



THE TAX INSTITUTE

10 August 2021

Director
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

By email: superannuation@treasury.gov.au

Dear Treasury,

Retirement Income Covenant

The Tax Institute welcomes the opportunity to make a submission in response to the Government's Retirement Income Covenant position paper (**Position Paper**).

This submission has been developed in close consultation with The Tax Institute's Superannuation Committee to provide comments on key issues which should be considered as part of the Government's introduction of a retirement income (**RI**) covenant in the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* which is intended to outline a fundamental obligation of trustees to formulate, review regularly and give effect to a RI strategy. Our view is that the proposed RI covenant should not apply to trustees of self-managed superannuation funds (**SMSFs**) for the following reasons:

- it will amount to an additional regulatory red tape burden without any commensurate benefit;
- SMSF trustees and their members are already fully engaged with their superannuation and RI objectives and a RI covenant is therefore not required to compel such engagement for SMSFs (as the existing investment strategy covenant is more than sufficient to ensure this is achieved for SMSFs);
- SMSFs are naturally prevented, due to their size, from engaging in the kind of RI product innovation that may be established by the introduction of an RI covenant for large public offer funds;
- SMSFs must comply with Regulation 4.09 (an operating standard) which requires a comprehensive investment strategy to be formulated, regularly reviewed and implemented. Regulation 4.09 also prescribes the requirement to consider the fund's ability to discharge its current and prospective liabilities which effectively requires the trustee to consider the retirement income needs of the fund membership. Non-compliance with Regulation 4.09 counts as a 'reportable breach' for the purposes of the Auditor Contravention Report and therefore, is subject to annual, external review.

Further detail of our submission and response to the Position Paper can be found at **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact Michelle Ma, Associate Tax Counsel, Tax Policy & Advocacy, on (02) 8223 0008.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a stylized, flowing script.

Peter Godber

President

APPENDIX A

Self-managed superannuation funds

The Tax Institute's view that the Government's proposed introduction of a RI covenant in the SIS Act should not apply to trustees of SMSFs. We are concerned that the imposition of the RI covenant on SMSFs is yet another regulatory burden for SMSF trustees which is unnecessary as members of SMSFs are already fully engaged with their superannuation and their RI needs. Accordingly, imposing the RI covenant on SMSFs will not prompt innovation in comprehensive income products for retirement (**CIPRs**) because of the natural limitations of small funds. Our reasons are set out below.

- The Position Paper already recognises the special nature of SMSFs (together with small APRA funds (**SAFs**)) with respect to compliance with the RI covenant, noting the proposal for the RI covenant to be entirely discretionary for SMSFs and SAFs with members in accumulation phase who are approaching retirement.¹
- Once members of SMSFs are in retirement phase, the Position Paper states that the trustees "should have a RI strategy". Given the level of engagement by members in running their own SMSF, it is very unlikely that there would not already be in place a RI objective – essentially in-built under the investment strategy for the fund. The investment objectives of an SMSF, which are already required to be reviewed periodically are naturally intrinsically linked to the RI objectives of members (and pensioners) of SMSFs. Accordingly, The Tax Institute is concerned that the imposition of a separate RI covenant upon SMSF trustees would be no more than regulatory red tape.
- It is also relevant to note that for SMSFs the investment strategy covenant in section 52B of the SIS Act is complemented by regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994* (**SIS Regulations**). Regulation 4.09 is a prescribed operating standard, compliance with which is mandatory, at a higher standard than a covenant alone and tested annually as part of the audit process. Non-compliance with Regulation 4.09 attracts administrative penalties under section 166 of the SIS Act amongst other punitive consequences e.g. non-compliance counts as a 'reportable breach' for the purposes of the Auditor Contravention Report and therefore, is subject to annual, external review. The Tax Institute considers this to be sufficient without the need to impose a further RI covenant on SMSFs.
- A feature of SMSFs is that members, as trustees, are engaged with the operation of the fund and will typically have control over the products offered. Typically, there is a spousal or close family relationship between SMSF members (around 70% or more of SMSFs are two member funds). Thus, SMSF trustees typically have a sound understanding of the financial status and needs of the fund's members. This contrasts with members of public offer funds. People who have established an SMSF will have already carefully contemplated their RI objectives during the establishment phase and will continue to review their status in regular consultation with their accountant, tax agent and/or adviser along the way.
- Given the average assets per SMSF member was \$701,234 as at 30 June 2019,² it is less likely that SMSF members will qualify for the Age Pension or any other relevant income support payments under the *Social Security Act 1991* or the *Veterans Entitlements Act 1986*, which are relevant factors for the proposed RI covenant. In any event, the more engaged SMSF member, the more likely that regard has already been given to these matters.

¹ The Australian Government the Treasury, Retirement Income covenant Position Paper – 19 July 2021, page 8.

² Australian Government, Australian Taxation Office, 'SMSF quarterly statistical report March 2021'. Accessed from: <https://data.gov.au/data/dataset/self-managed-superannuation-funds/resource/c2d3808d-fc2c-41bd-8122-b8e83fe22188>

- CIPRs are not readily available for smaller funds, like SMSFs for reasons including the finite life of most SMSFs and the potential need to re-house such products. Similarly, it is noted that the SIS Regulations operate to prevent SMSFs from providing defined benefit pensions from 12 May 2004 and therefore, SMSFs are effectively limited to providing account based allocated pensions. Accordingly, we consider that it is also extremely unlikely that imposing the RI covenant on SMSFs will provoke any innovative development of new income stream products

The Tax Institute urges the Government to weigh up the positive outcomes arising from the proposed RI covenant as it will apply to SMSFs against the adverse regulatory burden it will impose on SMSFs, with the associated compliance costs and unnecessary red tape.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.