

Our Ref: GLR:FMN:18707

18 November 2020

Mr Keith McInnes & Mr Alan Vaughan
91A Esther Crescent
Mooroolbark, VIC 3138

By Email: rustalan@netspace.net.au & bigal_v@netspace.net.au

Dear Keith and Alan,

We understand you are using Mark Thimm from Compass Advisors to complete your SMSF 2020 and 2021 to date/closure tax returns.

From recent discussions with Charter, we understand they have taken the following process regarding tax payable on the compensation:

1. The compensation is first transferred into another AMP product, for example AMP Flexible Super, being an alternative superannuation fund into which funds would have been invested;
2. Tax on the compensation is paid by this other AMP product as part of the tax they pay annually on behalf of all their members;
3. AMP sets up a temporary AMP Eligible Rollover Fund (**ERF**);
4. AMP rolls over the net compensation from the other AMP product (e.g. AMP Flexible Super) to the ERF;
5. AMP rolls over the net compensation to your SMSF as an 'element taxed';
6. AMP closes the ERF.

Our firm view, and that of our tax adviser, is that the compensation, including the interim payments (such as the \$9,394.66 for Keith and the \$15,960.84 for Alan) should be taxed in your SMSF. Your SMSF suffered the loss, your SMSF is entitled to the compensation, the offer of compensation by Charter was made to your SMSF, and your SMSF is a party to the Release Agreement with Charter.

There is a material risk, in our view, that the SMSF may be subject to tax assessment arising from the receipt of the compensation.

In our discussions, Charter acknowledged that the SMSF was entitled to the compensation, that Charter should have paid the pre-tax amount to your SMSF, and your SMSF is the entity which should pay the tax liability to the ATO. In accordance with the Release Agreement, Charter have confirmed it will pay any tax liability upon receipt of proof of the SMSF tax liability.

We recommend that you provide a copy of this letter to your accountant.

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Yours sincerely,

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