

17 November 2020

Law Design Office
Treasury
Langton Cres
PARKES ACT 2600
Via email: Miscamendments@treasury.gov.au

Dear Sir/Madam

Re: Miscellaneous amendments to Treasury portfolio laws 2020

CPA Australia and Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) welcome the opportunity to provide comments on the *Miscellaneous amendments to Treasury portfolio laws 2020* consultation, presently underway at Treasury.

CPA Australia and Chartered Accountants ANZ represent over 200,000 professional accountants in Australia and New Zealand. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

In this submission, we comment on a specific matter. That is, Item 67 of the exposure draft *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020* (the “draft regulations”), which would prescribe a mandatory date for trustees of self-managed superannuation funds (SMSFs) to have prepared accounts and statements; the date being 45 days prior to the due lodgement for a fund’s annual statutory return.

Although we do not comment on other measures contained in this package of amendments, Item 70 of the draft regulations is mentioned in passing.

We do not support this proposal as the objective of this measure is not clear. The purpose of Treasury’s consultation in relation to these miscellaneous amendment provisions is to “ensure the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes”¹. However, this measure appears to be new policy, which is unaccompanied by a policy statement setting out the issue or problem which it is designed to address. While we accept that there currently are no legislative requirements to prepare SMSF financial accounts by a particular date, we are not aware of what problem the proposed amendment is intended to solve.

¹ Treasury, The. 2020. *Miscellaneous Amendments To Treasury Portfolio Laws 2020* | *Treasury.Gov.Au*. [online] Available at: <https://tinyurl.com/yysmsn2g> [Accessed 11 November 2020].

Additionally, we note that the introduction of this measure would add regulatory complexity accompanied by penalties to SMSF regulation. This, in turn, places pressures on trustees to comply, and where preparation of accounts is provided by accountants, may add unnecessarily to work pressures, particularly where there may be a tight deadline.

We recommend this proposed provision be withdrawn and encourage Treasury to liaise constructively with CPA Australia, Chartered Accountants ANZ and other professional and industry associations to determine a more workable solution that not only addresses the perceived problem, but also considers the issue of some SMSFs failing to lodge their annual return by the due date. We believe that there are administrative and education-based solutions that can more effectively influence the behaviour of trustees and service providers, rather than a prescriptive legislative provision.

Lastly, we consider that this is likely to be very difficult to achieve where SMSFs rely on assistance from administration services and platforms, who may not be able to provide the necessary information and reporting in time to meet the proposed deadline. Moreover, such reporting difficulty has implications for auditors and their ability to conduct and complete audits in a timely manner. A logical prerequisite to a measure such as this should be initiatives led by regulators focussed on enhancing the speed and efficiency of reporting by these administration services and platforms.

The proposed measure

Item 67 in the draft regulations proposes, in a new regulation (8.02AA of the *Superannuation Industry (Supervision) Regulations 1994* (the "SIS Regulations"), that trustees of SMSFs would be required to have accounts and statements prepared by them in accordance with section 35B of the *Superannuation Industry (Supervision) Act 1993* (the "SIS Act") 45 days prior to lodgement of the fund's annual return. The due dates for the annual return prescribed by the Commissioner of Taxation vary depending on circumstances. The two most common dates are 31 October following the end of the fund's financial year and 15 May in the following calendar year. Like all taxpayers SMSF trustees and their tax agents can apply to the Australian Taxation Office (ATO) to have lodgement dates extended.

The 45 day period prior to lodgement of the fund's annual return coincides with the date by which the fund's auditor is required to be appointed – see SIS Regulation 8.02A. Therefore, the measure will ensure that the accounts and statements are ready for the auditor to start reviewing, on or before the start of the 45 day period prior to the annual return due date.

The 31 October due date applies to funds which do not use a registered tax agent in the preparation of their annual return and to a range of other SMSFs, such as newly registered funds or those funds which had lodged their annual return after lodgement date or an ATO-permitted extension. The use of a registered tax agent is not a requirement for SMSFs.

While the measure is due to commence upon the registration of the regulations, Item 70 of the draft regulations clarifies that the measure is to be effective for accounts prepared for financial years 2020/21 onwards. This would mean that the first due date for the measure to come into effect would be 45 days prior to 31 October 2021 for trustees who do not use a tax agent.

The explanatory statement to the draft regulations does not provide a stated policy intention in relation to the measure, and we consider that this change should not proceed without express justification.

A shortage of necessary information

CPA Australia and Chartered Accountants ANZ are concerned that there are a significant number of problems with trustees obtaining sufficient information to complete their financial records. A deadline halfway through the month of September, that is, 45 days before 31 October, imposes a significant change for trustees and may make compliance difficult.

To provide an example which is not uncommon, we can look at trustees who use administration services. These can vary from bespoke administration services which undertake asset custody, reporting and fund financial reporting through to simple use of a generic off the shelf platform, such as an Investor Directed Portfolio Service (IDPS), for asset custody and reporting.

For the purposes of compiling the accounts of an SMSF, data must be obtained from the administrator in order to properly complete the accounts. To prepare a fund's financial accounts accurately (as required by the SIS Act and general trust law) trustees must understand, for example, what types of fund income the fund has received, including franked dividends, realised capital gains and taxable contributions.

In all cases, it is common for trustees to have selected and invested in managed investment schemes via their administration arrangement. Operators of managed investment schemes are required to communicate the different types of investment income that the scheme has recorded on behalf of their investors.

Administration platforms, therefore, are simply unable to begin work in relation to reporting to their clients, including SMSF trustees, until information such as this is received from all investment managers available through the platform. This information must be fully compiled before the platform administrator undertakes its own financial reporting, which must also be audited. The provision of periodic reporting to clients, whether this be comprehensive financial reporting or just tax information, is likely to be the final task in this series of events.

Feedback from members of CPA Australia and Chartered Accountants ANZ indicates that information from platforms can come through as late as September and even sometimes later. This then may create issues for trustees to ensure that all reports and statements are able to be prepared for a mid-September deadline.

It should be noted that SMSF trustees are simply unable to proceed to finalisation of their financial reporting until all necessary information is made available. In many cases this is via paper statements which are delivered by post. We anticipate that due to the need to rely on reporting by third parties, this can be a significantly more difficult task for SMSF trustees than APRA-regulated superannuation trustees – who benefit from significant scale and technology advantages compared to SMSFs. APRA-regulated funds are able to benefit from real-time information sharing of data concerning fund accounting from custodians and investment managers, which are services unavailable to SMSFs.

We note as an aside that ASIC's guidance in *Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements* (RG 97) is a reminder that although managed investment scheme providers must provide investors with periodic statements as soon as practical, there is still the possibility that statements may not be issued until up to six months after the end of the reporting period, as required in section 1017D of the *Corporations Act 2001*.

The impact on self-preparers

The attraction to many Australians of managing their own retirement savings is the ability to undertake most tasks themselves. After setting up a fund, it is possible for a trustee to no longer require professional services to assist in the operation of the fund, with the exception of the fund auditor, which is mandatory, or in some cases the fund's actuary, which can be mandatory depending on the fund's circumstances.

Just over 5,000 of SMSF trustees self-prepare and lodge their returns, meaning any proposed requirements need to consider issues such as the timeliness of information from administration services and platforms for SMSF trustees.

Where information can't be obtained and audited by the return due date due to circumstances outside the trustee's control, the ATO should provide streamlined lodgement deferrals so the trustee is not exposed to criminal and civil penalties.

A broader question of timing

While we do not support the proposed provision, if progressed, we consider that there may be justifiable grounds for postponing this measure to a later financial year.

Many CPA Australia and Chartered Accountants ANZ members in public practice have told us of dramatic increases in workload due to the COVID-19 related recession and lockdowns. They have worked in a very high-pressure environment assisting clients financially survive this unfortunate period. The delivery of economic stimulus measures through the taxation system means that practitioners are absorbing significant additional compliance burdens and new measures that further increase the reporting complexity should be carefully considered. We consider it would be unfair to place additional pressures on their practices at this time and that further consultation with the profession is required to understand the practical challenges to implement the proposed change.

While we understand that the date chosen for this measure may have been intended to ensure that all necessary documents are ready for an appointed auditor, if reporting from administration services is not timely, or delayed, as noted above, the proposed reporting deadline might mean that accounts are prepared hastily, increasing the possibility of errors and adding to pressures on auditors to complete their work on time.

Finally, we also point to our illustration above regarding the inability to obtain the necessary information from administration services and platforms required to finalise reporting. This alone is a bottleneck which we believe should be resolved by regulators prior to implementation of this measure. Solutions could include tighter timelines for reporting by administration services and platforms, and technological solutions and protocols designed to better facilitate reporting by SMSFs and other downstream financial report users.

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at richard.webb@cpaaustralia.com.au or Tony Negline, Superannuation Leader at Chartered Accountants ANZ at Tony.Negline@charteredaccountantsanz.com.

Yours sincerely

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