9 February 2015

SIAG and SIRN secretariat
Australian Taxation Office
By Email: super@ato.gov.au

Dear Ms Powell

Response to ATO proposal to remove the 10 per cent eligibility rule

The Financial Services Council (FSC) welcomes the opportunity to make submissions in relation to the proposal to remove the 10 per cent eligibility rule.

The FSC supports removing this requirement. The eligibility rule contributes to the administrative complexity of the superannuation system and creates additional cost for superannuation funds and members.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.3 trillion on behalf of 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

This submission provides additional detail to assist the ATO in determining the impact that abolishing the rule would have on compliance costs for superannuation funds based on the outline of the proposal distributed by the ATO.

The FSC notes, however, that there would also be cost savings for professional advisors who are required to check for compliance with the 10 per cent eligibility rule that are not considered in the ATO proposal.

Comments on process map supplied by ATO

The variation notice arising from the denial of a tax deduction does not necessarily require an amendment to the Fund's income tax return. Section 295-490 (I) allows a deduction in the Fund for the income year in which the variation notice is received.

There is an option for the trustee to amend the income tax return, but this option is seldom taken because of the additional resources that would be required.

Fund administration effort & costs

The relatively low instances of variations by reason of a deduction disallowance result in higher risks, high effort and cost per variation.

Financial Services Council Ltd
ABN 82 080 744 163
Level 24, 44 Market St
Sydney NSW 2000
T. +61 2 9299 3022
F. +61 2 9299 3198
E. info@fsc.org.au
W. fsc.org.au

The level of technology required to administer the large scale processing of the multitude of data in the current superannuation environment is immense.

The time and cost efficiencies of such technology depend upon the smooth flow and uninterrupted continuity of processing of large amounts of data. This means that rare and/or infrequent processes such as reversals arising from variation notices received a few years after original notices are given often are not programmed for automation.

Such “manual” or “offline” processes require interruptions to the automated programs. Risks associated with these interruptions to perform manual processes are higher due to the potential for human error.

The process usually requires a valuable, highly skilled member of staff and often requires a lot of that person’s time.

Each variation costs around $800 to process, which is not compatible with the principles of cost efficiencies per member.

So, for between 100-200 variations a year, the direct costs can be up to $160,000 per annum for an individual superannuation fund. The true cost is the impact of taking up the time of a senior staff member who, via technology, would otherwise oversee the administration process of up to 2 million members at any one time.

The removal of the 10 per cent threshold will not only reduce the administration costs and risks, but also remove a lot of disclosure and instruction wording.

Timing issues and effect on variation eligibility

The primary source of concern for taxpayers and their agents is the inability to furnish a variation notice:

- After they have left the super fund; or
- The taxpayer has commenced an income stream using part or all of their benefit that includes the contribution sought to be varied.

Both circumstances not only result in the taxpayer losing their tax deduction, but also suffering the 15 per cent tax that cannot be reversed.

In the case where the benefit is applied to commence an income stream, the member must furnish their notice intending to claim prior to commencing the income stream. This “last chance to notify” process usually requires the taxpayer member to calculate their income to measure the 10 per cent eligibility threshold before their year of income has completed.

Events that arise subsequent to furnishing the notice of intention to claim often result in the 10 per cent threshold being exceeded.

Such situations would arise far less frequently if the 10 per cent rule is abolished, however there would continue to be some incidence, such as where a client does not have sufficient income to claim the deduction they had intended.

Yours sincerely

Blake Briggs
SENIOR POLICY MANAGER