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Consultation Questions

1. How are audit costs and fees expected to change for SMSF trustees that move to three-yearly audit cycles?

I can see very little change, if any, in audit costs as the major work undertaken in an SMSF audit is based on the transactions during the audit cycle. As there will be the same number of transactions to consider in a three yearly audit cycle as there are in 3 annual audit cycles there can be little reduction in compliance costs.

There will be a small saving in the need to prepare an audit report every three years instead of annually. If however, the SMSF repeatedly commits a reportable contravention (RC) over the three yearly cycle there will only be 1 audit contravention report (ACR) but it will be 3 times the size as an annual ACR would have been. Assume over a three yearly cycle a SMSF does commit the same RC each year, if the SMSF was on an annual cycle it would have been picked up in the first year so the ACR would be reporting 1 breach rather than 3 so the compliance costs would be actually higher for the three yearly cycle in this instance.

There can be no audit short cuts in a three yearly cycle. Auditors are required to comply with auditing standards and regulations determined by accounting bodies and ASIC. The expectation on auditors by trustees will be for a reduction in compliance costs as promoted in the media after the budget announcement and this pressure to reduce fees may see a reduced level of audit work to conform with this expectation. Also the cheaper operators, many of whom are in the sights of the ATO regulators, will have public perception on their side that their fees are lower because of the three yearly audit cycle and nothing to do with the thoroughness of their audit procedures. The ATO regulators are currently reviewing SMSF audit work practices especially for those identified as being much cheaper than the mainstream auditors.

From a practical perspective for all SMSF's on a three yearly cycle we have decided to do interim audits each year, the results of which we will report to the trustees in an audit management letter rather than a full audit report.

2. Do you consider an alternative definition of 'clear audit reports' should be adopted? Why?

I think this is a regulatory decision that the regulators should decide based on the statistics and their desired outcomes. I don't see any reason for a change here unless there are valid reasons, based on statistics, which show a change is needed to achieve the outcomes.

3. What is the most appropriate definition of timely submission of a SAR? Why?

The requirement as it stands is quite appropriate. Tax agents and trustees are used to the current deadlines and these seem fair.

4. What should be considered a key event for a SMSF that would trigger the need for an audit report in that year? Which events present the most significant compliance risks?

All the events listed seem fair and reasonable as triggers for the need of an audit report. Those more significant events are, receipt of non-arm's length income (NALI), commencement or maintenance of a limited recourse borrowing arrangement (LRBA), acquisition of an asset from a related party, investments, loans or leases with a related party and in-species lump sum payments to a member.

5. Should arrangements be put in place to manage transition to three-yearly audits for some SMSFs? If so, what metric should be used to stagger the introduction of the measure?

We are ambivalent when it comes to transitional arrangements. We will conduct interim audits on all our SMSF jobs so we're taking care of the work flow issues internally. It may be important to some auditors to have a staggered roll up to the three yearly cycle but who is to make the decision on which funds are done in year one and which are done in year three. Whichever way this is handled there will be disgruntled trustees hence our interim annual audit approach.

6. Are there any other issues that should be considered in policy development?

Absolutely. Why is there a need for audits of SMSF's when a tax agent is used to prepare and lodge the income tax returns? Tax Agents are required to act according to the Code of Professional Conduct (CPC) administered by the Tax Practitioners Board and legislated under the Tax Agent Services Act 2009 (TASA).

Subdivision 31-10 of TASA states :-

"(7) You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.

(9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.

(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

(11) You must not knowingly obstruct the proper administration of the taxation laws."

As can be seen from this CPC a tax agent must undertake some scrutiny of the SMSF to ensure it is entitled to deductions claimed and that there are no breaches of the Superannuation Industry (Supervision) Act 1993 (SIS) which would disqualify the SMSF from concessional taxation treatment.

The tax agent should therefore see that assets of the SMSF are managed by the trustees in accordance with the SIS regulations and the super fund trust deed. Further to determining whether or not there have been breaches by a SMSF, the Non-Compliance with Laws and Regulations (NOCLAR) Standard which is an international accounting standard sets out the actions that must be taken by members of accounting professional bodies when they find clients have breached laws and regulations. This international standard is an amendment to APES 110 Code of Ethics for Professional Accountants (Code)

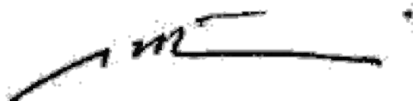
NOCLAR applies to all members working with clients and applies to :

"Any act of omission or commission, intentional or unintentional, committed by a client or employer, or by those charged with governance (TCWG), management or other individuals working for or under the direction of a client, or the employing organisation which are contrary to the prevailing laws or regulations"

NOCLAR covers issues regarding tax and pensions and requires members to disclose to an appropriate authority where the breach to laws and regulations warrants disclosure.

Further to NOCLAR, there is currently a bill before the federal parliament to review tax and corporate whistleblower protections in Australia. This bill is to help tax agents avoid any problems associated with reporting non-compliance to laws to the ATO.

It would appear to me that the objectives of an audit on a SMSF should be met by tax agents who are members of a professional accounting body as they are required to act under the CPC and the NOCLAR accounting standard and report breaches of taxation law to the appropriate authorities. Audits of SMSF's appear superfluous to me.



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