

September 19, 2012

Manager  
Benefits and Regulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [strongersuper@treasury.gov.au](mailto:strongersuper@treasury.gov.au)

To whom it may concern

**Exposure Draft: – Stronger Super – SMSF – Administrative Penalty**

The Institute of Public Accountants (the Institute) takes this opportunity to respond to the Exposure Draft (ED) on Stronger Super – SMSF – Administrative Penalty. The Institute has over 22,000 members and students throughout Australia and internationally. As trusted advisers to SMSF trustees, accountants play an important role.

The Institute welcomes the proposals outlined in the ED. While the majority of trustees understand and abide by their obligations as trustees, there remain a persistent group who either do not understand or choose not to fully meet their responsibilities.

The inadequacies of the current “one size fits all” system allow minor infractions of the SIS requirements to continue. Making funds non-compliant is an excessive punishment for all but the most egregious of breaches. Without an alternate penalty the only other choice is for the breaches to go unpunished. Neither outcome is optimal.

The proposals outlined in the ED will give the Australian Taxation Office (ATO) the ability to better tailor penalties to specific breaches. The Institute believes the new rules will lead to better educated and compliant SMSF trustees as well as better managed SMSFs.

The Institute therefore supports the proposed reforms included in the ED. Further clarification of the Institute’s position is set out in the attached appendix.

Please contact our Senior Policy Adviser, Reece Agland, via e-mail at [reece.agland@publicaccountants.org.au](mailto:reece.agland@publicaccountants.org.au) should you wish to discuss the details of this submission further.

Kindest Regards



Andrew Conway FIPA  
Chief Executive Officer  
Institute of Public Accountants

**National Office**

Level 6, 555 Lonsdale Street, Melbourne VIC 3000 Australia | GPO Box 1637 Melbourne VIC 3001 Australia

t +61 3 8665 3100 f +61 3 8665 3130 e [natoffice@publicaccountants.org.au](mailto:natoffice@publicaccountants.org.au) w [publicaccountants.org.au](http://publicaccountants.org.au) ABN 81 004 130 643

## Appendix 1: Comments on specific issues

### **Appendix Rectification Directives**

The *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* (SIS requirements) are complex and can be difficult to fully comprehend. This complexity can lead to inadvertent breaches of the SIS requirements.

It also appears that a small number of trustees either deliberately or through indifference behave in breach of their obligations.

A simple process is required to ensure trustees operate their SMSF within the SIS requirements.

Many minor breaches could be rectified easily with attention to the breaches. While many trustees do attend to breaches when brought to their attention; many do not.

Making a fund non compliant in such circumstances would be excessive. The alternative of not taking any other action (other than moral suasion) is also unacceptable.

In those circumstances it is appropriate that the regulator advises the trustees through a rectification directive to attend to the breach.

While enforceable undertakings are an option they are more costly to administer and require the regulator to take separate court action to enforce should a trustee not abide by their undertakings.

It is vital for the health of the system that funds continue to remain compliant. Unrectified breaches cascade into breaches in future years. It therefore is important that the regulator has the power to order rectification of particular breaches and particularly where the trustees of the fund do not voluntarily attend to breaches.

We believe the rectification directive is an important and necessary element of the regulator arsenal. It is cost effective mechanism that will improve the SMSF sector.

### **Education Directives**

Where the regulator is able to identify that the lack of knowledge of SIS requirements or trustee obligations is a core reason for contravention, an education directive is likely to be an effective tool.

It is vital for trustees to understand their obligations prior to agreeing to act as trustee. It is also important that where necessary trustees are obliged to update their knowledge. SIS requirements change regularly so it is important they remain current and aware of changes. Unlike auditors and other professionals there is currently no obligation on trustees to remain abreast of all developments.

However, where the breach of the SIS requirements is due to the intransigence on the part of a trustee, an education directive is likely to be ineffective. It is not possible to force learning.

This is not to say the measure will not be effective; but to highlight that the extent of any learning will be dependent on the commitment of the trustee to the process.

The Institute, together with our partners at CPA and ICAA, have developed an online education tool for SMSF trustees. This is in the process of review. The three accounting bodies, through the Joint Accounting Bodies, provide this at no cost free. We would welcome ATO accreditation of this course as a means by which trustees can be required to undertake appropriate training.

This initiative would meet the requirements stipulated in the ED that such these courses are offered free of charge.

### **Review Rights**

The Institute supports granting trustees the ability to seek to vary the direction. There are likely to be a variety of reasons why a person subject to an obligation requires a review.

There may be unforeseen issues which make it impossible to meet a deadline. We believe that a person should be able to seek a review if there had been a breach of the original time frame. Issues such as a death in the family or urgent and sudden business situations may mean those who fully intended to abide by the time frame are unable to do so. In these cases an extension may only be sought after the due date has passed. We believe an exceptional circumstances rule would allow review in these cases.