

24 October 2014

The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Reform of the non-concessional contributions cap

The Financial Services Council (FSC) welcomes the time and commitment to consulting with industry on the reforms to the non-concessional contributions caps. The FSC would like to take this opportunity to reiterate a couple of the key points raised in the consultation for your consideration.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, private and public trustees. The FSC has over 130 members who are responsible for investing over \$2.4 trillion on behalf of more than 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

FSC members support the Government's intent to improve the fairness of treatment of superannuation fund members who have breached their non-concessional caps. Our experience is that many breaches are inadvertent, an accident of timing, or a misunderstanding of the complex rules and processes governing the non-concessional caps.

FSC members are largely comfortable with the drafting of the *Tax and Superannuation Laws Amendment (2014 Measures No.7) Bill 2014: Excess Non-concessional Superannuation Contributions Tax Reforms*, and have these comments on the Exposure Draft and Explanatory Memorandum:

- The seven day time frame from the date of printing for funds to comply with the Release Authority is too restrictive (Item 19, *Tax Administration Act 1953, Subsection 96-20(1A)* in Schedule 1). Our experience with existing release authorities is that it can take up to five business days from printing by the Tax Office to be received by the fund, and therefore the time for funds to comply is administratively challenging. This time frame should be revised to 14 days.
- FSC members have some concerns about the tax treatment of payments made

from a fund under the release authority (Item 19, *Tax Administration Act 1953, Subsection 96-20(1B)* in Schedule 1). While the original contributions will have increased the member's tax free component, any earnings will have been credited to the taxable component. By releasing payment, including the related earnings, only from the tax free component, this will deplete any accumulated tax free component. As in discussions on the day, we understand that separate treatment of the tax components creates complexity, but this could have an impact on accumulated tax free amounts, which does not appear to be the intent of the measure.

- Further to the point above, with respect to income streams, there is no mechanism in tax law allowing the trustee to release an amount from a particular tax component within the income stream. The percentages of each tax component are set at the commencement of the income stream and do not change. While ideally the excess non-concessional contributions should be released from tax-free component alone, we recommend that s96-20(1B) in item 19 be revised to exclude income streams, and that therefore the existing proportioning rules apply. The potential taxation advantage to the pensioner created by this exclusion may not be significant, as the earlier an income stream is commenced using excess non-concessional contributions, the higher the tax-free percentage of the income stream is likely to be. In addition, the proportion of pensioners incurring tax on income stream payments is very low.
- In the Explanatory Memorandum, we believe it would be beneficial to note some additional detail on the purpose and process of the measure, for example:
 - that the earning rate is intended to incorporate a penalty margin, and
 - that Trustees do not have to complete any calculation of the earnings amount, merely to comply with the Release Authority.

Please feel free to contact me on 02 8235 2566 if you have any further questions.

Yours sincerely



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SENIOR POLICY MANAGER