMSF Annual return does not have a field for the date the financials were completed. Therefore, it will most likely be the SMSF trustee or SMSF auditor that will need to create and evidence a minute that details the date of preparation. Realistically, it will be difficult for an auditor to evidence the date that SMSF financials were 'actually' prepared, even when they receive the statements after the 45 days prior to the SMSF Annual Return due date.

The definition of 'prepared' is also ambiguous. Does this mean signed and provided to the client or just finalised to the satisfaction of the trustee? Would trustees breach the 45-day rule if the financials are prepared before the 45-day deadline, but adjustments required to be made after that time, result in the trustees breaching the 45-day deadline?

Reduction in quality/increased accounting and audit fees for trustees

The SMSFA believes the proposed requirement may lead to a reduction in the quality of financial statements. This is because some accountants and administrators may be inclined to 'rush' preparation of financial statements if they are approaching the 45-day deadline.

This in turn will increase the audit fees by auditors who will have to provide more of a 'review' service on financial statements, which is not their core obligation. If an auditor finds errors in financial statements, these must be corrected by a trustee's accountant or administrator and will increase the fees paid to them.

Finally, the SMSFA would be happy to consult with Treasury and the ATO on what alternative measures can be implemented to improve the timeliness of SMSF Annual Return lodgement.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

Peter Burgess
Deputy CEO/Director of Policy and Education
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than $700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards 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 trustee members and provides them access to independent education materials to assist them in the running of their SMSF.