INSTITUTE OF PUBLIC ACCOUNTANTS

Submission to the ATO: Discussion Paper

SMSF 'Event-Based' Reporting Framework

15 September 2017

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The ATO Super Consultation Team

Dear Sir/Madam,

The IPA is pleased to submit a submission on the discussion paper on SMSF event-based reporting. The ATO discussion paper is seeking feedback on one specific aspect of SMSF events based reporting, being how often SMSFs are required to report events impacting an individual member's transfer balance from 1 July 2018.

The Institute of Public Accountants (IPA) is one of the three legally recognised professional accounting bodies in Australia. The IPA has been in operation for over 90 years and has grown rapidly in recent years to represent more than 35,000 members and students in Australia and in more than 80 countries. The IPA has offices around Australia and in London, Beijing, Shanghai, Guangzhou and Kuala Lumpur. It also has a range of partnerships with other global accounting bodies. The IPA is a full member of the International Federation of Accountants and has almost 4,000 individual accounting practices in its network, generating in excess of $2.1 billion in accounting services fees annually. The IPA's unique proposition is that it is for *small business*; providing personal, practical and valued services to its members and their clients/employers. More than 75 per cent of IPA members work directly in or with small business every day.

The new super rules have now placed a limit on the total amount an individual can transfer into retirement income stream accounts, such as pensions and annuities. This is known as the 'transfer balance cap'. From the 1 July 2018 SMSF trustees will be required to report events impacting an individual member's transfer balance on an events basis. Events based reporting will not require all SMSF's to report every quarter or every month. Those that have members with events impacting their transfer balance cap in a particular quarter or month will be required to report via the transfer balance account reporting. SMSF's without any members in pension phase (which is approximately 52% of the SMSF population) will not be required to report anything additional until their members commence a pension, which for some funds may not be for many years. The discussion paper provides two possible alternative options on how often SMSF's with members in pension phase are required to report events impacting an individual member's transfer balance.

The two options as detailed in the discussion paper are:

Option 1:

From 1 July 2018 SMSF's will be required to report events occurring in relation to their members' transfer balance account 10 business days after the end of the month in which the relevant event occurs, except for:

- *Income stream commencement*: an administrative concession will allow SMSFs to report the commencement of a retirement phase income stream (pension) 28 days after the end of the relevant quarter.
- *Limited recourse borrowing arrangements (LRBAs):* an administrative concession will allow SMSFs to report relevant repayment events 28 days after the end of the relevant quarter.
- *Commutation Authorities*: SMSF's must abide by legislated TBC reporting timeframes as specified within Commutation Authorities.

Option 2:

From 1 July 2018 SMSF's will have 28 days after the end of the relevant quarter to report **all** TBC events **except for**:

- The *commutation of an income stream* were the ATO have issued a member of an SMSF with an Excess Transfer Balance (ETB) Determination, which will need to be reported 10 business days after the end of the month in which the commutation occurred; otherwise the ATO may issue you with a Commutation Authority that will require the removal of the excess, even if the member has already done so.

- *Compliance or non-compliance with a Commutation Authority* that the ATO have issued to an SMSF, SMSFs must abide by legislated TBC reporting timeframes as specified within Commutation Authorities.

- Following an appropriate transition period, SMSFs will then be required to move to reporting **all** TBC events 10 business days after the end of the month in which a relevant event occurs, other than compliance or non-compliance with a Commutation Authority which will still need to occur within the specified time frame.

The discussion paper contemplates that an appropriate transition period for SMSFs to move from quarterly to monthly reporting of all TBC events may be two years until the end of 30 June 2020.

We understand this reporting mechanism is vital for the ATO to minimise the taxation consequences for individual members in instances where the transfer balance cap is exceeded. The taxation consequences for individual members if they exceed the cap is that excess transfer balance tax is payable on the notional earnings associated with any excess. The notional earnings continue to compound daily until the member takes action to remove the excess or the ATO issues an excess transfer balance tax determination. We understand without visibility of an individual's position in relation to the transfer balance cap the individual is at risk of a continually accruing and increasing taxation liability. Unless a member knows that they have exceeded the cap, then they are not in a position to take action to remove the excess. Similarly if the ATO does not have visibility and is not aware an individual has exceeded the cap, then they cannot issue an excess transfer balance cap determination.

If this happens the individual's excess transfer balance cap liability will continue to increase and when it eventually becomes apparent that the individual has an excess they will be liable for a greater amount of tax that what would otherwise have been the case if there had been earlier visibility of that excess. Moreover, without the additional visibility provided by events based reporting, the ATO will not be able to provide reliable services to warn people when they may be approaching the cap and / or at risk of exceeding the cap.

The events that are required to be reported by SMSF's on a more regular basis are limited to the transfer balance cap and events that impact an individual's transfer balance account. Reporting is only required if there is an event that impacts upon an individual member's transfer balance. Whilst we accept that this is the case, current reporting arrangements often mean that a large majority of SMSF trustees only visit their tax agent or accountant once a year to have their financial accounts and SMSF annual return prepared. Often this does not occur until some 10 months after the end of the financial year, and it is not until then that the relevant amounts and values are determined. The magnitude of what is being proposed cannot be understated as it entails changes in well entrenched behaviors. In addition there will be additional compliance costs on all trustees associated with transfer balance account reporting (TBAR) which should not be underestimated. There will need to be greater interactions between SMSF members and their accountants. Whilst the ATO does not consider a large number of reportable events for most SMSF's, this assumption may not be the case if trustees commute pension amounts beyond the minimum as part of a strategy to manage transfer balance account. The commutation of a pension counts as a debit against the current $1.6 million tax-exempt pension limit thereby allowing future super top up's. If this strategy proves popular it can lead to a dramatic increase in reportable events under the transfer balance reporting regime.

Specific comments on the discussion paper as follows:

- **All in approach** – The discussion paper does not make any distinction on who is targeted as part of the TBAR reporting regime. The discussion paper takes a whole of industry reporting approach in the position paper. Whilst we fully understand the ATO has an obligation to monitor the $1.6m cap, it is imposing additional compliance cost on all trustees regardless of whether the cap has application. The ATO's intention in the position paper is to be in a position to warn fund members approaching the cap and issue notices when it is breached. For trustees with relatively modest superannuation interest it will be highly unlikely that they will ever going to get anywhere near the $1.6m cap. Regardless of the superannuation interest the position paper still wants these members to report. The ATO is in a position to be able to determine fund members who may have or may end up with a superannuation interest of $1.6m without having every fund member in the country report. This whole of industry reporting adds substantial cost to fund members in pension mode for no little benefit to anyone. Already intermediaries are proposing to charge trustees in pension mode more for SMSF administration services to undertake these additional compliance requirements on behalf of trustees. We believe a risk approach be adopted to limit the compliance impact of TBAR regime. Will the cost of the TBAR regime being applied to all members in pension phase outweigh the benefits? Applying the regime to members that are more likely to exceed their transfer balance limit seems to be a better approach to take as it achieves the desired outcomes without imposing significant compliance cost on the entire pension phase population. Members with smaller balances will incur additional costs which reduces their retirement benefits unnecessarily.

- **Different reporting dates -** The second issue of concern is the differing reporting dates. There is no reason why some events should be reported 10 days after the end of the month and others 28 days after the end of a quarter. All reporting should be 28 days after the end of each quarter - irrespective of the event. Furthermore, to report a pension commutation, as an example, requires the same amount (or more) of administration work and asset valuations as starting a new pension - so why should the reporting dates be different? I concede reporting may need to be different where the ATO has issued an ETB Determination (which should not happen too often), but this should be the ONLY time reporting should differ from 28 days after the end of the quarter.

- **Frequency of reporting -** The third issue of concern is the proposal to change from quarterly to monthly reporting in 2020. Monthly reporting is incredibly onerous and costly to fund members. There is a huge increase in cost to move from quarterly to monthly reporting.

We acknowledge that the ATO is cognisant that events based reporting represents a significant shift from the current annual reporting requirements that apply to SMSF’s, not only in terms of SMSF trustees and members themselves, but also those in the SMSF profession who are supporting SMSF trustees and members in managing their retirement savings. In addition the transition relief granted to this new model of reporting which will not require anything additional to be reported until 1st July 2018 is commendable given the significant recent changes to the superannuation which came into effect as from 1st July 2017.

What needs to be remember foremost is that the greatest risk of not reporting on time is the risk of individual members inadvertently and unknowingly exceeding the cap and facing an increased tax liability. There is a need to balance administrative cost with the need to mitigate this risk of SMSF members being exposed to unexpected and increased excess transfer balance tax liabilities. For this reason we recommend a risk based approach be adopted for the TBAR regime to reduce the compliance burden on a significant portion of the pension member population.

We thank you for the opportunity to provide a response to the Discussion Paper SMSF Events Based Reporting. If you wish to discuss any of our comments or would like further information then please don't hesitate to contact Tony Greco at tony.greco@publicaccountants.org.au or on mobile 0419 360038. We would be pleased to comment on any other matters on request.

Yours sincerely

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