

File Name: 2014/38

24 October 2014

Manager
Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ENCCTax@treasury.gov.au

Dear Manager,

RE: Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014

Reforming the Superannuation Excess Non-concessional Contributions Tax

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the call for comments on the exposure draft legislation and draft explanatory memorandum to give effect to the 2014-15 Budget measure to allow individuals the option of withdrawing superannuation contributions in excess of the non-concessional contributions cap made from 1 July 2013 and associated earnings, with these earnings to be taxed at the individual's marginal tax rate.

We note that this measure is intended to deliver on the Government's election commitment to develop an appropriate process that addresses inadvertent breaches of the contribution caps where the error would result in a disproportionate penalty.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90 per cent of the 12 million Australians with superannuation.

1. General comments

ASFA welcomes the proposal to amend the operation of the tax provisions relating to excess

non-concessional contributions (ENCC). There has long been concern that the penalty for inadvertently breaching the non-concessional contributions cap may, in certain circumstances, seem excessive. That said, ASFA considers that there remains a need for there to be a disincentive to breaching the caps.

ASFA has participated in extensive discussions with Treasury and the Australian Taxation Office (ATO) on the design of both the law and the administrative arrangements. We support the design of the measure and specifically the decision that the 'associated earnings' are to be calculated using the General Interest Charge (GIC) rate and the decision to commence the 'earnings' calculation period on 1 July of the income year in which the contribution was made.

ASFA believes that the proposed amendments are consistent with the policy objective that delivers on the Government's election commitment to develop an appropriate process that addresses inadvertent breaches of the contribution caps.

2. Specific comments

2.1 Design features of the legislation

ASFA acknowledges that the intent of the legislation is for monies to be removed from the system in response to an appropriate release advice and for those monies to be paid firstly from the tax free component of the member's interest before being paid from the taxable component of those interests.

However, ASFA recommends that more guidance be provided in regards to implementing the release authority where an income stream has commenced sometime after the breach and before the release authority was issued. For a superannuation income stream the tax free and taxable components are set as a percentage at the pension's commencement and remain static until the income stream is terminated by commutation or through the depletion of the capital. Exactly how a release authority works in concert with an income stream that is on foot is unclear.

2.2 Draft legislation

Item 3 After section 292-465

Section 292-467 sets out the circumstances in which a member's superannuation interest is determined to be nil. ASFA recommends that the circumstances should be extended to include the situation where a member is unable to redeem an interest as it has been determined to be illiquid.

Such circumstances occurred during the Global Financial Crisis and still impact on some superannuation interests.

Item 14 After section 98-5 in Schedule 1

ASFA recommends that better clarity of intent is needed in this provision. Specifically ASFA recommends the following minor wording changes:

96-7 (1)(b)

Replace 'elect not to release the amount' with 'elect not to release the total amount ...'

96-7(c)

Replace 'elect not to release the amount' with 'elect not to release the total amount ...'

Item 19 After subsection 96-20(1) in Schedule 1 and Item 23 Subsection 96-25(2) in Schedule 1

Both these sections specify that a superannuation provider who has been given a release authority must take certain actions within 7 days.

A similar 7 day period currently applies to excess concessional contribution cap (ECCC) release authorities.

The 7 day period for ECCC release authorities has proven to be too short and the ATO, in recognition of this, applies a 'best efforts' test.

In light of the current difficulties in meeting the 7 day period ASFA recommends that the time period for both ECCC and ENCC release authorities be set at 'within 14 days or such further period allowed by the Commissioner'.

Further to this, it is unclear what the situation is where the payment is not made within the specified time. ASFA therefore recommends further guidance be provided on this issue.

2.3 Explanatory Material

As set out in section 2.1 above, ASFA recommends that the Explanatory Material provide an example of the operation of the provisions with respect to an income stream and particularly the operation of a release advice.

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Should you have any queries in relation to the content of our submission, please contact Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email rhodge@superannuation.asn.au.

Yours sincerely



Glen McCrea

Chief Policy Officer