Commissioner's address at the SMSF Association National Conference

Commissioner of Taxation, Rob Heferen's address at the SMSF Association National Conference.

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Introduction

I'd like to acknowledge the Traditional Owners and Custodians of Narrm, the Wurundjeri Woi Wurrung people of the Kulin Nation. I pay my respects to their Elders past, present and emerging, and to Elders of all First Nations communities here today and joining us online.

Thank you to the Self-Managed Super Fund Association for inviting me to speak today.

This is my first opportunity to speak to this group as Commissioner of Taxation. I've been in the role for almost a year now, and talking to different taxpayer groups in forums such as this has been invaluable in providing me with firsthand perspectives and insights into the tax system in operation.

The function of superannuation

The Australian settings for superannuation are unique. So, it's worth regularly revisiting its purpose, and the principles that underly it.

In November last year the Objective of Superannuation was enacted by Parliament.

The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.

Given this core purpose to help people save for their later years, the settled approach is for the current savings in superannuation to receive preferential income tax treatment compared to other savings. And very substantial preferential treatment.

And as Australia has seen, this preferential treatment has pushed the taxation of super to a concessional, almost expenditure tax, benchmark.

Of course, given this concessional treatment, strong regulatory oversight is needed to ensure superannuation savings cannot, in the main, be used for current consumption until retirement.

As taxpayers, SMSF trustees have a range of obligations regarding the tax system: principally to pay the tax that is required, and pay it when it is required.

As trustees there are additional obligations.

And, of course, the main ones relate to making sure the savings in the fund cannot be used, in the main, for any purpose other than accumulating, untouched, for the beneficiaries' retirement.

Growth of the SMSF sector

Growth in the SMSF sector has been widely reported. Registrations over recent years have reached record levels with over 32,000 new registrations in 2023–24 (up from just over 27,000 in 2022–23). This trend is continuing with new registrations tracking towards 40,000 for the 2024–25 year.

The sector is now 25 years old – the birth of the 'modern' self-managed fund happening in the late 90's. As of December 2024:

- There were over 625,000 SMSFs with an estimated 1.15 million members
- An estimated total SMSF assets of $1.02 trillion which is 25% of the total assets held in superannuation.

With this growth – and as you may reasonably expect – there has been a commensurate level of growth in SMSF related risks and SMSF oversight.

SMSF risk and regulation

With more money and more participants in the SMSF system, we continue to see indicators of heightened risk in behaviours and arrangements that put retirement savings at risk or inappropriately take advantage of the tax concessions.

We have seen increased sophistication of arrangements to facilitate illegal early release being promoted to vulnerable individuals.

In the 2023–24 financial year, the ATO disqualified over 660 trustees. This was largely due to illegal access to superannuation funds, and over $7 million in administrative penalties and additional tax of $16 million was raised.

In February 2024 we released the Illegal Early Access estimate, which is an annual estimate of the total amount of super withdrawn by SMSF members before they are legally entitled to.

For the 2019–20 year we estimated $381 million of super had been illegally withdrawn by trustees.

In the 2020–21 year, we estimated over $256 million of super had been illegally accessed, and we estimated that there were $206.2 million in prohibited loans.

I can announce today that our IEA estimate for the 2021–22 income year is $250.1 million, and with an estimated $231.7 million in prohibited loans.

So, while the amount illegally accessed has reduced, the amount of prohibited loans has gone up.

Other risks on our radar are non-lodgment of SMSF Annual Returns, regulatory contraventions, and Non-arms length income and expenses on which we recently released draft amendments to TR 2010/1 and LCR 2021/2.

The ATO’s Regulatory role

As the regulator of SMSFs the ATO is focussed on protecting the integrity of the system by ensuring trustees comply with their obligations, principally that funds pay the correct amount of tax when it is due, and operate within the law for the sole purpose of providing retirement benefits to their members.

Ensuring that retirement savings are not being used for non-retirement related purposes.

We do not have a prudential role and are not responsible for developing the law, providing financial advice or determining whether an individual should or shouldn’t set up an SMSF (or whether the fund is making the right investment choices), but we do want to ensure that people go into this system with their eyes wide open.

To achieve this, we provide prospective and current trustees with access to information to enable them to make an informed decision about whether an SMSF is the best retirement savings vehicle for them.

We know from both our research and independent studies that there are distinct clusters of SMSF trustees reflecting a wide variation in their knowledge, confidence, and engagement.

There are those who are very confident and financially savvy, have an interest in investing and finance, and attend seminars to improve their knowledge. These individuals have a high level of financial literacy and fraud awareness.

Then at the other extreme, we have the unprepared trustees who lack the financial confidence and capability to manage their SMSF.

In-between these extremes are trusting delegators who seek professional advice but often leave decisions to someone else without doing any research themselves.

Meeting increasing expectations

Within this context there are inherently increasing expectations.

For the ATO our approach to administering the legislation we are responsible for must be seen in the context of the growing scale of the sector and our legislated requirements to ensure that all taxpayers in the system meeting their obligations.

For SMSF and financial professionals it’s worth noting the very specific changes for tax professionals on the back of the PWC scandal. These expectations should be viewed as indicative of broader community and government expectations on the integrity of all professionals.

And for those making the choice to run their own SMSF it is vital for trustees to understand the importance of the ‘self’ element of self-managed funds.

Conclusion

I’m conscious that my remarks today have been quite short, and encourage you to attend Deputy Commissioner Emma Rosenzweig’s panel session with ASIC’s Leah Sciacca next, where Emma will discuss in more detail the ATO’s regulatory role and our current and future plans in this space.

Before I finish, I’d like to briefly revisit the notion of obligations I mentioned earlier, and the crucial role tax has in it.

As the famous American Supreme Court Judge Oliver Wendell Holmes Jr said, tax is the price we pay for a civilised society.

Expanding on that to posit that the tax we pay is a vital element of our social contract: the citizenry pay tax and in return the government provides the services the community, collectively, demands.

Superannuation funds, though very focussed on their beneficiaries, are an important – and will continue to become more significant – part of Australia’s tax base.

Within the social contract, the community expects the ATO to tax and regulate those sectors that hold the money, to ensure a fair and equitable tax system for the benefit of all Australians.

And as important players in the superannuation sector, I hope you can join us in that mission.

Thank you.

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