

28 August 2018

Division Head  
Retirement Income Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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

Dear Sir/Madam,

### **CCH WOLTERS KLUWER SUBMISSION ON THE THREE YEAR AUDIT CYCLE FOR SOME SMSFs**

CCH Wolters Kluwer welcomes the opportunity to participate in the submission process on the Government's 2018 federal budget proposal to allow SMSF trustees to move to a three-year audit cycle in certain circumstances. We acknowledge and understand that the purpose of the measure is to incentivise good record-keeping and compliance by SMSFs whilst maintaining system oversight and integrity.

The discussion paper tabled six consultation questions to industry. We would like to take the opportunity to present our thoughts in regards to questions 2, 3 and 4 in this paper. Our thoughts are explored in detail below.

#### **Definition of clear audit report**

As the Australian Taxation Office is the regulator of SMSFs, we acknowledge and support that a 'clear audit report' refers specifically to the Auditor Contravention Report which is lodged by an approved SMSF auditor. The definition of 'clear audit report' will protect the robust operation of the superannuation system by the ATO as it is not providing a detriment to SMSF trustees who make inadvertent, minor non-compliance errors in the tax and superannuation laws.

Currently, minor issues of non-compliance are treated on a personal level by the use of an auditor management letter or educational guidance from SMSF administrators. The systems already in place allow a robust deterrent to ensure compliance with SIS rules that are not part of the compliance audit for an SMSF audit report or Auditor Contravention Report. An example of this would be the income tax assessed against an SMSF when minimum standards are not met for superannuation income streams under SIS Regulations 1.05 and 1.06. Issues such as this arise and generally are taken care of quickly in an SMSF without the need for an ACR.

#### **Definition of timely submission of SMSF Annual Returns**

From the range of options the discussion paper identified, we recommend that the appropriate definition of timely submission of SMSF Annual Return's refers to the previous three years for each SMSF. This measure would promote "best practice" for the industry, and meet the objective of maintaining a robust superannuation system with integrity. Also, an SMSF in its first three years of operation will generally have SMSF trustees who are new to the SMSF administration process. Having a three year introduction to annual audits will promote "best practice" ideals which are wanted in the industry.

## **Key event audits**

CCH Wolters Kluwer acknowledges and supports the examples of key events given in the discussion paper. We propose that the Treasury expand the definition of 'key event audit' in the draft legislation to provide more powers to the Commissioner of Taxation.

### *Authority for the Commissioner of Taxation to declare a key event audit*

We propose that the Commissioner of Taxation have a general authority to declare a key event audit is required in the event that external or macroeconomic factors may have occurred which may affect SIS compliance. The Commissioner should have an authority to declare these key event audits apply either:

- to all SMSFs for a certain year, or
- to a certain group or class of SMSFs for a certain year.

While it is difficult to hypothesise future external or macroeconomic events that are potentially detrimental to SMSFs, giving the Commissioner a "catch-all" provision would provide greater certainty in the process of achieving the objective of maintaining system oversight.

Firstly, this mitigates the risk that a group of trustees are unwittingly putting their SMSF in a breach position which is outside their control or knowledge.

Secondly, this measure will not require trustees and administrators to self-assess areas of SIS compliance which may be complex or difficult to understand completely, such as SIS Regulation 4.09A (Separation of assets between the SMSF and trustees personally) and SIS Regulation 13.14 (Charges over assets of the SMSF).

Thirdly, the discretion would allow the ATO to identify high risk areas to the SMSF market early by issuing announcements and rulings in a timely manner. The Commissioner of Taxation already has a platform in which to deliver the announcement of a key event audit for a group of SMSFs, being the *Taxpayer Alert* program. This has uncovered SIS compliance issues for the superannuation industry in the past, and would assist trustees and administrators to understand when a key event audit is required.

As mentioned above, it is outside the scope of this submission to identify or hypothesise future external or macroeconomic events which may impact a group of SMSFs and their SIS compliance. However, the following are some recent examples of external factors which may have affected SIS compliance of SMSFs:

### ***Issue A: The valuation of unrelated, unlisted securities in the wake of the Global Financial Crisis***

This macroeconomic situation provided an increased risk of a SIS breach for Regulation 8.02B, which requires assets to be valued at market value. In situations of heightened volatility, a reportable contravention may occur for three years due to the fact an external valuer was not used to complete a complex valuation on these types of securities in a falling market.

The Commissioner of Taxation would be able to identify this key event due to the high publicity something like this would receive in the general news cycle. Also, the Commissioner would be

able to specifically identify a group of SMSFs that have declared these kinds of investments in Section H of their SMSF Annual Return.

In situations such as this, an SMSF trustee having a clear idea of the valuation of assets is important particularly when needing to make decisions about asset allocation as part of their overall retirement strategy.

However, an SMSF trustee is not required to self-assess whether this would be considered a key event under the proposal in the discussion paper.

***Issue B: The rezoning of commercial and industrial land by state governments and local councils***

Like *Issue A*, this situation provides an increased risk of a SIS breach for Regulation 8.02B for valuation of assets at market value due to external factors outside of the control or perhaps knowledge of the SMSF trustee.

Current ATO guidelines state that an external valuation of real property is not required each year. However, a recent valuation would be prudent if an event occurred that may have affected the value of the property since it was last valued.

The Commissioner of Taxation would be able to identify when these key events happen due to the public release of information by state governments and local councils. For example, on 1 June 2017 the NSW Department of Planning & Environment declared 15 *Priority Precincts* in the greater Sydney metropolitan area. As a result, certain areas were earmarked for boosting housing supply, which included rezoning of large commercial and industrial land.

These external announcements would have significantly changed the valuation for non-residential real property held by SMSF trustees in these areas. The Commissioner of Taxation would have been able to declare that affected SMSFs are required to complete a key event audit at the next balance date by issuing a public ruling, such as a *Taxpayer Alert*.

The current discussion paper does not take into account a situation where a material misstatement may have occurred causing a potential reportable SIS breach. With the issuing of the *Taxpayer Alert*, SMSF trustees and administrators are not required to self-assess whether a key event has occurred.

***Issue C: The rise in investments in unorthodox assets such as foreign exchange products and crypto-currencies***

Investments in these types of assets provide an increased risk of a SIS breach for both Regulation 13.14 – Charge over assets of the fund, and Regulation 4.09A – Separation of assets between the SMSF trustee and the members personally.

The risks would be identified by the review of the contracts agreed to by the SMSF trustee and the provider of these financial products. However, issues such as this are not listed as a key event in the discussion paper, meaning that SMSF trustees may have put themselves at risk of having multiple SIS breaches over multiple years when on a three-year audit cycle due to the complex nature of these SIS Regulations.

In this situation, the Commissioner of Taxation would be able to identify these types of unorthodox investments due to the increased publicity they received at the time. By giving the Commissioner the power to declare a key event audit by a public ruling, trustees have the ability to efficiently rectify any SIS compliance issues.

### **Conclusion**

These types of circumstances in the past have enabled an SMSF auditor to ensure compliance with the SIS Regulations in a timely manner. While the issues listed above may not happen again, providing the Commissioner of Taxation with the ability to declare a key event audit would, in their role as regulator of SMSFs, provide further assurances for compliance for SMSFs on the three-year audit cycle.

The Commissioner of Taxation already has many areas of the tax and superannuation law where discretionary action is available in exceptional circumstances. Adding a discretion for key event audits for SMSFs would satisfy the desire to maintain a robust superannuation system, allow for good record-keeping and compliance as well as ensure oversight and integrity for the industry.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ben Miller". The signature is written in a cursive, slightly slanted style.

Ben Miller  
CCH Wolters Kluwer