SMSF Owners' Alliance
Limited ABN 96 161 052 464
Not-for-profit public company

SMSFOA Members' Newsletter
 # 12/2016 8 September 2016

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First tranche of super legislation…but the contentious measures are still to come

The Government has released the first tranche of draft legislation to enact the changes to superannuation it announced in the May budget.

The first tranche deals with the objective of superannuation and some of the budget measures that are relatively easy to legislate. They are:

- tax deductions for personal superannuation contributions,
- improve superannuation balances of low income spouses;
- introduce a Low Income Superannuation Tax Offset (LISTO); and
- harmonising contribution rules for those aged 65-74.

Legislation on controversial measures – such as the $1.6 million cap on tax-free super accounts, the $500,000 lifetime cap on non-concessional contributions and the reduced $25,000 concessional contribution cap – will be released later.

For these more contentious measures, it may take several weeks or even months for the detailed legislation to emerge. In the meantime, uncertainty will remain over how the measures will work in practice and how members of self-managed funds can order their affairs to comply with the legislation.

The Treasurer, Scott Morrison, has been holding meetings with Coalition backbenchers who are concerned about the impact of the measures on self-funded retirees in particular. Some in the Coalition are particularly concerned about the retrospective nature of the changes and the impact on their constituents.

The Treasurer has circulated to his colleagues a briefing note on the changes which has not been released publicly but given to journalists. In it, Mr Morrison reportedly claims that only one per cent of superannuation savers will be adversely affected by the changes and they are rich so they can cop it.

Well, Treasurer, just because a minority are affected doesn't make it right. Retrospective legislation has long been accepted as wrong in principle. At least Labor can see that and has pledged to oppose the retrospective elements of the superannuation package.

We estimate that over 110,000 self-managed fund members will be adversely affected by the changes. Over time that number will grow as super savings grow and more people hit the $1.6 million cap.

The broader message to all superannuation fund members is that their savings are no longer safe. Any government at any time can change the goal-posts and frustrate the plans that people have made for their retirement.

Apart from the damage the government is doing to trust in the superannuation system, it is not good economic policy to raid people's savings to pay for recurrent government spending. The Treasurer's admission that the purpose of the superannuation changes is to raise revenue is a significant shift. He has set a precedent for governments to tap into retirement savings to prop up the budget. It is a short-sighted policy. If savings are reduced now, the call on taxpayer funded pensions in the future will be greater.

We appreciate the current Government has a difficult budget repair task with an unco-operative Opposition and Senate. The whole Parliament needs to accept that government has a spending problem, not a revenue problem, and they need to tackle the cost of government rather than deplete savings.

Purpose of superannuation

Before the budget, the then Assistant Treasurer, Kelly O'Dwyer (now Minister for Revenue and Financial Services) embarked on a rushed consultation with the superannuation sector on the purpose of superannuation. However, it seems she didn't take much notice of the submissions received.

SMSF Owners, and others, argued that setting the objective of superannuation just in the context of the Age Pension was too limiting and the objective should be much more ambitious.

We suggested that a performance benchmark be set based on the concept known as "a reasonable replacement rate" which would set a target for retirement income of about two-thirds of pre-retirement, after-tax income. This concept is widely used in comparable countries.

We see the Age Pension has just one component (pillar) of a well-founded and effective retirement incomes system. The other pillars are compulsory concessional contributions and voluntary contributions, some concessionally taxed.

The role of the Age Pension should just be to help people who are unable to save enough to support themselves financially in retirement – it is a social safety net.

Everyone else should be encouraged, by way of tax concessions on their compulsory and voluntary contributions, to save enough to be financially independent in retirement and have a better standard of living than the Age Pension provides. Superannuation policy, including taxation incentives, should be set so as many people as possible can achieve this goal.

So, rather than winding back superannuation benefits, as the Government is now doing, it should be making superannuation more attractive to encourage and enable more people to be self-sufficient, or largely so, in retirement.

The reduction in concessional contributions (from $35,000 for over 50s and $30,000 for under 50s to $25,000 for everybody) will make it harder to expand superannuation as less money will be flowing into the system and as a result there will be more reliance on the Age Pension in future.

Way open for further fiddling with super

The draft legislation defines the objective of superannuation as to "substitute and supplement" the Age Pension.

It will require any government wanting to make changes to the superannuation laws to justify them in terms of the objective by way of a "Statement of Compatibility". This means that in proposing any change to the superannuation law, the Government must explain how it complies with the objective.

This should not be too hard given the very general wording of the objective.

So we believe there is still plenty of scope for governments to make further changes to superannuation and to continue to wind back its benefits with new limits and restrictions.

And those who want to further cut back superannuation tax concessions won't give up.

The Grattan Institute – a left wing think tank that is leading the charge against superannuation tax concessions – sees further restrictions on super contributions and tax concessions coming:

John Daley from the Grattan Institute told *SMSF Adviser* that*: "Even with these reforms, super tax breaks will still overwhelmingly flow to high-income earners. And the long-term cost will remain unsustainable. Further changes will be needed in future."*
Mr Daley believes it's likely the superannuation caps will continue to be tightened.

"This includes the amount you can put in before tax, the amount after tax and the amount that you can pay no tax on the earnings."

Of course, in claiming that super tax breaks flow to high-income earners, Mr Daley overlooks the fact that high income earners pay most of the income tax in the first place. Their share of super tax breaks is actually lower than the share of income tax they pay.

The top 20% of income earners receive 57% of super tax concessions but pay 64% of the income tax for which those concessions are given.

The Grattan Institute says it receives no ongoing government funding but it was started in 2008 with $15 million each from Kevin Rudd's government in Canberra and John Brumby's government in Victoria. That taxpayers' money generates about 80% of Grattan's income. Our members in Victoria actually paid twice through their Federal and State taxes for the privilege of hosting the Grattan Institute in free digs at Melbourne University.

Tight deadline set for responses

The Government has allowed little time – less than two weeks – for submissions in response to its draft legislation. It was released by the Treasurer on 7 September and submissions are due by 16 September.

Within that tight time constraint, we will be reviewing the draft legislation in detail and preparing a submission to the Government.

Members will find the Treasurer's statement at:
http://sjm.ministers.treasury.gov.au/media-release/094-2016/

And the draft legislation and Explanatory Memorandum is here:

https://consult.treasury.gov.au/retirement-income-policy-division/superannuation-reform-package/

If you have any comments on the draft bills, please let us know via: info@smsfoa.org.au

Please keep in contact with your Federal MP and Senators on this issue. The Government Party room still needs to discuss the proposed legislation in coming weeks.

Our initial media release on the super legislation:

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First, the good news…

7 September 2016

The first tranche of draft legislation covering some of the superannuation measures announced in the May Budget covers changes that will generally be broadly supported.

SMSF Owners are more concerned about how other more problematic aspects of the Government's measures – new limits on contributions and account balances - will be explained in draft legislation that is still some weeks away.

SMSF Owners generally supports the intent of the first tranche of legislation though we will need to study the fine detail.

Our major reservation is that the proposed objective of superannuation - to substitute and supplement the age pension - is not ambitious enough.

Benchmarking retirement incomes to the age pension sets the bar too low. It bases policy on one pillar (the age pension) of a three pillar retirement income system (the other two being compulsory and voluntary contributions).

The age pension should be a social safety net to look after those who have not been able to save enough during their working lives to sustain their own income in retirement.

Everyone else should be encouraged, via concessionally taxed compulsory and voluntary contributions, to be financially independent in retirement.

Setting superannuation policy within the context of the age pension will give governments' license to further grind away the benefits of superannuation through tighter contribution limits and taxation of super savings.

A better objective would be to set an objective for retirement incomes via the concept of a 'reasonable replacement rate', being a retirement income of about two thirds of pre-retirement, after-tax income. This would be set a realistic performance target for superannuation.

We await with interest the next tranche of legislation on how the $1.6million balance cap and the $500,000 non-concessional contribution cap will be implemented. This legislation should answer the many questions that have been raised about how these limits will work in practice.

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