



15 January 2016

Mr. Tom Reid
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Email: taxlawdesign@treasury.gov.au

Dear Mr. Reid,

SMSF ASSOCIATION SUBMISSION ON COMMISSIONER'S REMEDIAL POWER AND RELATED ISSUES

The SMSF Association welcomes the opportunity to make a submission regarding the draft legislation which implements the proposed Commissioner of Taxation's statutory remedial power. We support the Commissioner having a remedial power to modify the taxation and superannuation laws where appropriate so that these laws are administered in an efficient manner.

Generally, we believe the draft legislation strikes an appropriate balance between giving the Commissioner discretion to modify the law where appropriate and limiting the discretion to changes of a minor nature. This should allow for efficient administration of the taxation and superannuation laws where there are minor unintended consequences for taxpayers and a reduction of compliance issues for affected taxpayers.

Consultation Questions

- 1. Do you agree that the proposed consultation process will be appropriate to obtain relevant stakeholder input?*

Yes, we believe that the consultation arrangements described in the consultation paper are appropriate. We would envisage that individuals/associations selected to participate in consultations would be chosen on an ad-hoc basis so that the Australian Taxation Office (ATO) can call on relevant expertise when needed. Accordingly, we believe it is important that there is transparency as to who the ATO has consulted with on each use of the Commissioner's remedial power. This could be achieved by maintaining a register on the ATO website that tracks the use of the Commissioner's remedial power which could include the issues that have been raised for consideration, why the discretion has or has not applied and who has been consulted in the process. We believe this would ensure that the use of the power is appropriately transparent and engender confidence in the taxpayer community that it is being used appropriately.



2. *Do you agree that the administrative process proposed by the ATO achieves the right balance between ensuring robust consideration of issues including thorough consultation with stakeholders, and flexibility to ensure that issues can be resolved in a timely manner?*

Yes, the proposed consultation arrangements are appropriate. As discussed above, we believe it is important that the ATO maintains transparency around who is being consulted with and what issues have been raised for potential application of the Commissioner's remedial power. We believe this is best achieved through a public register of issues considered and subsequent consultations conducted.

3. *What would be an appropriate sunset period for legislative instruments made under the Remedial Power?*

We consider that a ten year sunset period is more appropriate than the proposed five year period.

While we understand the rationale that the Commissioner's remedial power should only be an interim solution for an anomalous legislative outcome and that ultimately an amendment to the primary legislation should be used to resolve the relevant issue, we believe that a ten year sunset period will give taxpayers more confidence in applying the "modified" law. We note that the often busy legislative agenda of Governments and the Treasury can see smaller legislative issues not be afforded the resources or opportunity to be resolved through the Parliament passing legislation. Accordingly, the standard ten year sunset period is preferred for legislative instruments made under the Commissioner's remedial power.

Other matters

The explanatory memorandum could benefit from including an example of the application rule in draft subsection 370-5(4) where a taxpayer chooses not to apply the modified law because it results in a less favourable outcome.

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing the SMSF sector throughout Australia. The SMSF Association continues to build integrity through professional and education standards for advice and education standards for trustees. We represent professional, irrespective of their personal membership and professional affiliations, who provide advice and services to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of the SMSF Association is principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries.



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 "A. Slattery".

Andrea Slattery
Managing Director/CEO
SMSF Association