SUBMISSION

Submission to ATO — LODGE 2020/D1

6 April 2020

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Mr Matthew Baxter

Australian Taxation Office

Via email: matthew.baxter@ato.gov.au

6 April 2020

Dear Mr Baxter

***Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020* — LODGE 2020/D1**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the draft legislative instrument *Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020* ("draft instrument"), released for consultation as LODGE 2020/D1.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $2.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

ASFA's membership includes most of Australia's taxable large/medium superannuation entities (superannuation funds and pooled superannuation trusts). Our analysis of tax issues impacting the superannuation industry is greatly assisted by our Tax Specialist Advisory Committee, which includes senior representatives from tax advisory firms and major superannuation funds.

Impact of the ATO's lodgment program on taxable large/medium superannuation entities

As in prior years, the draft instrument states that those who are required to lodge a tax return, whose year of income ends on 30 June 2020, must do so by 31 October 2020. In practice, for many types of taxpayer there are longstanding arrangements where this date is extended through the ATO's lodgment program. The due date for lodgment of tax returns for taxable large/medium superannuation entities has, for many years, been 15 January.

Medium and large superannuation entities are increasingly sophisticated investors. This has a flow-on impact to the complexity of their tax arrangements and can make it difficult for entities to finalise their tax returns for lodgment by 15 January in accordance with the Commissioner's current lodgment program.

ASFA, through its Tax Specialist Advisory Committee, has identified several impediments to taxable large/medium superannuation entities lodging a finalised tax return by 15 January, as outlined in the attachment to this letter.

These impediments typically mean that tax returns lodged by 15 January are based on the best information available at that time and will often need to be amended to reflect information received after initial lodgment. This generates additional work for both the entities and the ATO.

We would welcome the opportunity to discuss options to minimise these impacts for medium/large superannuation entities — potentially including a permanent lodgment extension until the 31 March following each income year. We note that this would not impact the current obligation for superannuation entities to make a 'balancing' payment of their income tax liability by 1 December following the end of each income year.

Please do not hesitate to contact me on (03) 9225 4027 or jstannard@superannuation.asn.au if you have any queries or comments in relation to this submission.

Yours sincerely

Julia Stannard

Senior Policy Advisor

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Background

We refer to section 161(1) of the *Income Tax Assessment Act 1936* which provides the Commissioner with the power to publish in the *Gazette* a notice requiring certain taxpayers to give the Commissioner a return for a year of income within the period as specified in the notice.

As part of this process, the Commissioner issues:

- a legislative instrument for each income tax year requiring certain taxpayers to lodge an income tax return — such as the draft instrument released as LODGE 2020/D1; and
- the ATO lodgement program.

In particular, the ATO lodgment program requires the income tax return for taxable large/medium entities — which includes superannuation entities — to be lodged by 15 January each year in respect of the preceding income tax year ended 30 June.

Impediments to lodging tax returns by 15 January

The ASFA Tax Specialist Advisory Committee has identified a number of issues which impact the ability of taxable large/medium superannuation entities to lodge an income tax return by 15 January each year in respect of the preceding income tax year ended 30 June:

1. Review of tax data provided by third parties

    Taxable large/medium superannuation entities are continually strengthening their internal tax governance framework to satisfy the ATO's broader tax risk management and governance framework. In particular, there is an increased focus by superannuation entities to reduce any risk arising from reliance on data received from third party service providers, such as custodians.

    Superannuation entities undertake an increased level of scrutiny and review of the tax information maintained and reporting received from custodians. In this regard, we note that the final version of the 30 June custodian tax report — which is required to complete the income tax return of each superannuation entity — cannot be finalised/issued by the custodian until approximately 31 October each year (subject to the service arrangement agreed).

    It is not possible to bring forward this date as the custodian must first receive all (or almost all) tax distribution statements/attribution managed investment trust member annual statements (AMMAs) from underlying listed and unlisted trust investments held by the superannuation entity. This results in a very limited timeframe for superannuation entities to undertake a detailed review of the custodian tax report to determine the quantum of any required 1 December balancing tax payment, and to then to finalise the income tax return by the 15 January lodgment deadline.

    The review of the final custodian tax report received by 31 October each year by superannuation entities will involve often a detailed review of the following:

    - Trust distribution income reported by the custodian, to ensure the tax components have been correctly reported in the custodian's tax report. This includes a review of stapled securities and encompasses listed and unlisted investments;
    - Cost base adjustment reconciliation and processing;
    - Reporting for any 45-day rule franking credit denial; and

- Offshore investments (including analysis to identify/verify any hybrid mismatching, classification of income and return of capital).

Superannuation entities will ordinarily undertake a review of the custodian tax report progressively throughout the course of each income tax year. However, the review of many aspects can often only commence once the final custodian tax report has been issued on or around 31 October each year.

Invariably each year some trust distributions statements are issued after the custodian's ordinary cut-off date for its finalised tax reporting, and the investing unitholders are often required to follow up the trusts to request the information required. This often results in delays in the release of the final custodian tax reports, sometimes well into November each year.

Any extension to the income tax return lodgment date for large/medium superannuation entities would allow for a more detailed, comprehensive and thorough review of third-party data and reporting.

2. Complexity of investments and flow-on tax implications

Superannuation entities have become increasingly complex investment entities.

(a) Superannuation entities may hold foreign investments via offshore investment entities. In these circumstances, the custodians of the superannuation entities are often not able to prepare the necessary tax calculations. The additional tax calculations required for certain offshore investments can include controlled foreign corporation (CFC) and foreign hybrid limited partnership calculations. These often adopt a 31 December year end, causing further complexity and delay in obtaining all information necessary to perform the calculations by 15 January.

(b) Superannuation entities may also hold investments via special purpose investment trusts. At the end of each income year, the special purpose investment trust will usually distribute any net trust income to the superannuation entity. The income tax return for the special purpose investment trust will often be finalised by March in respect of the previous year ended 30 June. An extension to the due date for lodgment of income tax return for taxable large/medium superannuation entities to 31 March each year would therefore be more closely aligned with the due date for lodgment of the special purpose investment trusts.

As a result of this growing complexity, we anticipate that — without a later due date for lodgement — superannuation entities will increasing find themselves in a position where, due to circumstances beyond the entities' control, there is a requirement to routinely lodge subsequent amendments to the return. This results in an increased compliance and administration burden for both the superannuation entities and the ATO, which would be alleviated by an extended lodgement due date.

We acknowledge that the 15 January lodgment date (with the 1 December deadline for the balancing payment of tax liability) is not unique to superannuation entities — it applies equally to other taxable medium/large taxpayers such as companies and tax consolidated corporate group.

However, we note that corporate taxpayers are generally able to commence the income tax return preparation process shortly after each year end as they usually have all or a significant level of information available immediately after year end (for example, in July for a June balancing corporate entity). This is in sharp contrast to the situation for a taxable large/medium superannuation entity where, as we have outlined above, the information required from custodians, external administrators, and other third parties is often not available until November at the earliest. In practice, corporate taxpayers have most of the six-month period from 15 July to 15 January to complete their procedures for the tax return, while for large/medium superannuation entities most of this same work is compressed into little more than two months from 15 November to 15 January.

No change to date for payment of tax liability

In highlighting these concerns, and proposing a permanent lodgment deadline of 31 March, ASFA is not seeking any change to the existing 1 December deadline for final payment of the tax liability of a taxable large/medium superannuation entity. Accordingly, there would be no disadvantageous impact to tax revenue.

We note that where tax return calculations are not yet finalised by 1 December, superannuation entities ordinarily calculate any 'final' (balancing) payment on a conservative basis, with the entity due a refund following the lodgment of a final tax return.

Recommendation
Lodgment date for taxable large/medium superannuation entities The date for lodgment of the tax return for a taxable large/medium superannuation entity with a 30 June year end should be permanently deferred to the 31 March following each income year.