



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

17 November 2016

Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Re. Superannuation (Excess Transfer Balance Tax) Bill 2016 [Provisions] and Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 [Provisions]

Dear Sir/Madam,

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on bills supporting superannuation reform measures announced in the 2016 federal budget.

We appreciate the reasons for reform, however we are concerned about some aspects of the legislation supporting the new measures. We have recommended some alternative proposals for your consideration. If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

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Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
 - The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
 - We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
 - CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
 - We are recognised as a professional body by the Tax Practitioners Board
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SENATE INQUIRY INTO THE SUPERANNUATION (EXCESS TRANSFER BALANCE TAX) BILL 2016 AND TREASURY LAWS AMENDMENT (FAIR AND SUSTAINABLE SUPERANNUATION) BILL 2016

FPA submission to:
Senate Economics Legislation Committee

17 November 2016

INTRODUCTION

We are concerned about the consequences of the new measures, particularly in relation to child beneficiaries of death benefits, as well as the lack of reasonable transition arrangements. We have recommended alternative proposals to deal with our concerns.

Restrictions on tax-free earnings

The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 No. , 2016* would limit the extent to which earnings on superannuation assets are tax free. It does this by restricting the type of superannuation income streams that are defined as being in retirement phase, and by limiting the amount that can be credited to retirement phase.

We are concerned with the complexity and certain consequences of the reforms and propose alternative approaches to deal with concerns.

Transfer balance cap

Child recipient of death benefit income stream - ITAA 1997 ss 294-185 to 294-200

Special rules apply to ensure death benefit income streams paid to children of the deceased increase the amount the child can transfer to retirement phase during their lifetime. The transfer balance cap of child beneficiaries of death benefit income streams is increased to reflect the remaining value from the parent's transfer balance cap.

We are concerned that the rules apply differently depending on whether the deceased had a transfer balance account, and are not based on the potential needs of the child. This can lead to situations where disabled children - or children who were born when their parents were older-than-average – are disadvantaged if their parent had a transfer balance account when they died.

In our view, the current needs the child may have are paramount. However, the modification provisions are based on the situation of the deceased, resulting in arbitrary differences in the way different child beneficiaries are treated.

Alternative proposal

We recommend that the provisions be amended to ensure that the total of the cap increments added to a child beneficiary's transfer balance account due to the same parent's death is always at least the general transfer balance cap.

Replenishment debits - ITAA 1997 s 294-85

We are concerned that in order for a debit to arise in respect of fraud or dishonesty, an individual needs to have been convicted of an offence involving fraud or dishonesty. This places an extremely high hurdle on generating debits in these situations. Further, it would result in uncertainty and long delays.

We appreciate the need to limit opportunities to artificially exploit the provision. However, members should also be given an opportunity to adjust their plans as soon as possible after they've suffered a loss due to dishonest or fraudulent conduct.

We are also concerned that no other circumstances, apart from fraud and dishonesty, bankruptcy and payment splits, are covered by the replenishment debits provisions. While we accept that mere poor investment performance should not give rise to replenishment debits, there is an argument for providing for replenishment debits where there has been a catastrophic fall that is expected to be long-lasting, in the investment market (for example, as was the case when the global financial crisis hit).

Alternative proposal

We recommend that draft subsections (c) and (d) of s 295-85(2) be replaced with the following:

- (c) the Australian Securities and Investments Commission (ASIC) has certified that it reasonably satisfied that:
 - (i) the loss is a result of fraud or dishonesty

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- (ii) if the matter went to court, an individual would be likely to be convicted of an offence involving that fraud or dishonesty

Obviously, it would need to be ensured that there is a mechanism for ASIC to certify it is satisfied that the above elements have been met.

We also recommend that provision is made for replenishment debits if a market benchmark specified in the legislation falls by more than a certain percentage. In addition, the Minister should have a discretion to declare additional circumstances when replenishment debits will arise.

We would also recommend that consideration be given to allowing superannuation funds to accept contributions from a member to provide for the member's replenishment debits and that the contributions are not taxed.

Non-concessional contributions cap – Div 292 ITAA 1997

General

Especially given the tightening of the non-concessional contributions (NCC) cap, it is crucial to ensure that the scope of exemptions is appropriate. We believe that, in addition to existing exemptions, contributions made for the purpose of replenishing losses giving rise to replenishment debits under Sub-division 294-D should be excluded from the definition of NCC (and concessional contributions). This measure would allow contributions made on behalf of members (including contributions attributable to compensation for such losses) to be made without having adverse consequences in relation to the taxation of the member's current or potential contributions.

Alternative proposal

We recommend that contributions made for the purpose of replenishing losses giving rise to replenishment debits under Sub-division 294-D be excluded from the definition of NCC (and concessional contributions).

Reductions

Not only does the reform to the NCC regime reduce, in general, the NCC cap, but also further reduces that cap where the member's total superannuation balance is close to or exceeds the transfer balance cap. We are concerned that, apart from for structured settlements, the legislation does not modify the general definition of total superannuation balance.

We believe that it is also appropriate to disregard cap increment amounts (i.e. of child recipients of superannuation income streams paid due to the death of a parent) for the purpose of determining the child's NCC cap. While the income stream balance won't restrict the child from making contributions in the year the income stream commences, there may be situations where it is appropriate to make later contributions to the child's super.

Disabled children are likely to need more than the transfer balance cap (which appears to be designed to provide for the normal retirement period) to provide for the rest of their lives. Therefore, disregarding the cap increment for the purpose of determining the child's NCC cap is appropriate, even though this modification would do nothing to limit the ability to build a total superannuation balance that exceeds or further exceeds the transfer balance cap.

For non-disabled children, the purpose of a superannuation income stream paid on the death of a parent is to provide benefits into the child's early adulthood (but not beyond). The benefits are earmarked for early adult life and not for retirement. Further, the income stream needs to be commuted by when the child turns age 18 (or if financially dependent on the parent, age 25). Therefore, we know that children generally won't have such an income stream in super once they turn 25. In other words, we know that the purpose of superannuation benefits making up the income stream the child receives on the parent's death won't become a retirement purpose. Given this knowledge, it is appropriate to disregard the cap increment amounts. It is useful to have this flexibility to enable children to maximise their retirement benefits by maximising their contributions to super.

Alternative proposal

We recommend that a child's cap increments not be counted towards the child's total superannuation balance. This would allow children to build up a balance earmarked for retirement purposes. The exemption might be especially useful for a disabled child as it would enhance the opportunities for providing benefits for the rest of the child's life.

Indexing of transfer balance cap - ITAA 1997 s 960-290

We are concerned that the index number merely reflects the consumer price index. Indexation should reflect not only price inflation but also improvements in living standards.

Alternative proposal

We would recommend that the index number should instead be Average Weekly Ordinary Times Earnings, which is consistent with other indexation numbers used for existing superannuation measures.

Excess transfer balance determination and default commutation notices – Div 136 in Sch 1 to TAA 1953

In our view, the timeframe (60 days from the ATO's issue of an excess transfer balance determination) for members to make a commutation election is too short.

Alternative proposal

We would recommend a 90-day window for members to make an election.

Excluding small funds from segregating assets - ITAA 1997 s 295-387

We are concerned that self-managed superannuation funds and small APRA funds are prohibited from using the segregation method if:

- at a time during the income year, there is at least one superannuation interest in the fund that is in the retirement phase; and
- just before the start of the income year:
 - a person has a total superannuation balance that exceeds \$1.6 million; and
 - the person is the retirement phase recipient of a superannuation income stream (whether or not the fund is the superannuation income stream provider for the superannuation income stream).

We appreciate that the introduction of the transfer balance cap increases the incentive to wash assets through the retirement phase. However, we believe that this issue should be dealt with through anti-avoidance measures, rather than a specific prohibition.

Alternative proposal

We would recommend that the proposed section is not proceeded with. If there is concern that Part IVA of ITAA 1936 will not be complied with in relation to the circumstances contemplated by the provision, the ATO should step up its compliance efforts.

Transition to retirement income stream

Removal of tax exemption - ITAA 1997 s 295-385 and s 307-80

We are concerned that the removal of the tax exemption for transition to retirement income streams (TRISs) will have the unintended consequence that many funds will stop providing these types of products. This is because the reforms create a new product category for which earnings are treated the same as for an accumulation account, but benefits are paid as income. The system changes required may make this new category uneconomical for providers.

This would be an unfortunate outcome as, despite the removal of the tax exemption, members close to retirement may benefit from the budgeting and other benefits that TRISs can offer. For this reason, we have proposed an alternative that would make it easier for funds to include assets supporting TRISs, in their accumulation funds.

Alternative proposal

We recommend that members under age 60 could draw their TRIS benefits as lump sums within the annual limits. This arrangement would ensure that the many providers that use the segregation method could hold assets supporting TRISs in the same pool as assets supporting accumulation benefits, without needing to provide for differential tax treatment. This may mean that the product survives the superannuation reforms.

Limits to tax concessions for contributions

Lowering of concessional contributions cap – ITAA 1997 s 291-20

We are disappointed there are no transitional arrangements for the reduction in the concessional contributions (CC) cap. People make plans to provide for their retirement. Especially for those nearing retirement, the dramatic reduction in the CC cap can dramatically undermine those plans.

Alternative proposal

We recommend that members over age 50 have a higher cap for a reasonable transitional period. This will allow a less dramatic adjustment to their plans.

Additional tax on contributions for high income earners – ITAA 1997 Div 293

Again, we are disappointed there are no transitional arrangements.

Alternative proposal

We recommend that members over age 50 have a higher cap for a reasonable transitional period. This will allow a less dramatic adjustment to their plans.

Lowering of non-concessional contributions cap – ITAA 1997 s 292-85 and IT(TP)A s 292-85

We are disappointed that there is no reasonable transition to the lower NCC cap.

Alternative proposal

We recommend that members over age 50 have a higher cap for a reasonable transitional period. This will allow a less dramatic adjustment to their plans.

Anti-detriment provisions – ITAA 1997 s 295-485

Many peoples (especially advised members) factored the anti-detriment payment into their plans. We are disappointed that existing benefits won't be grandfathered.

Alternative proposal

We recommend that the anti-detriment payment is grandfathered in respect of existing benefits.