

## **SMSFOA Members' Newsletter**

# 16/2016    22 November 2016

### **In this newsletter:**

- **Superannuation Bills before the Parliament will likely be law by Christmas**
- **Government makes a couple of sensible changes**
- **But the Bills are too complex and still retrospective**

## **Superannuation changes to be rammed through Parliament**

Two of the Government's three superannuation 'reform' Bills are being considered by the Parliament in the two week sitting starting today – the last for the year.

By the time the Parliament rises for its summer break, the most extensive and controversial changes to superannuation in a decade are likely to become law.

The Government is giving urgency to the Bills that have a revenue effect:

- Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 – this Bill applies the \$1.6 million retirement savings balance cap, sets new lower limits on both concessional and non-concessional contributions.
- Superannuation Excess Transfer Balance Tax Imposition Bill 2016 – this Bill deals with what happens when people make a contribution in excess of \$1.6 million

The main changes in these Bills compared to the draft legislation released in October are:

- The 60-day period allowed for rectifying an excess contribution of less than \$100,000 is now 6 months.
- The 10 year sunset clause on the revaluation of assets transferred from a pension account to an accumulation account for capital gains tax purposes has been dropped.

Both of these changes – urged on the Government by SMSF Owners – are good outcomes.

The third Bill, the Superannuation (Objective) Bill 2016, deals with the purpose of superannuation and will be debated early in next year's Parliamentary sittings.

As soon as the Bills were introduced, the Senate Economics Legislation Committee opened an inquiry into the first two Bills and sought public submissions – allowing just four working days.

Nonetheless, some 41 submissions were sent to the Senate Committee, including by SMSF Owners.

You can find the submissions here:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/SuperRefo\\_rmbillsx2/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperRefo_rmbillsx2/Submissions)

The SMSF Owners' submission is summarised in the next story.

Other submissions of interest were lodged by Save Our Super, the Self-managed Superannuation Independent Funds Association (SISFA) and the Institute of Public Affairs which contains a very good analysis by Professor Henry Ergas. These submissions are well worth reading.

Generally, as expected, the major industry and retail funds support the changes though they say implementation of such complex changes in less than 6 months will be a challenge. It's no surprise that the left-wing, taxpayer funded 'think tank', the Grattan Institute, thinks taxing retirement savings is a great idea.

The Senate Committee has only a few days to consider the submissions – its report is due by 23 November.

## Too Complex and Still Retrospective

### FACT

**The Government's three new superannuation Bills run to 142 pages with another 364 pages taken to explain them in an Explanatory Memorandum.**

**The Commonwealth of Australia Constitution Act is 31 pages.**

In our submission to the Senate Economics Legislation Committee, we again argued that the Government's legislation is complex and remains retrospective.

Our submission is here: [file:///C:/Users/officeworks/Downloads/19%20\(1\).pdf](file:///C:/Users/officeworks/Downloads/19%20(1).pdf)

We make the point that the changes are aimed squarely at self-managed superannuation funds which are the most successful type of fund. Contrary to some commentary, SMSFs have been subject to exactly the same tax rules as other superannuation funds. However, for the first time this legislation contains elements that are exclusively targeting self-managed superannuation funds.

We remind the Senate that it is a general principle of tax law that changes to taxation should not have retrospective effect. The Senate is the guardian of this principle.

The Government backed away from its initial proposal to restrict non-concessional contributions to \$500,000 because it was widely regarded, including by Coalition MPs/Senators and the Labor Opposition, as retrospective.

The legislation presented to the Senate is still retrospective in important respects by:

- applying a transfer balance cap retrospectively, requiring people to reverse transfers already made into their superannuation retirement accounts in the past under the rules that applied at the time;
- applying an earnings tax to such retirement savings that were not to be taxed at the time the savings were made and the pensioner's decision to retire was made; and
- requiring some assets in a CGT free pension account to be transferred to an accumulation account where they will again become subject to CGT.

With respect to the proposed transfer balance cap, it was incorrect and misleading for the Treasurer to state in his Second Reading Speech that "the cap only limits the amount that can be transferred into the tax-free environment". A large part of the Bill is devoted to requiring those pensioners who have **already** made such a transfer to unwind it and shift funds that have legitimately been transferred into an untaxed pension account **back** into a taxed accumulation account.

Another deleterious aspect, which has not received much attention, is that the legislation is unfair and discriminatory in that it applies differently to people depending on when they reach the balance cap.

Those who are yet to retire will be allowed to transfer capital up to the then transfer balance cap (\$1.6m indexed) into their retirement account, and for this amount plus all future earnings on that money to remain tax-free in that account.

However, some people who have already retired will be forced to transfer back into a taxable account some of the earnings and capital gains that they have made since retirement. For these retirees, the Bill applies the \$1.6m cap to **both** the capital they transferred into their retirement account **plus** all the accumulated earnings thereon.

This blatant unfairness and discrimination is sufficient reason for the Senate to exercise its responsibility to uphold equal rights for all Australians and reject the legislation outright.

However, realistically, we expect the Government's legislation will get through both the House of Representatives and the Senate, perhaps with some amendments, and be law by Christmas.

## Trust in super gone

Let's leave the last word to a submission sent to the Senate Committee by an 'ordinary Australian' - Dr Maureen Burke – 73 and retired:

*"Mr Morrison's proposed changes to superannuation disappointed and disgusted me, and tens of thousands of other Australians. He had said on many occasions that the Coalition would not touch super and yet here he is...bringing in changes that will destroy all trust and certainty in the superannuation system."*

SMSFOA Members' Newsletter #16 22 November 2016