15 December 2021

Law Division
Treasury
Langton Crescent
PARKES ACT 2600

Email: MiscAmendments@treasury.gov.au

Dear Sir/Madam,

**SMSF ASSOCIATION SUBMISSION - Treasury Laws Amendment (Measures for Consultation) Regulations 2021: Miscellaneous and Technical Amendments Autumn 2022**

The SMSF Association welcomes the opportunity to provide this submission in response to the above-mentioned Exposure Draft Regulations.

**Amendments supported**

We broadly support the proposed regulations with regards to:

- The application to excess transfer balance amounts arising from the restructure of a capped defined benefit income stream (CDBIS) any time after 1 July 2017.
- The choice afforded to individuals to retain any lump sum resulting from the excess commutation authority in accumulation phase or to nominate that it be paid out as a lump sum.
- Not including deemed earnings in the excess transfer balance amount until after the Regulations commence. This ensures the appropriate tax outcome with no excess transfer balance tax liability accruing until after the Regulations commence.
- Continuing to value the commutation debit at the time of the commutation with the debit not arising in an individual's Transfer Balance Account (TBA) until the date the Regulations commence. The loss of valuable Transfer Balance Cap (TBC) space would only be magnified if the debit was also valued on the date the Regulations commence.
- Amending the SIS Regulations to allow commutations resulting from commutation authorities to address excess transfer balance amounts.

**Other observations**

- We support the amnesty afforded to SMSFs where members have already restructured into new market linked pensions (MLPs), however it needs to be acknowledged that the timing of any withdrawal of physical benefits from the pension can only occur at the time the lump sum is paid. Therefore, given that MLPs are an account-based pension, and the payment factors are designed to ensure that the pension assets are drawn down over the term of the pension, it is inevitable that by the time these new Regulations are enacted, the value of the underlying pension assets will have declined further. We do not advocate for additional complexity, but it needs to be noted that with no adjustment to the artificial excess, the artificial commutation value will be even more disproportionate to a member's actual retirement benefits at the time a commutation authority is actioned. This is magnified where pension assets have suffered losses due to market volatility, particularly during the current COVID pandemic. We trust that the Government will consider this impact as part of its Budget announcement to allow individuals to exit legacy pension products.

- We support the changes to SIS Regulation 1.08 to allow the commutation of a complying life expectancy pension to resolve excess transfer balance amounts however we do not believe that the amendments go far enough to overcome the unnecessary complexity associated with the treatment of any reserves supporting the full commutation of these pensions. We urge Treasury to consider permitting funds to use a higher pension valuation factor when commuting the assets supporting a complying life expectancy pension to commence a new complying income stream (including a MLP in an SMSF) and amending SIS Reg 1.06(7)(i) accordingly. This will allow the value of any reserves held by the trustee to satisfy the payment of the life expectancy pension to be directed towards funding a new complying income stream. Any resulting excess transfer balance amount can be dealt with under these proposed Regulations.

- We support amendments to vary annual pension payments from complying life expectancy pensions to account for the reduced capital supporting the income stream following a commutation, but we note that no equivalent is available for a MLP. Given that MLP drawdowns are calculated on 1 July each year and are determined based on the actual size of the account balance, a significant withdrawal of capital in response to a commutation authority, has the potential to create liquidity issues, particularly for funds that have suffered losses during the current pandemic.

- We believe subsection 294-80.02A(1)(b) should be referring to subsection 294-25.02(1) of these Draft Regulations.

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

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.