



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

**Submission to
Treasury: Treasury
Laws Amendment
(Miscellaneous and
Technical
Amendments)
Regulations 2020**

November 2020

17 November 2020

Law Design Office
Treasury
Langton Crescent
Parkes, ACT 2600

By email: miscamendments@treasury.gov.au

Dear Sir / Madam

Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission in relation to the Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020 (Draft Regs).

The IPA is one of the three professional accounting bodies in Australia, representing over 40,000 accountants, business advisers, academics and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and SMEs.

This submission relates to Item 67 of the Draft Regs which propose to insert a new regulation (8.02AA) into the *Superannuation Industry (Supervision) Regulations 1994* (SIS Act) requiring 'accounts and statements to be prepared at least 45 days before the day by which section 35D of that Act requires a return to be lodged for the entity'. It is noted that section 35B currently does not prescribe a time frame and therefore the ATO is not able to impose any penalties on Trustees under section 166 of the SIS Act.

We do not support the proposed change requiring accounts and statements to be prepared at least 45 days before the day a return is required to be lodged. Failing to comply with the requirement will attract 10 administration penalty units, amounting to a fine of \$2220, which appears harsh on SMSFs that have lodged a late annual return. When an SMSF stops lodging, this can also be an indicator of broader compliance issues and this measure will not address this problem. It represents a blunt instrument when there are other factors at play and the penalty which will be difficult to administer is disproportionate to the potential breach and is unwarranted.

Our main points we wish to make to explain our position are as follows:

- The IPA supports efforts to ensure timely lodgments, and appreciate the fact there are issues with a number of funds lodging late and the ATO currently not having the authority to issue penalties. We also appreciate that this is an attempt to align the requirement to prepare accounts with the latest date by which an auditor can be appointed. However, we do not believe the proposed amendment is going to address the issue of encouraging timely lodgments. It will instead place increased pressures on Accountants, which is likely to result in further late submissions and substantial penalties (10 penalty points of \$2 220), likely then to be the subject of remission appeals, resulting in an increase the workload also on the ATO. We believe there are many opportunities already available to the ATO to encourage timely lodgment including, being able to remove a fund from the Super Fund Lookup register. Such action disallows employers from being able to make any super guarantee contributions for the SMSF members.
- A key impediment to the effective working of the 45 days deadline that we see, is the practical reality of non-compliance for those funds having an earlier lodgment date of 31 October not being able to prepare their accounts by mid-September as many of the managed funds that they rely on, do not publish their information until late September and in many cases early October. This change would unfairly impact newly established SMSFs and those funds that have lodged the annual return late in a prior year. If such funds have investments in managed funds which do not report until the end of September, it represents an unrealistic timeframe.
- Finally, in our experience we are not aware of any provisions in Superannuation legislation which impose punitive measures for failure to comply with a requirement, prior to the associated lodgment date. So, this amendment would be creating new impositions above and beyond those linked to the failure to comply with lodgment dates.

If you have any queries or require further information, please don't hesitate to contact Tony Greco, General Manager, Technical Policy, either at tony.greco@publicaccountants.org.au or mobile: 0419 369 038

Yours sincerely



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