



SUBMISSION

PROPOSED REDUCTION OF HIGHER TAX CONCESSION FOR CONTRIBUTIONS OF VERY HIGH INCOME EARNERS

19 June 2012

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About ASFA

ASFA is a non-profit, politically non-aligned 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 industry. 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% of the 12 million Australians with superannuation.

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Proposed reduction of higher tax concession for contributions of very high income earners

Executive Summary

ASFA's position on the proposal to reduce the level of tax concessions available to very high income earners with respect to their superannuation contributions is determined by ASFA's Policy Principles, these are:

1. Working to enhance retirement outcomes for all Australians;
2. Superannuation members should be informed and engaged;
3. The Government and industry should work towards and for industry efficiency gains; and
4. Governance and the regulation of super funds should be effective and transparent.

We use the following policy screens to further develop our position, these screens include:

1. Equity across the system;
2. The benefits of implementation outweigh the costs;
3. The system is simplified rather than complicated;
4. Ethical behaviour is addressed;
5. A level playing field is achieved;
6. The outcome is an open, fair, transparent and competitive market; and
7. The best long term interests of the majority of fund members are protected and improved

In relation to the proposed measure ASFA recommends:

1. That the measure be implemented by way of a personal tax on the individual and not by way of a tax on the superannuation fund that received, or is the holder, of the contributions.
2. That the ATO model the administration of the tax on the existing processes for levying and collecting excess contributions tax.
3. That defined benefit funds be given the capacity to offer a tax-offset account to members so that payment of the tax may be deferred until the member's benefit crystallises.

1. General comments

The Association of Superannuation Funds of Australia (ASFA) would like to provide this brief submission with respect to the proposal announced in the 2012 Federal Budget to reduce the level of superannuation taxation concessions available to very high income earners.

While not endorsing the proposal, and having reservations about the net increase to government revenues that will flow from implementing the measure, ASFA would like to offer a series of recommendations on the design of the administration arrangements. These are set out below.

2. A tax on the individual

With regards to the collection of superannuation related taxes there are three general methods applied by the ATO

- assess the fund holding the money (contributions taxes);
- assess the individual (excess concessional contributions tax);
- impose a withholding obligation on the fund holding the money (benefit payments tax, no-TFN tax)

Assessment against a fund can work smoothly and efficiently where the tax is applied uniformly across all members (e.g. contributions tax on concessional contributions at a flat 15% of the contributed amount).

Assessment against the individual is the best path where assessment of the obligation relies on the collection and referencing of a range of information (e.g. excess contributions tax with its need to know details of all contributions made by and in respect of an individual to all funds the individual may be a member of.)

The withholding of taxes by a superannuation fund works well where the withholding rules are clear and all required information is held by the person with the withholding responsibility. In the superannuation context there is clarity of both the withholding rules and the amount against which those rules are to be applied.

The Superannuation Contributions Surcharge adopted a hybrid administration process. The level of tax was assessed by the ATO based on income tax information, but the assessment was served on the trustee of the fund to which the contributions were made.

This arrangement resulted in enormous costs to the industry and a range of issues for the ATO in collecting the surcharge, not the least of which was that the information about where the contributions currently were being held and the amount of those contributions was typically out of date.

With the introduction of the Simpler Super reforms from 1 July 2007 and its notion of contribution caps assessed against an individual, the issue of collecting the tax penalty associated with a breach of the rules (the Excess Contributions Tax (ECT) regime) was addressed by focusing on the individual rather than the fund that contributions for the individual were paid to. In hindsight, this is the approach that should have been adopted for the superannuation contributions surcharge (notwithstanding the complication that would have been caused by the surcharge advance instalment regime that existed for several years.)

As the starting point for this tax is the level of the individual's income as based on their income tax return, and the information on the person's superannuation interests and held by

the ATO will not be current, ASFA's considered view is that an assessment issued on the individual is the appropriate course of action.

3. Modelled on existing ATO processes

Should the Government agree with industry that the reduction in the tax concessions available to very high income earners on their superannuation contributions should be collected by way of a tax assessed on those individuals, then there appears to be two potential administration methods:

- Self-assessment and
- Direct assessment

ASFA would argue strongly that due to the complexity of the proposed income test and the difficulty for an individual to determine the actual contributions made by them and on their behalf this tax is not a suitable candidate for a self-assessment regime.

ASFA would argue strongly for a direct assessment approach with the administration arrangements modelled on those used for the ECT assessment process.

That is, the assessment would be based on the individual's income tax return information and the contributions information provided by superannuation providers to the ATO. The ATO would assess an individual's liability for the tax and where appropriate issue a tax assessment to the individual. To alleviate payment pressures, on receipt of the assessment the individual could choose to pay the assessment or refer it to their superannuation provider for payment.

4. Consideration of members with defined benefit interests

Currently, certain members of defined benefit funds have their contributions capped for excess contributions cap purposes under grandfathering arrangements. Should similar arrangements not apply to this measure then some fund members may be subject to a significant tax liability which they will typically not be able to transfer to the defined benefit fund for payment. To address this issue ASFA recommends that consideration be given to the inclusion of a provision that would enable a defined benefit fund, should they so wish, to run a tax offset account for affected members with the tax being payable once the member's benefit crystallised.

To cater for the specific needs of members of exempt public sector superannuation schemes it may be necessary for the tax offset facility to be managed by the ATO, as occurred with these members' surcharge debts.

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If you have any queries or comments regarding the contents of our submission, please contact Robert Hodge on 02 8079 0806 or via email on rhodge@superannuation.asn.au.

Yours sincerely

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