SMSF 2021 year end health check list

The following is a non-exhaustive check list to be used as a guide only in the lead up to 30 June 2021. It is designed to aid practitioners assisting SMSF trustees with matters that should be reviewed and attended to prior to 30 June 2021.

Contributions

Timing

To be a contribution for 2020-21, the SMSF must have received the contribution by no later than Wednesday, 30 June 2021. In most cases, a contribution is made by an electronic transfer of funds to the SMSF's bank account. Using this common contribution method, for the contribution to be recorded as received in the 2020-21 income year, it must show on the SMSF's bank transactions as a deposit no later than 30 June 2021.

Even where the contributor can show that the contribution was made no later than 30 June 2021, if the SMSF bank transactions shows the contribution received after 30 June 2021, it is most likely to be regarded as a contribution in the following 2021-22 income year.

This approach is confirmed in the ATO's ruling **TR 2010/1** and includes consideration of the timing of contributions made by other contribution methods. It is possible for a contribution, banked after 30 June 2021, to be regarded as received in the 2020-21 year, for example, where the SMSF trustee received a contribution by way of a non-posted dated cheque, on or before 30 June 2021 and was promptly banked.

For employers who use a clearing house to make SG and other contributions for members, only where they use the ATO's free Small Business Superannuation Clearing House (SBSCH) will the contribution be regarded as made when they make the contribution to the SBSCH. For other superannuation clearing houses, the contribution will not be regarded as paid until the relevant superannuation fund has received the contribution from the clearing house. For SG purposes the employer's liability is met when the clearing house, including the SBSCH, has received the contribution and the relevant data. Also, note for contribution cap purposes, the relevant year is the year the superannuation fund received the contribution, regardless of the clearing house method.

Acceptance

The SIS regulations govern when an SMSF trustee can accept a contribution from or on behalf of a member. It is important to separate the contribution acceptance rules from the contribution cap consequences of the contribution being accepted. Where it is discovered that the SMSF trustee was unable to accept the contribution, the SIS regulations requires the SMSF trustee to return the contribution within 30 days of becoming aware that the contribution should not have been accepted.

SIS regulation 7.04 sets out the rules for acceptance of contributions for a SMSF trustee. Note that the age at which the 'work test' (40 hours of 'gainful employment' in 30 consecutive days) applies was increased from 65 to 67, with effect from 1 July 2020.

Federal Budget Update – 'work test':

The Government has proposed that the work test will no longer be required to be met by individuals aged 67 to 74 for voluntary contributions like non-concessional contributions and salary sacrifice contributions. However, individuals aged 67 to74 still need to meet the work test requirements in order to make any personal deductible contributions. This measure is expected to apply from 1 July 2022.

Caps

Once it is confirmed that the SMSF trustee can accept the contribution, the contribution cap consequences need to be determined. Since 1 July 2017, several contribution caps are dependent upon the member's prior 30 June Total Superannuation Balance (TSB), for example, the non-concessional cap and application of the catch-up concessional contribution cap rules. Consequently, for any contribution strategies in 2020-21 (or any other income year), the contribution cap being utilised may require knowing the member's prior 30 June TSB. A member's TSB includes all superannuation across all superannuation funds, not just the member's SMSF entitlements.

Where a contribution reserving strategy is implemented, care needs to be taken to ensure that the amount 'reserved' is allocated by no later than 28 July. Further, where the 'reserved' contribution is a concessional contribution, the relevant ATO form **'Request to adjust concessional contributions'** (NAT 74851) must be completed and lodged at the same time as the relevant SMSF annual return to ensure that the 'reserved' contribution is counted against the member's relevant contribution cap in the income year allocated.

Documentation

It is important that any relevant documentation that is required, particularly for income tax or contribution cap purposes, is completed for a contribution. For example, where a member personally contributes and wishes to claim the amount of the contribution as a personal income tax deduction, the relevant **notice of intention to claim** (ATO form provided in link – NAT 71121) and acknowledgement must be completed. It is also vital that the documentation is correctly dated. The personal income tax return has been amended to include a question to confirm that the individual taxpayer has provided their superannuation fund with a notice of intent to claim and received acknowledgement of the notice. The ATO has increased their audit activity in this area.

Likewise, with a contribution to which the SMSF member wishes to apply the CGT lifetime cap, the relevant election notice must be provided to the fund trustee no later than the time the contribution is made. The relevant election is **'Capital gains tax cap election'** (NAT 71161).

Pensions – reduced minimums for 2020-21

As a consequence of the financial effects of the COVID-19 pandemic, the Federal Government amended the minimum pension standards to effectively halve the relevant minimum pension percentage for account based pensions. The 50% reduction in the minimum pension also applies to Transition to Retirement Income Streams (TRIS); market linked pensions and any old allocated pensions still in place. However, the 50% reduction does not apply to any legacy defined benefit pensions, for example, lifetime complying pensions or life expectancy pensions.

Like the timing issues with contributions, pensions are considered paid when the relevant amount has left the SMSF's bank account. However, where the pension is paid by cheque, the payment would be regarded as being paid in the year the cheque is dated, provided there were sufficient monies in the SMSF's bank account to honour the cheque and the cheque was presented promptly by the relevant SMSF member for cashing.

It would be prudent to review SMSFs with members receiving pensions prior to 30 June to ensure the relevant minimum has been paid, so that the fund can claim the relevant amount of exempt current pension income (ECPI). Further, for any pensions that are a TRIS, ensure that the 10% maximum has not been exceeded, including any PAYG withholding requirements.

Where it is discovered after end of year end that the relevant minimum pension has not been paid for an account based pension, consider the ATO's general powers of administration in relation to treating the pension as meeting the minimum pension requirements, despite the shortfall. Refer ATO website (**click here** or search QC 39769).

Transition to Retirement Income Streams – has the member met a full CoR?

For members that are in receipt of a TRIS, review whether they have met a condition of release (CoR) with a nil cashing restriction, commonly referred to as a full CoR. If this is the case, the TRIS moves into retirement phase and is known as a 'TRIS in retirement phase'. Consequently, the TRIS will be subject to the member's transfer balance cap (TBC), will be required to be reported to the ATO via a transfer balance account report (TBAR) and the SMSF will be eligible to claim exempt current pension income (ECPI) in relation to the pension. Further, subject to the SMSF's trust deed and the original TRIS documents, the 10% maximum pension draw will be removed.

Where a member satisfies a full CoR prior to age 65, the timing of when the TRIS moves into retirement phase can be managed, as it requires the member to notify the fund trustee(s) that they have satisfied a full CoR. However, where the member has turned age 65, this is an automatic move of the TRIS into retirement phase, on their 65th birthday. Consequently, this triggers TBC and TBAR issues that need to be planned for or at least dealt with within relevant reporting timeframes.

In-house Assets (IHA)

Ensure that the SMSF's in-house assets comply with the 5% limit. This is measured at 30 June each year and is based on gross fund assets, not net assets. Consequently, the IHA percentage does not take into consideration any liabilities, including loans under a Limited Recourse Borrowing Arrangement (LRBA).

Where an SMSF has exceeded the 5% IHA limit, the trustee is required to put in place a written plan to dispose of the excess IHA percentage by the following 30 June. Consequently, for any excess IHA assets from the 2019-20 income year, the excess amount needs to be disposed of, per the written plan, by 30 June 2021, but note next paragraph.

However, refer to the ATO's COVID-19 compliance approach to dealing with excess IHAs where the reduction in value of fund assets, for example listed stocks and managed funds, has caused the SMSF to exceed the 5% IHA limit. In these circumstances the ATO will not take any compliance action, where a written plan is prepared and by 30 June of the following income year, the SMSF was unable to execute the plan because the market had not recovered, or it was unnecessary to implement the plan as the market had recovered. This approach by the ATO will apply where the SMSF has exceeded the 5% IHA limit as at 30 June 2019 or 30 June 2020.

For further information about the ATO's compliance approach to a breach of the IHA rules due to the financial effects of COVID-19, **click here.**

Investment Strategy

In 2019 the ATO contacted 17,700 SMSF trustees & their auditors where their records showed the SMSF held at least 90% of fund assets in one asset or in a single asset class. Trustees were asked to review their Investment Strategy to ensure that it complied with SIS regulation 4.09, particularly whether the strategy addressed the risk of lack of diversification.

The ATO campaign was a good reminder that an SMSF's investment strategy is not a template document that can be used for every SMSF. An SMSF's investment strategy needs to be tailored to the fund's circumstances and address all the requirements in SIS regulation 4.09. The ATO's investment strategy guidance can be accessed by **clicking here** or search QC 23320 on the ATO's website.

The ATO also provided guidance on the effect of short term variations of an SMSF's investment strategy due to the financial effects of COVID-19, which can be found by **clicking here.**

Residency issues for an SMSF

To be a compliant superannuation fund, an SMSF must also satisfy the definition of an 'Australian superannuation fund' under the 1997 Tax Act. This involves satisfying three (3) tests, at all times:

1. Establishment Test or owns an Australian asset; AND
2. Central Management & Control Test; AND
3. Active Member Test

The residency rules should be reviewed regularly, particularly when it is known that SMSF trustees/directors are living or travelling outside of Australia. Once any of the three tests are failed, the fund effectively becomes a non-complying superannuation fund, with severe adverse tax consequences.

For further reading, refer to **TR 2008/9** and the ATO's website, **click here** or search QC 23312.

The ATO has also advised of their approach to residency rules, particularly the second and third tests, where the SMSF trustees/directors are stranded overseas due to the COVID-19 pandemic, which can be found by **clicking here.**

Year end market values for SMSF assets

SIS regulation 8.02B requires the year end financial statements to disclose the fund's assets at market value. This requires SMSF trustees to turn their mind to the market value of fund assets, particularly those assets that do not have a ready-made market, for example, property, collectibles and personal use assets, unlisted investments.

SMSF trustees with assets for which their market value is not publicly quoted or obtainable, need to plan for arranging to have sufficient appropriate audit evidence to substantiate the market value used in the SMSF's 2021 financial statements. Given the effect of the COVID-19 pandemic on asset values, consider the currency of previous valuations obtained and whether they will be acceptable to substantiate 30 June 2021 market values.

The ATO has previously published valuation guidelines for SMSFs and these guidelines are just as relevant today. Refer to the guideline and in particular the commentary in relation to when SMSF trustees should consider obtaining an external valuation.

For access to the ATO's valuation guideline, **click here** or search QC 26343 on the ATO website.

It is also worthwhile to discuss with the SMSF auditor what evidence they will require to be submitted as part of the 2020-21 audit to substantiate the market values disclosed in the 2021 financial statements for each particular asset class. It would be beneficial to understand the auditor's requirements now, so that SMSF clients can be advised of these requirements, which may be different from prior year audits.

Attending to prior year matters raised by the Auditor

Prior to submitting the SMSF's 2021 financial statements to the SMSF auditor, review the audit management letter and audit report from the prior year of income for any contraventions or other matters raised that need to be dealt with. The auditor will review to ascertain if there are any prior year outstanding issues that have not been dealt with to date.

The ATO has indicated that they will be taking a hard line approach to the remission of any administrative penalties imposed for relevant contraventions. However, they have also indicated that this may not be implemented until post COVID-19, consequently, it would be best to get the SMSF house in order now and clear up any compliance issues.

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