



CHARTERED ACCOUNTANTS
AUSTRALIA • NEW ZEALAND

3 May 2017

Manager
Melbourne Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted via email to superannuation@treasury.gov.au

Dear Sir/Madam,

Submission – Superannuation Reform Measures – Exposure Draft Regulations

Chartered Accountants Australia and New Zealand welcomes the invitation to make a submission on the release of exposure draft legislation on 27 April 2016 for some of the government's superannuation and related tax changes in relation to Limited Recourse Borrowing Arrangements put in place by small superannuation funds.

Please note: our submission responds solely to the issues raised in the exposure draft and related material and does not imply our views on other aspects of the superannuation system or on any past or future policy proposals.

We would be pleased to discuss any aspect of our submission.

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Please note: throughout this submission we will use the following abbreviations:

- LRBA – Limited Recourse Borrowing Arrangements
- SMSFs – Self Managed Superannuation Funds
- TBC – Transfer Balance Cap
- TSB – Total Super Balance

TBC credits

Under the proposed legislation the intention is for TBC credit transactions to arise whenever loan repayments are made. Conceivably this means TBC credit transactions will occur whenever a super fund trustee repays any loan capital. Under most LRBA contracts this will mean monthly TBC transaction reporting (because most loans are principal and interest loans requiring monthly repayments). However these TBC transactions may occur more frequently.

As TBC credit transactions must be reported to the ATO, we believe this is a particularly harsh reporting requirement and would place an unreasonable administrative burden on super funds.

Some flexibility is essential. We suggest that if this requirement is necessary then it should permit data to be sent to the ATO annually.

If the government chooses to require TBC credit transaction reporting whenever loan capital is repaid then as an equity measure it should also permit TBC debit transactions when a loan balance is increased for any reason.

Inclusion of LRBA loans in the Total Super Balance

The inclusion of a LRBA in the TSB may mean that super fund member may not be able to make sufficient, and possibly no further, contributions to superannuation because their TSB is greater than \$1.4 million. In many cases it may be that the investor's long term plan was to make contributions that were then to be used to repay the LRBA loan.

As a result we do not agree with this policy for LRBAs that are in place before the legislation receives Royal Assent because it unfairly penalises these funds and in some cases will mean that they are unable to comply with their legal obligations.

We believe this stance is supported by a letter the Treasurer wrote to Chartered Accountants ANZ on 29 June 2016 regarding this particular issue (refer attached).

This letter related to the government's original policy that would have permitted only \$500,000 in non-concessional contributions over a person's lifetime. However we believe that the contents of that letter have application in relation to the proposed amendments. In that letter the Treasurer stated that "transitional provisions will apply to allow further non-concessional contributions to be made only to the extent necessary to complete the PreExisting Contract [that is, a LRBA put in place before 3 May 2016], taking into account existing financing arrangements. The quantum of the additional contributions must also be within the constraints of the non-concessional contributions cap rules that existed immediately prior to the Commencement Date. These additional non-concessional contributions will be counted towards the lifetime non-concessional cap, but will not result in an individual being in breach of the lifetime non-concessional cap."

Restricting inclusion of outstanding LRBAs in TBAs and TSBs for SMSFs and APRA regulated super funds with less than 5 members

We do not agree with this restriction. In our view there is no policy reason not apply this rule to all superannuation funds given that they can all elect to borrow money via a LRBA however we acknowledge that to date these transactions have primarily been put in place by SMSFs.

In paragraph 1.26 of the exposure draft's explanatory memorandum it is stated that "limiting the transfer balance credit in this way recognises that in larger superannuation funds, there is unlikely to be direct connection between a specific asset of the fund and the superannuation interests of an individual member".

This statement fails to take into account superannuation investments that are held within many retail master trusts which are sometimes called Superannuation Wrap Accounts where each member has their own specific asset allocation including having specific assets identified as being owned by them.

Should you require any further information or wish to discuss the contents of this submission, please contact Tony Negline, Head of Superannuation on 02 8078 5404 or by email at tony.negline@charteredaccountantsanz.com

Yours sincerely,

A handwritten signature in black ink that reads "Liz Stamford". The signature is written in a cursive, flowing style.

Liz Stamford
Head of Policy
Chartered Accountants Australia and New Zealand