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Law Design Office
Treasury
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By email: miscamendments@treasury.gov.au

Re: Miscellaneous amendments to Treasury portfolio laws 2020

The National Tax and Accountants' Association Ltd ('NTAA') welcomes the Government's consultation and the opportunity to provide comments on the Miscellaneous amendments to Treasury portfolio laws 2020, as outlined in the following Exposure drafts: *Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Minor and Technical Amendments*, and the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020*.

The NTAA is a member-based organisation which represents the interests of, and provides dedicated tax training to, over 10,000 member firms, which include tax practitioners and accountants. The NTAA is also dedicated to ensuring that the interests of Australian taxpayers are at the forefront of any potential change to taxation law or to the administration of the taxation system.

This submission focuses on **Item 67** of the Exposure Draft *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020*. This item proposes to introduce Regulation **8.02AA** of the *Superannuation Industry (Supervision) Regulations 1994* ('SIS Regulations') in order to prescribe a time by which the accounts and statements of a Self Managed Superannuation Fund ('SMSF') must be prepared for the purposes of S.35B of the *Superannuation Industry (Supervision) Act 1993* ('SIS Act').

This proposed Regulation will require that the accounts and statements of an SMSF for an income year are prepared **at least 45 days before the day by which the fund's annual return is required to be lodged** with the Commissioner under S.35D of the SIS Act. This is the same day by which an approved SMSF auditor must be appointed under S.35C(1) of the SIS Act.

Although the NTAA is supportive of appropriate measures that seek to improve the level of compliance with the superannuation laws, we are extremely concerned about proposed SIS Regulation 8.02AA for the following reasons:

- (a) The NTAA strongly believes that the imposition of such an additional statutory deadline would create an unnecessary compliance burden on practitioners (including tax agents) who are involved in preparing the financial accounts of SMSFs. The NTAA also questions whether this measure will result in any real improvement in compliance levels for the SMSF sector.



- (b) Some SMSFs would have a lodgment date of 31 October after the end of the relevant income year. In these situations, under proposed SIS Regulation 8.02AA, these funds would be required to prepare their financial accounts by 16 September. As a result, some of these funds may not have all the information required in order to finalise their financial accounts by this time (e.g., tax statements of distributions from unit trust or managed fund investments).
- (c) Under S.35B of the SIS Act, where trustees do not satisfy the proposed deadline in SIS Regulation 8.02AA for the preparation of the fund's financial accounts for an income year, an administrative penalty of 10 penalty units (i.e., currently \$2,220) could be imposed upon each individual trustee or each director of a corporate trustee.

The NTAA believes that such a penalty would be excessive (and unreasonable) for SMSFs that actually lodge their annual return on time for an income year and are therefore otherwise compliant. This concern equally applies to SMSFs that do not lodge their annual return on time for an income year, as these funds would already be subject to the existing failure to lodge on time penalty regime (which, itself, would act as a deterrent for not lodging an SMSF annual return on time).

On the basis of the above, the NTAA urges the Government to abolish the proposed introduction of SIS Regulation 8.02AA.

If you have any further questions in relation to this submission, feel free to contact James Deliyannis on (03) 9209 9999.

Yours faithfully,



Geoff Boxer
Chief Executive Officer
NTAA