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Manager
Superannuation Tax Reform
Retirement Incomes Division
Treasury
PARKES ACT 2600

Superannuation Reform Package - Tranche 3

Consultation period

We again note that the consultation period allowed for comment on Tranche 3 of the draft legislation is inadequate - only five working days. We therefore cannot say we understand all aspects of the complex legislative changes in Tranches 1, 2 & 3. In forcing the pace on consultation, and passage of the legislation through Parliament, the Government risks unintended consequences.

Purpose of superannuation

As per our comments on Tranches 1 & 2, we note that the Explanatory Memorandum, at section 3.4, in explaining the purpose of superannuation, refers to "tax minimisation".

Limits are placed on the concessional and non-concessional contributions that individuals can make. These limits are a matter of judgement for the Government. If individuals are able to contribute up to the limits, this should not be regarded as tax minimisation with the stigma that is attached to that term.

If the Government wishes to refer to "tax minimisation" in legislation (of which Explanatory Memoranda are part) then the meaning of that phrase should be precisely defined. At what point do superannuation savings in accordance with the rules set by the Government become tax minimisation? Defining "tax minimisation" will be difficult and it should be removed from the Explanatory Memorandum. For the same reason, the phrase "estate planning", which appears in the Explanatory Memoranda for Tranches 1 & 2, should be removed.

Impact of the legislation

Section 3.4 of the Explanatory Memorandum says: "These amendments are only expected to affect a small number of individuals who already have high superannuation balances." The quality of legislation should not be judged and justified on the number of people who are affected. This sentence should be removed.

Total superannuation balance

Sections 3.4 & 3.5 refer to the total superannuation balance cap as "less than the general transfer balance cap". The transfer balance cap is \$1.6 million, not a lesser figure. Wherever it appears in the draft legislation, this wording should be amended to "not more than the general transfer balance cap".

Bring forward of non-concessional contributions

The Government, rightly, withdrew its original decision to limit non-concessional contributions to a life-time non-concessional contribution cap of \$500,000 because it was retrospective.

The new bring-forward arrangements are still retrospective because they change the conditions under which non-concessional contributions can be made by individuals who had intended to make non-concessional contributions over the next three years as part of their superannuation savings strategy. Instead of being allowed to make a non-concessional contribution of \$180,000 a year for three years, individuals may make such a contribution in 2016-17 but a lesser amount in the remaining two years.

The new bring forward arrangements are complex and take 8 pages of explanation in the Explanatory Memorandum.

We question why the bring forward arrangements are restricted to those under 65. There should be no age limit.

It would be simpler, and fairer, for the new, lower limits on non-concessional contributions to apply from 1 July 2017. The current bring forward arrangements should continue to apply until then. We appreciate this would be at some cost to Government revenue but this should be balanced against fair treatment of people who are making non-concessional contributions under the present rules.

Indexation

Section 3.8 of the Explanatory Memorandum says that the non-concessional cap will be adjusted in line with wages growth (AWOTE). This is appropriate. However, the general balance transfer cap is aligned to consumer prices (CPI). This is not appropriate as superannuation savings are an outcome of payment for work and both contribution and balance caps should be linked to wages. Retirement incomes should be relative to working incomes.

Structured settlement amounts

We agree that people who receive compensation for personal injury should be able to contribute that amount to their superannuation without affecting the balance cap, particularly if they are no longer able to work. However, In principle, we would be concerned if people who benefit from an inheritance, or a court order upholding a statutory right, or some other windfall, were to be treated more favourably in regard to allowable contributions than everyone else. What is a "structured settlement amount" for the purpose of the total superannuation balance should be defined more precisely in this legislation rather than rely on the more general references in the Income Tax Assessment Act 1997.

Balancing of accounts

Until 30 June 2017, where members of self-managed funds - commonly a couple - have uneven account balances where one member has more than \$1.6 million and the other has less, it should be possible for the member with the higher balance to transfer the excess to the other member so that member can make a non-concessional contribution without regard to the work test. This would recognise that typically a self-managed superannuation fund is a 'joint venture' by couples with both having an equal interest in the outcome though their separate account balances may differ because of differing contribution patterns over time. The same principle should apply to self-managed funds with a different membership structure, e.g. including other family members or partners.

Yours sincerely

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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. SMSF Owners is an independent, not-for-profit organisation with a sole focus on advocacy.