

File Name: 2014/18

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RE: Protection measure for announced but un-enacted tax amendments

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the request for comments on exposure draft legislation to provide legislated protection for taxpayers who have self-assessed in accordance with announced changes that the Government has subsequently determined will not proceed (discontinued announcements).

About ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. 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.

General comments

ASFA strongly supports the protection provisions to be introduced by the proposed amendments to the *Income Tax Assessment Act 1936* with respect to discontinued announcements.

We note that the structure of the relief provision is by way of reference to a table which lists the discontinued announcements. We support, with modification, this structure.

Separately ASFA has concerns that, over the years, there has been an increasing tendency for governments to legislate by press release. That is, the government makes an announcement, states that it has effect from a specific date and then commences the often lengthy task of consultation and enacting legislation. Significantly, this process tends not to be applied to matters such as closing a tax avoidance scheme or introducing other revenue measures, typically in association with the Budget process, but increasingly announcements with respect to tax expenditure measures are of this nature.

This process of legislation by announcement can create uncertainty for taxpayers and their advisers and can add considerably to business costs. ASFA considers that this process of announcing a measure and a specific commencement date should be avoided if possible. The need to put forward the current draft legislation, which includes an un-enacted measure announced in March 2006 (and re-announced in the Howard Government's May 2006 Budget), is proof of how problematic legislation by press release can be.

ASFA recommends that, in the interests of reducing unnecessary red-tape costs, clear guidelines be established as to when it is, and is not, appropriate to announce a proposed measure with a specific start date, especially an immediate one, and when the Government should announce the deferral of a proposed measure's announced start date – ideally with sufficient notice. In formulating the guidelines consideration should be given to the impacts on business and individuals arising from any uncertainty.

The following is an example of the business impacts that can arise from the process of legislation by press release:

The Abbott Government announced a two-year pause in the increase in the Superannuation Guarantee (SG) rate from 9.25% to 9.5%, with effect from the 2014-15 financial year. The legislation to give effect to this measure is linked to the repeal of the Mineral Resource Rent Tax (MRRT). The MRRT repeal legislation is currently stalled in the Senate and is unlikely to be passed until some time after 1 July 2014, when the new Senate is in place.

Accordingly, on 1 July 2014 the SG rate will become 9.5% and will remain at that level until such time as the MRRT repeal legislation is passed. Based on the legislative requirement, payroll providers will be rolling out updated software which, from 1 July 2014, will create SG payments at the rate of 9.5%¹.

Should the requisite legislation be passed and the SG rate for 2014-15 be re-set at 9.25%, payroll providers will have to issue amended software to employers. Additionally, assuming retrospective effect, employers will have to make manual adjustments to future SG payments with respect to employees who had contributions made at the (then applicable) higher 9.5% rate. The administrative cost to employers and payroll providers in dealing with the delay in the passage of this legislation is self-evident. Importantly, these costs are avoidable.

A preferable process would have been for the SG pause commencement date to have been advised as being the financial year following the year in which the measure is legislated.

Specific comments

Table of discontinued provisions

Proposed sub-section 170B(9) contains a table which lists the announcements to which section 170B applies together with details as to when an announcement is considered to be 'on foot' for the purposes of the section. The basic structure of a reference table is supported. We suspect, however, that there will be future occasions when a government decides not to proceed with a previously announced measure or is otherwise unable to proceed. To accommodate this, and thus simplify this process in future, ASFA suggests the following modification to the provision:

- the insertion of a regulation making provision (should one be required)
- the placement of the table into a regulation
- amendment of the table structure to include a column 3 – end date
- amendment of paragraph 170B(1)(9) to point to the regulations
- amendment of the definition of *on foot* in paragraph (9) to refer to the period covered by the dates in column 2 and column 3 of the table

The above structure would enable a government to give early effect to an announcement not to proceed with a particular measure by amending the table by way of legislative instrument.

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I trust that the information contained in this submission is of value.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email rhodge@superannuation.asn.au.

Yours sincerely



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¹ The ATO has confirmed that employers must pay SG at the 9.5% rate until the legislation is amended.