



28 June 2021

Director  
Tax and Compliance Unit  
Retirement Income Policy Division  
Treasury  
1 Langton Cres  
Parkes ACT 2600

Email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam,

**SMSF ASSOCIATION SUBMISSION – IMPROVING VISIBILITY OF SUPERANNUATION ASSETS IN FAMILY LAW PROCEEDINGS**

The SMSF Association welcomes the opportunity to provide this submission in response to the Government's proposed superannuation information sharing process in Family Law matters. They will help to improve the outcomes for many people, particularly women, creating greater equity and fairness.

The proposed structure and procedure that would apply is reasonable, practical and secure. It provides essential protections to ensure that this measure is not abused and used for other purposes.

Whilst this is seen as a positive measure, it is an imperfect solution. We note that this is acknowledged within the draft explanatory materials. This imperfection is largely due to the nature of the current reporting system that applies to superannuation funds. In some circumstances, this will extend further than has been contemplated or considered in the explanatory materials.

Presently, all superannuation funds are required to report member account details, including end of financial year member balances to the Australian Taxation Office just once a year. For the large APRA regulated funds, this will occur around October each year. Others may however voluntarily report on a more frequent basis such as half yearly or quarterly.

It is acknowledged that as technology and processes change over time, so too will the availability of more current, and quality data.

Delays in the availability of balance information may occur where the fund is a self managed superannuation fund ("SMSF"). The balance data is updated only once a year and after the SMSF Annual Return ("SAR") is lodged with the Commissioner of Taxation.

Prior to lodging the SAR for the year of income, the SMSF trustees are required to prepare the annual financial and member statements for the fund. These must then be audited by an ASIC Approved SMSF Auditor. An independent audit is required for each year of income.



Only once the audit has been completed can the SAR be lodged with the Commissioner.

The due date for lodgement for SMSFs varies depending upon a range of factors:

1. Whether or not the Trustees have engaged the services of tax agent
2. Whether it is a newly registered fund or a continuing fund
3. The size of the fund and the value of its tax liabilities
4. If in the prior year the Fund was non-taxable or received a refund

The various lodgement periods that apply are set out in the summary tables below.

<b>New Funds</b>	<b>Due Date</b>
Year 1 – Tax Agent	28 February
Year 1 – Tax Agent*	31 October
<i>Advised by the Commissioner</i>	
Year 1 – No Tax Agent	31 October

\*SMSF was reviewed by the ATO on registration.

For continuing funds, a range of variables will affect when the SMSF annual return falls due. The lodgement periods range from 31 October to 5 June.

<b>Continuing Funds</b>	<b>Due Date</b>
Prior year return lodged late	31 October
Continuing Fund – No Tax Agent	28 February
\$2m+ in taxable income – Tax Agent	31 March
All other Funds – Tax Agent	15 May
Non-Taxable in Prior Year – Tax Agent	5 June

The draft explanatory materials at paragraph 1.18 highlights that the information provided by the Commissioner will be the last balance reported by the Fund and may be up to 18 months old. As you can see from the tables above, depending on the timing of when a request is made and when an SMSF lodges its SAR, the age of the data could be more than 18 months old. In some cases, this could be up to 24 months.

Further delays in the update of member balance information will occur where prior year SAR returns remain outstanding. This becomes a concern in matters where one party seeks to control the other or cause difficulties and delay the process. It can also be indicator of potential compliance breaches.

Where a SMSF is involved, it would be beneficial to include additional information in the information reported by the ATO, including:

1. SMSF ABN
2. Return Lodgement status, including details of any outstanding returns; and
3. Flagging of any compliance activities, audits, or reviews in progress

Non-lodgement of returns and compliance activities by the ATO as regulator could have significant, negative, impacts on the financial settlement for the former spouse. A fund with outstanding lodgements also raises concerns on potential compliance breaches. As such the applicant should be



made aware of any concerns, current or emerging, to allow them to take the steps necessary to protect their financial interests and reach an appropriate settlement.

Where an SMSF is more than two weeks late in lodging its SAR, the ATO will remove the fund's regulation details from the Super Fund Lookup service. The consequences of this action are, that until the fund's status is restored, the SMSF is unable to receive employer contributions (including salary sacrifice amounts), and the rollover of superannuation benefits to or from the SMSF are not permitted. This would prevent parties from actioning a Family Law superannuation split from the SMSF.

It is acknowledged that the parties will be required to make further enquiries on current member balances from the respective superannuation fund trustee. The reporting from the ATO is not intended to replace this. However, providing this additional SMSF information will help to ensure any undisclosed funds, or fund compliance issues, are appropriately and fairly considered, and addressed in the property settlement process.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Peter Burgess', written over a light blue grid background.

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.