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The Treasury  
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Dear Sir

### **Exposure draft - reforming the Superannuation Excess Non-concessional Contributions Tax**

This submission is made on behalf of our members and in the broader public interest.

CPA Australia supports the introduction of these reforms to the superannuation excess non-concessional contributions tax as it removes the punitive taxation treatment of excess non-concessional contributions and maintains the contribution caps as an integrity measure. However, we have concerns with the proposed implementation of this measure and the impact it may have on individuals through the determination of when non-concessional contributions (NCC) are considered to be excess and the cumulative tax treatment of the associated earnings both within the superannuation fund and in the hands of the individual. Our concerns and suggested solutions are detailed below.

#### **Determination of excess non-concessional contributions**

It is proposed the Commissioner of Taxation will provide a written determination to individuals who make NCC in excess of their cap for the financial year. However, individuals under age 65 are not considered to have breached their cap until after they have triggered the 'bring-forward' provision and exceeded the equivalent of three years of the annual cap. The result is that an individual who inadvertently triggers the bring-forward provision in one year and then makes a large contribution in a later year thinking that is when they will first trigger the bring-forward provision will end up with a considerably larger excess NCC, and associated earnings, to be refunded than if they had been able to refund the small initial excess amount that triggered the bring-forward. This is best illustrated by the following example.

If an individual unwittingly contributed \$5,000 over their NCC cap in 2013-14 to pay an insurance premium and then made a large contribution in 2015-16 to take advantage of the bring-forward, the outcome would look like this:

<b>Financial year</b>	<b>NCC</b>
2013-14	\$155,000
2014-15	\$180,000
2015-16	\$540,000

In this case the individual's NCC cap is \$450,000 since they unwittingly triggered the bring-forward in 2013-14 and hence they have an excess NCC of \$425,000. Under the current proposal they would be able to withdraw the \$425,000 but would then pay assumed interest on that amount, whereas if they had been able to withdraw the offending \$5,000 from 2013-14, the impost would be considerably less, even if associated earnings were calculated on the \$5,000 for a longer period.

Given it is more likely that people will have an excess NCC due to inadvertently triggering the bring forward than making a one-off excess contribution, we believe that being able to refund that initial offending contribution would significantly reduce the possibility of this issue occurring.

We suggest there are two possible solutions. The ATO issues a notice to individuals when they first trigger the bring-forward, as has been recommended by the Inspector-General of Taxation in his 2014 report on the ATO's approach to superannuation excess contributions tax. The individual should also be able to self-assess that they have exceeded their cap or triggered the bring-forward provision in a particular year.

In either case, the individual could then request the Commissioner make a written excess NCC determination for that amount for that financial year, subject to the validity of the request being confirmed, which would then be actioned as proposed.

We believe this could be implemented by amending section 97-25 of the Tax Administration Act 1953 to allow the Commissioner to make a determination upon the request of an individual taxpayer or under such other circumstances as allowed for in regulations. Allowing for regulations, this should then provide the flexibility if the ATO accepts the Inspector-General of Taxation's recommendation to notify individuals when they trigger the bring-forward provision.

### **Associated earnings**

CPA Australia supports, for administrative simplicity, the calculation of associated earnings from 1 July in the financial year the excess contributions were made to the day the excess NCC determination was made. However, as this compromise will unfairly penalise people who made the offending contributions later in the year we believe it is unreasonable to use the punitive General Interest Charge to calculate associated earnings. As a fairer compromise we believe the lower Shortfall Interest Charge should be used to approximate the associated earnings.

Also, in the interests of fairness, where the Commissioner makes a direction that the value of an individual's superannuation interests is nil due to the entire superannuation interest having been paid out, the associated earnings should be recalculated from 1 July to the date the super interest was paid. Practically, this would be achieved through the superannuation provider advising the ATO the entire superannuation interest has been paid out and the date of payment. The ATO could then issue an amended determination with associated earnings recalculated from 1 July to the date the super interest was paid.

### **Release of amounts from superannuation**

The requirement for a superannuation provider to pay the amount nominated in a release authority within seven days of it being issued will be problematic, particularly if there is any delay in a provider receiving the release authority and for self-managed superannuation funds that may have to liquidate assets to pay a large contribution return. We suggest a period of at least 14 days would be more workable. Similarly, the time period for notifying the individual of the payment should also be 14 days.

The requirement for released amounts to be paid from the tax-free component of a superannuation interest adds to the cumulative punitive impact of this measure. Actual earnings within the interest form part of the taxable component while the associated earning of the excess NCC to be released must be released from the tax-free component. This will result in a disproportionate increase in the taxable component and higher tax paid if benefits are paid out before age 60 or to non-tax dependants on death. We suggest that the amount shown on the release authority be split between the excess NCC to be returned and the associated earnings. The excess NCC should be paid from the tax-free component while the associated earnings should be paid from the taxable component.

### **Preservation**

Regulation 6.22A of the SIS Regulations require the preserved components to be cashed in a particular order starting with unrestricted non-preserved benefits (UNPB), then restricted non-preserved benefits (RNPB) then preserved benefits. Given that any contributions made since 1999 are preserved, we suggest that when the regulations are drafted a regulation is included to ensure that the release of excess NCC and associated earnings comes out of the preserved benefit so that any UNPB within the superannuation interest are not reduced unnecessarily.

### **Cumulative detrimental impact**

As a trade-off for simplicity, there are a number of components of this measure that when added together may have a significant detrimental impact on an individual through having to release higher than necessary associated earnings and/or additional taxation. These components include:

- The inability to refund excess NCC when the bring-forward provision is first triggered
- Associated earnings being calculated from 1 July of the year the excess contribution is made

- The assumed earnings rate for the associated earnings being relatively high through the use of the punitive General Interest Charge
- The release of associated earnings from the tax-free component of a superannuation interest.

We recognise the need to maintain the caps as an integrity measure and discourage abuse. However, a balance has to be struck where individuals are able to rectify inadvertent breaches of the contribution caps without being unnecessarily penalised. As such, we ask that serious consideration be given to the solutions proposed in this submission.

If you have any questions regarding this submission, please do not hesitate to contact Michael Davison, Senior Policy Adviser – Superannuation on 02 6267 8552 or [michael.davison@cpaaustralia.com.au](mailto:michael.davison@cpaaustralia.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Drum". The signature is fluid and cursive, with a long horizontal stroke at the end.

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