



TREASURER

Mr Duncan Fairweather
Executive Director
SMSF Owners' Alliance Limited

Via email: dfairweather@smsfoa.org.au

Dear Mr Fairweather

I write to clarify the scope of the Turnbull Government's superannuation reforms announced in the 2016-17 Budget.

As you are aware, the 2016-17 Budget announced the introduction of a lifetime non-concessional contributions cap of \$500,000, applicable from 7:30pm (AEST) on 3 May 2016 (**Commencement Date**).

The Government has been asked to provide guidance on how this measure will apply to a very small number of individuals using sophisticated financing techniques for the purchase of assets within a self-managed superannuation fund (**SMSF**).

Specifically, the Government has been asked for guidance on the consequences for individuals in the following circumstances:

- The trustee of the individual's SMSF has entered into a contract for the purchase of an asset (often using a limited recourse borrowing arrangement (**LRBA**)) prior to the Commencement Date (**Pre-Existing Contract**);
- The Pre-Existing Contract is due to be completed after the Commencement Date;
- The individual was above the lifetime non-concessional cap as of the Commencement Date or would be above the lifetime non-concessional cap as a result of further non-concessional contributions made in respect of the completion of the Pre-Existing Contract; and
- The individual had planned to complete the contract of sale by making further non-concessional contributions after the Commencement Date.

In such circumstances, transitional provisions will apply to allow further non-concessional contributions to be made only to the extent necessary to complete the Pre-Existing Contract, taking into account existing financing arrangements. The quantum of the additional contributions must also be within the constraints of the non-concessional contributions cap rules that existed immediately prior to the Commencement Date. These additional non-concessional contributions will be counted towards the lifetime

non-concessional cap, but will not result in an individual being in breach of the lifetime non-concessional cap.

In addition, transitional arrangements will apply to SMSFs with existing borrowings, including LRBAs. Members of SMSFs with existing borrowings will be permitted to make further non-concessional contributions to the extent necessary to ensure the legal obligations of SMSFs that existed on or before the Commencement Date are met or to comply with the Australian Taxation Office (ATO) Practice Compliance Guideline 2016/5 (PCG 2016/5). These additional non-concessional contributions will be counted towards the lifetime non-concessional cap, but will not result in a breach of the lifetime non-concessional cap, until 31 January 2017. Once legislated, this deadline will be extended only in exceptional circumstances and at the discretion of the Commissioner of Taxation.

This transitional period allows those with no other practical option than to make further non-concessional contributions to meet legal obligations that existed at the Commencement Date or to comply with PCG 2016/5 sufficient time to rearrange their affairs such that they do not breach the cap as a result of contributions made after the Commencement Date.

The date of 31 January 2017 is consistent with the deadline set by the ATO in relation to PCG 2016/5, which provides safe harbour guidance for SMSFs who have borrowed from related parties under a LRBA.

I trust this information provides you and the very small number of individuals to whom the aforementioned proposed treatment applies the necessary certainty going forward.

Should you have any queries in relation to the contents of this letter, please do not hesitate to contact Byron Hodgkinson, Senior Adviser, Office of the Treasurer on (02) 6277 7340.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Morrison', is written over a light blue horizontal line.

The Hon Scott Morrison MP
29 June 2016