SMSF
Owners'
Alliance
Limited ABN 96 161 052 464
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Manager
Superannuation Tax Reform
Retirement Incomes Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Superannuation Reforms Package – Tranche 2

Given the very short time allowed for consideration of very complex draft legislation, our comments are necessarily brief. The legislation introduces entirely new concepts and procedures and more time should be allowed to consider how these will work in practice.

1. **Implementation**

The draft legislation anticipates that on or before 1 July 2017, people will know their superannuation balance down to the last dollar. However, for self-managed funds in particular, it can take months for the trustees and the fund's accountant to assess the value of the assets in the fund, identify the earnings, calculate the tax due and prepare tax returns.

Another complication is that people with self-managed funds may also have superannuation accounts with APRA funds and/or be members of defined benefit schemes.

It is not clear how relevant information from different funds and accounts will be drawn together so adjustments can be made to balances to comply with the new transfer balance cap and the new limits on non-concessional contributions.

As there are more than half a million self-managed funds, most with multiple member accounts, we expect there will be a serious compliance logjam in 2017 as fund trustees and their accountants and auditors come to grips with the new requirements.

We anticipate there will be a lot of confusion and honest mistakes made before the system is bedded down.

The period of 60 days allowed for the correction of excess amounts held in a pension account is too short.

We recommend that a period of at least 12 months be allowed for implementation of the new measures. During this period there should be no penalties applied for holding an amount in excess of the transfer balance cap in a pension account

3. Retrospectivity

The $1.6 million transfer balance cap is just as retrospective as the proposed $500,000 non-concessional cap that was withdrawn by the Government largely because of widespread concerns it was retrospective. The Tranche 2 draft legislation is also retrospective as it catches people who had already moved their superannuation into pension mode and will require these people to re-engineer their superannuation, and pay tax for which they were not previously liable.

Had they known this change was coming, they might have made different decisions about when to retire and how to order their financial affairs.

It is a long recognised principle of taxation law that it should not be changed with retrospective effect to the disadvantage of those who had abided by the law. The right thing to do would be for the Government to 'grandfather' the existing rules under which people have saved for their retirement and apply the new measures prospectively.

4. Wrong premise

The draft Explanatory Memorandum says the Government is changing the superannuation rules to stop wealthy people from minimising their tax and engaging in estate planning. We object to this reference, as we did when the same terms were used in the draft Explanatory Memorandum for the legislation on the objective of superannuation.

The connotation that people who are able to contribute to superannuation to the extent permitted by law are tax dodgers is offensive. It should not be expressed in legislation.

The $1.6 million transfer balance cap doesn't just affect wealthy people. It affects hard working Australians who have saved diligently throughout their working lives to afford a comfortable living in retirement – doing just what the Government wanted them to do.

It is wrong to imply these people are tax dodgers when they have saved according to the rules set by the Government.

The term 'wealthy' is a relative concept and is not defined in the draft Explanatory Memorandum.

Nor is 'estate planning' defined. Where is the line to be drawn between estate planning and prudent saving for a hopefully long retirement? It is in the Government's interest for people to have superannuation savings left over when they die. They won't have been a drain on the public purse in their latter years and the Government gains revenue by taxing any money they leave to non-dependant family members.

The references to tax minimisation and estate planning should be removed from the Explanatory Memorandum.

5. **Limit on capital gains cost base adjustment**

It is not clear how the ten-year limit applied to the adjustment of the cost base for capital gains if assets are transferred out of a pension account to an accumulation account to comply with the transfer balance cap will work in practice. More time should be allowed to consider this point.

6. **Defined benefit schemes**

We have not had time to analyse the complex changes to defined benefit schemes and to form a view on whether they satisfy the Government's intention that they are commensurate with the rules that apply to members of conventional superannuation funds.

It is clearly necessary, for fairness and credibility, that those on defined benefit schemes do not get a better deal under the changes than most Australians, whether they are in self-managed, industry or retail funds.

Yours sincerely

Duncan Fairweather
Executive Director
SMSF Owners' Alliance

dfairweather@smsfoa.org.au

About SMSF Owners: The SMSF Owners' Alliance was established to provide a voice for the one million Australians who are trustees and members of self-managed superannuation funds. SMSFOA is an independent, not for profit organisation with a sole focus on advocacy.