



14/07/2014

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The Treasury  
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PARKES ACT 2600  
Email: [BEPS@treasury.gov.au](mailto:BEPS@treasury.gov.au)

Dear Sir/Madam,

## **SPAA COMMENTS ON PROPOSED COMMON REPORTING STANDARD FOR THE AUTOMATIC EXCHANGE OF TAX INFORMATION DOCUMENTS**

The SMSF Professionals' Association of Australia (SPAA) welcomes the opportunity to make a submission in relation to the proposed Common Reporting Standard (CRS) for the Automatic Exchange of Tax Information. SPAA's submission focuses on supporting why Australian superannuation funds, in particular SMSFs, should be exempt from the proposed CRS.

SPAA supports Treasury's statement in the CRS discussion paper that superannuation funds, including SMSFs, are expected to be exempted from the CRS requirements. The exclusion of SMSFs from the CRS requirements is justified on the basis that they have a low risk of being used for tax evasion and are subject to a strict regulatory regime.

The key points of this submission are:

- 1. SMSFs pose a low risk of tax evasion because they are subject to strict regulation and supervision by the Australian government; and**
- 2. SMSFs should be exempt from the proposed CRS reporting requirements.**

We provide our responses to the discussion paper questions relevant to the SMSF sector as set out below.

## **About SPAA**

SPAA is the peak professional body representing the self-managed superannuation fund (SMSF) sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners and other professionals such as actuaries.

SPAA is committed to raising the standard of professional advice and conduct in the SMSF sector by working proactively with Government and the industry. In doing so, SPAA has contributed to SMSF advisors providing a higher standard of advice to SMSF trustees. This in turn has enabled trustees to make more informed decisions addressing the adequacy, sustainability and longevity of their own retirement savings. SMSFs offer trustees greater control and flexibility and have become an integral part of the Australian Superannuation landscape by providing significant and viable options for managers, business owners, executives and retail operators alike.

## **DISCUSSION PAPER QUESTIONS**

**Question: What other financial institutions should be considered Non-Reporting Financial institutions under paragraph 3 (and therefore exempt from CRS reporting requirements in Australia)?**

SPAA notes that the Treasury has earmarked the expected exemption of SMSFs from CRS reporting requirements in its CRS discussion paper.<sup>1</sup> SPAA firmly supports the proposed exemption of SMSFs from the CRS reporting requirements.

SPAA supports the exemption of SMSFs from the CRS on the following grounds:

- Australia's retirement income system, embodied by superannuation funds, is strictly regulated. The regulation and government regulatory oversight of Australian superannuation funds ensures that the funds are not open to abuse, are not used as

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<sup>1</sup> Common Reporting Standard for the automatic exchange of tax information: Discussion Paper, The Australian Government the Treasury, 2014, page 3.

tax evasion tools and are compliant with rules that ensure the integrity of superannuation funds.

- Australian superannuation funds must have a sole and exclusive purpose of providing retirement benefits for fund members. This core rule limits the activity of funds for retirement purposes only and deters those seeking to use them as tax evasion vehicles.
- Australian superannuation funds can only release funds to members who have met specific mandated conditions, mainly the 'preservation rules'. The preservation rules ensure that superannuation benefits are not accessed until a member has achieved their preservation age (ranging between 55 and 60, depending on when the member was born) and has satisfied a condition of release such as having permanently retired from the workforce. These conditions limit the abuse of superannuation funds as a tax evasion tool.
- Only certain individuals are able to be a member of an Australian superannuation fund. These individuals are limited to Australian citizens, temporary Australian residents, Australian ex-pats living overseas, and permanent residents. This limits the number of foreign citizens that can use an Australian superannuation fund as an investment vehicle.
- Contributions to superannuation funds are limited to 'contribution caps' specified by Australia's taxation laws. Amounts contributed in excess of the caps can be refunded by the fund or are subject to a tax penalty so that the aggregate rate of tax on the excess is equivalent to the top marginal income tax rate, the 'excess contributions tax'. This tax discourages people from using superannuation funds as a vehicle to evade taxes.
- Tax advantages for superannuation funds, principally concessional rates of taxation on certain fund contributions and funds' earnings, as well as retirement benefits that are exempt from tax, depend on funds complying with the strict regulatory rules. Breaking the rules mean a superannuation fund runs a significant risk of:
  - a. losing access to tax concessions and being taxed at 47% on the fund assets;
  - b. disqualification of the trustee;
  - c. meeting the requirements of an education and/or rectification direction;
  - d. imposition of administrative penalties; and

- e. imposition of civil and criminal penalties.

These characteristics of Australian superannuation funds make it clear that they pose a low risk of tax evasion and should be exempt from the proposed CRS. The regulatory framework and supervision ensures that superannuation funds are highly regulated and continually scrutinised by Australian government regulators.

In particular, SPAA stresses the strict regulation and supervision of SMSFs by Australian government regulators. The regulatory framework described above prevents SMSF trustees from undertaking activities that are open to tax evasion.

In addition, the cost of compliance with the CRS reporting requirements may deter many people from establishing and maintaining an SMSF. According to ATO data, in the 2011-2012 income year, 25.6% of SMSFs (this representing the largest percentage in any category) held between \$200,000 and \$500,000 in assets.<sup>2</sup> In addition, only a very small percentage of SMSFs (1.8%) had assets exceeding \$5 million in the 2011-2012 income year. This demonstrates that only a very small percentage of SMSFs have large asset values. This combined with the strict laws and reporting requirements confirms our proposition that the risk of using SMSF as a vehicle for tax evasion is low.

**Question: How can the Government ensure that any Non-Reporting Financial Institutions continue to be a low risk for being used to evade tax?**

The Australian Government needs to maintain the current regulatory framework of SMSFs which has proven to work well. As at June 2013, ATO data indicates that only 2% of all SMSFs had received auditor contravention reports relating to fund breaches of the operating standards, indicating that compliance by SMSF is strong. SPAA believes that the continuance of the strict regulatory framework will ensure that the risk of tax evasion will continue to be low.

If this framework continues to be maintained, then it follows that SMSFs should continue to be exempt from CRS reporting requirements.

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<sup>2</sup> SMSF Statistical Report – March 2014, ATO, 2014  
<https://www.ato.gov.au/Super/Self-managed-super-funds/In-detail/Statistics/Quarterly-reports/Self-managed-super-fund-statistical-report---March-2014/>

If you have any questions about our submission or would like further information please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Slattery', written in a cursive style.

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