



SELF-MANAGED INDEPENDENT SUPERANNUATION FUNDS ASSOCIATION

23 August 2020

Kellie Grant
Australian Taxation Office

By email - kellie.grant@ato.gov.au

Dear Kellie

Submission in relation to SPR 2020/D2

The Self-managed Independent Superannuation Funds Association (**SISFA**) is Australia's original SMSF advocate, established in 1998 to represent the interests of trustees and industry to Government and the Regulators. SISFA's mission includes the encouragement of high professional standards through its professional membership and public education initiatives.

SISFA supports the legislative instrument

While SISFA does not believe that all rental deferrals will constitute financial accommodation, SISFA nonetheless supports the release of the legislative instrument and commends the ATO for dealing with this issue.

However, SISFA believes that a number of changes should be made to the legislative instrument, as outlined below.

Suggested changes to the legislative instrument

Paragraph 3 – reference to acquires

Paragraph 3 refers to “acquires” an in-house asset. This should also cover holding an in-house asset. This would avoid any argument that a rent deferral (or waiver or reduction) arrangement does not result in the SMSF acquiring an in-house asset.

SISFA recommends “acquires” in paragraph 3 be replaced with “acquires or holds”.

Expansion to cover waiver and reduction of rent

SISFA considers that the deferral of rent can, but will not always, fall within the definition of financial accommodation. SISFA, therefore, considers that it is appropriate that the legislative instrument cover deferrals.

However, SISFA is concerned that it could also be argued that a waiver or reduction of rent is financial accommodation (and, therefore, an in-house asset).

SISFA recommends that the legislative instrument be amended to include situations where there is a waiver or reduction of rent.

Regulation 13.22 entities

Even if the ATO takes the view that paragraph 4(a) should not be expanded to cover a waiver or reduction of rent, then paragraph 4(b) should be so expanded.

This is because of the potential application of regulation 13.22D(1)(l) requires the regulation 13.22 entities to transact on an arm's length basis and its potential to be triggered for a rental reduction or waiver.

While it could be said that this is not required as any reduction or waiver should be on arm's length terms anyway (in the context of the current COVID-19 environment), in SISFA's view this would provide certainty to SMSF trustees offering reductions or waiver of rent.

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If you have any questions in relation to this submission, please contact Phil Broderick on 0419 512 801.

Yours Faithfully

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Phil Broderick, Chair of Technical and Policy Committee

A handwritten signature in blue ink, appearing to be 'Chris Balalovski', written in a cursive style.

Chris Balalovski, Chair