Australian Government
Australian Taxation Office

Actuaries Institute
Attention: Mr Doug McBirnie
Level 2, 50 Carrington Street
Sydney
NSW 2001

23 August 2017

Dear Doug,

RE: Segregated current pension assets and actuarial certificates

I am writing to confirm the ATO's approach with respect to segregated current pension assets and actuarial certificates. This confirmation is provided in response to your letter to Mr James O'Halloran of our office dated 7 July 2017 and a subsequent meeting at your offices on 25 July 2017.

As discussed in our telephone conversation on 22 August 2017, we will publish guidance on our website in the coming days to confirm the ATO's view and our compliance approach for the 2016-17 income years and prior.

The ATO's website guidance in relation to this issue will confirm the following:

ATO view – SMSF's assets are segregated for only part of an income year

In instances where all of a SMSF's assets are held 'solely' to meet superannuation income stream benefit liabilities it has to pay, then 100% of the fund's assets are used to support pension liabilities, and the ATO's position is that all of the fund's assets in these circumstances are classified as segregated current pension assets.

This position is in accordance with the ATO's view of the appropriate interpretation of subsections 295-385(3) and 295-385(4) of the *Income Tax Assessment Act 1997* and is consistent with the position outlined in paragraph 19A of *Law Companion Guideline LCG 2016/8, Superannuation Reform: transfer balance cap and transition-to-retirement reforms: transitional CGT relief for superannuation funds.*

This means that for any portion of an income year where an SMSF's assets are held solely to meet superannuation income stream liability benefits (i.e. any period the SMSF is in 100% pension phase) the SMSF trustee is required to calculate its exempt current pension income (ECPI) for that portion of the income year using the segregated method. An actuarial certificate is not required to support the SMSF trustee's calculation of ECPI for this period when all of the fund's assets are classified as segregated current pension assets.

For any portion of an income year that an SMSF is not in 100% pension phase, for example its members have a mix of pension phase and accumulation phase interests for part of year, and the SMSF's assets are not segregated the SMSF trustee will be required to use the proportionate method to determine its exempt current income (ECPI) for that period. That is, the SMSF trustee will be required to obtain an actuarial certificate if they wish to claim ECPI in relation to income received by the fund during that part of the income year.

The actuary will calculate the proportion of the fund's assets that are supporting superannuation income stream liabilities during that part of the year when the fund's assets were not segregated in accordance with professional standards and accepted actuarial practice and methodology. The SMSF trustee is then required to apply the proportion determined by the actuary to the income received by the fund during the relevant period as a component of the fund's ECPI for the income year.

ATO's compliance approach for the 2016-17 income years and prior

Recent representations made to the ATO by industry stakeholders indicate that there are instances where an approach or practice that is not consistent with the ATO's position has been applied by some SMSF trustees to calculate ECPI where their fund is in 100% pension phase for only part of an income year, and relevant assets are unsegregated for the remaining part of the income year.

That is, actuarial certificates have been obtained by SMSF trustees on the basis that their fund's assets are unsegregated for the entire income year and the actuarial percentage calculated by the actuary has been applied by the SMSF trustee to the fund's income for the entire income year. The ATO considers that this approach is not reflective of the appropriate and correct interpretation of subsections 295-385(3) and 295-385(4) of the *Income Tax Assessment Act 1997*.

From a practical compliance perspective, the ATO considers this to be a matter of low risk in relation to prior income years.

Therefore, based on the level of risk, the ATO does not intend to apply compliance resources to specifically review ECPI calculations undertaken by SMSF trustees in the 2016-17 income years and prior where an SMSF trustee has calculated ECPI on the basis that fund assets were unsegregated for the entire income year; notwithstanding that for part of the income year the fund's assets were held solely to support superannuation income stream benefits, i.e. the fund was in 100% pension phase for part of the year.

However, if the ATO was asked to provide advice on the issue in relation to any income year including the 2016-17 income year and prior (for example in a private ruling) our advice will be in accordance with our abovementioned position as to the appropriate application of subsections 295-385(3) and 295-385(4) of the *Income Tax Assessment Act 1997*.

Notwithstanding the abovementioned practical compliance approach for the 2016-17 income years and prior, for the purposes of claiming CGT relief a SMSF will still be considered to have switched from the segregated method to the proportionate method if a member of a SMSF that is 100% in pension phase commuted an amount back to accumulation to comply with the transfer balance cap on 1 July 2017.

From a compliance perspective, from the 2017-18 income year and onwards, SMSF trustees are expected to calculate ECPI and obtain actuarial certificates on the basis of the ATO view of the operation of subsections 295-385(3) and 295-385(4) of the *Income Tax Assessment Act 1997* outlined above in cases where their fund's assets are unsegregated for part of an income year. That is, where a SMSF's assets are unsegregated for part of a year, the SMSF trustee will be required to obtain an actuarial certificate pertaining to that part of the income year if they wish to claim an ECPI deduction for income received during that period.

Thank you to you and your colleagues for your time in raising and discussing this issue with us.

We will advise you as soon as our website guidance about this matter is published. In the meantime please do not hesitate to call me on (07) 3213 8346 if there is anything further that you would like to discuss.

Yours sincerely

K. Macfarlane

Kasey Macfarlane
Assistant Commissioner of Taxation