

File Name: 2017/21

7 August 2017

Manager
Accumulation and Savings Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

via e-mail to superannuation@treasury.gov.au

Dear Mr Preston,

Re: Consultation on the *Housing-Related Superannuation Measures*: Draft legislation

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission in response to the consultation on the *Housing-Related Superannuation Measures*: Draft legislation (Draft Legislation).

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire Australian superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through our service provider membership, represents over 90 per cent of the 14.8 million Australians with superannuation.

A. General comments

ASFA welcomes the release for public consultation of the Draft Legislation on the *Housing-Related Superannuation Measures*.

In a general sense, ASFA recognises home ownership as an important contributor to quality of life in retirement and can see benefits from the First Home Super Savers Scheme (FHSSS) in terms of member engagement.

It is, however, important to maintain the integrity of the superannuation system and we are strongly of the belief that funds should only be released and utilised for the purchase of a first home. We would be concerned to the extent that money is able to be withdrawn and not used to purchase a house and we note that the design adopted in the exposure Draft Legislation would allow this to occur. While there is a penalty regime, allowing money to be taken out for purposes other than a home has the potential to undermine the purpose of superannuation. Tightening the release of funds to the event of purchasing a house will address these concerns.

It is worth acknowledging that, as part of our consultation with ASFA member superannuation providers, differing views have been expressed as to the policy merits of the measures. While generally supportive of the downsizing measures, significant concerns have been expressed with respect to the FHSSS. With respect to downsizing it has been observed that it will be critical that members receive personal financial advice, especially with respect to social security means testing, as selling the primary residence (exempt asset) and contributing proceeds into superannuation (counted against the assets test) may reduce, or even remove, their entitlement to the Age Pension.

All of our member superannuation providers have, however, expressed a desire to ensure that the administrative and operational impact on funds is minimised. As the cost of implementing these schemes will be borne by all members of superannuation funds, not just those able to utilise the measures, it is imperative that the measures are designed to be as efficient and cost effective as possible.

B. First Home Super Savers Scheme (FHSSS)

1. Policy Issue – early release of funds

As part of our consultation process with ASFA member superannuation providers, mixed views have been expressed as to the policy of allowing early access to superannuation for the purchase of a first home. Even amongst those ASFA member superannuation providers who support the FHSSS, however, concerns have been raised that the design of the scheme should ensure that any funds released are utilised in the purchase of a first home.

ASFA recognises that ownership of a home makes an important contribution to a person's quality of life, before and during retirement, both financially and in providing security of tenure.

From a financial perspective, the most significant aspect of home ownership is the removal of the need for members to pay rent in retirement. While there are costs associated with maintaining a home, generally these are significantly less than the amount that would have to be paid to rent a property.

Furthermore, the equity in a home can represent a significant financial asset, which, subject to the availability of suitable/appropriate products, can be released by the member to provide supplementary income in retirement.

It is on this basis that this exception to the preservation rules, to allow limited access to voluntary contributions for the purchase of a home, could be justified.

Accordingly, ASFA is of the view that, to maintain the objective and integrity of the superannuation system, it is important that released funds are utilised only for the purchase of a first home.

One possible option to achieve this would be to design the FHSSS such that, after a member has applied to the Australian Taxation Office (ATO) for the release of the relevant amount, the ATO would transfer the net amount to the entity, as nominated by member, which is to provide the finance for the acquisition of the property (financial provider).

Transferring the funds to the financial provider, as opposed to the member, would ensure that the funds would only be released to the member for the purpose of financing the purchase of the member's first home. If a property were not purchased within 12 months (or such longer period, up to 24 months, as agreed by the ATO) the funds could be then be repatriated to the ATO by the finance provider and then remitted to a superannuation fund.

This design would have the further advantage of mitigating the issues with respect to re-contributing amounts into superannuation, as detailed in section 3.3 below.

2. Administration by the ATO

ASFA member superannuation providers are generally supportive of the proposed design and of the administration of the scheme by the ATO.

There are significant benefits achieved through the administration of the scheme by the ATO, including

- the ATO is in an ideal position to monitor members' eligibility for the scheme, including
 - the amount of voluntary contributions made by the member during the relevant period (refer to section 3.1 below re salary sacrifice contributions)
 - whether the member had previously acquired a property
- the ATO is able to determine the appropriate amount:
 - that the member is entitled to have released from the superannuation fund
 - of withholding tax to be deducted prior to the ATO forwarding the net amount to the member (current design) or finance provider (ASFA proposed design)
- transactions between the ATO and superannuation funds could be facilitated by the current 'Government to Business' SuperStream transaction processes, including the existing 'Release Authority' process
- the achievement of significant efficiencies and reduced costs in implementing the scheme; and
- a consistent member experience.

Further – if the design of the scheme were to be amended such that funds were released to the member's finance provider – an additional benefit would be that, as the repatriation of unused monies would be from the finance provider to the ATO (and then to the fund), this would ensure the correct treatment for the purposes of the contribution caps.

3. Operational design considerations

3.1 Salary sacrifice contributions

Member superannuation providers have identified that often employers combine salary sacrifice contributions with employer contributions and, accordingly, it may prove difficult to determine salary sacrifice contributions, as opposed to compulsory employer contributions, through fund reporting alone. For this reason it is imperative that it is the ATO, which determines the amount eligible for release.

3.2 Implementation costs

In order to achieve an effective and efficient administrative solution for members, the ATO and the superannuation industry it will be important that the scheme is designed to minimise the degree of change to information technology systems and processes. Centralising the administration of the scheme through the ATO will serve to reduce the costs of implementation significantly.

3.3 Re-contribution of unused FHSSS amount

ASFA member superannuation providers have identified that amounts re-contributed

- are to be treated as normal non-concessional contribution (NCC) to the fund; and
- count towards the member's NCC Cap

and, as such, there will be no additional data element to be captured by funds and reported to the ATO.

Accordingly, this means there is no method by which the contribution can be identified by the fund as a FHSSS re- contribution.

Under the current process for claiming a tax deduction under section 290-170, if the fund is not aware that an amount is a FHSSS re-contribution the fund will not be in a position to disallow the member from claiming a personal deduction.

There are proposals to streamline the process for claiming a personal superannuation contribution deduction, which will necessitate the member requesting the deduction via the ATO and the ATO notifying the fund of the deduction. There is a risk, however, that this revised process will not be in place by 1 July 2018. If this is the case and the current practice remains, funds will not be in a position to reject the deduction.

3.4 Design issues

3.4.1 *Indexation of prescribed limits*

To ensure that the measures continue to provide the intended outcomes as the concessional and non-concessional contributions caps increase with indexation over time, we submit that indexation should be applied to the prescribed limits for the FHSSS contributions. We would suggest that the annual and total voluntary contribution limits of \$15,000 and \$30,000 respectively are subject to annual indexation to AWOTE, rounded to the nearest \$2,500.

3.4.2 *Limiting FHSSS to permanent residents*

It appears as though there are no residency requirements imposed with respect to eligibility for the FHSSS. If this is the case, this will mean that foreign residents and temporary residents of Australia who have accumulated superannuation in Australia would be able to access the scheme to assist them in purchasing a residential property in Australia. Given the policy objective of reducing pressure on housing affordability, we suggest that the scheme could be restricted to permanent residents and citizens of New Zealand.

3.4.3 *Timeframes for processing FHSSS determinations and issuing release authorities*

The final design of appropriate timelines for the processing of FHSS applications and the issuing of release authorities will be affected by whether the final design provides for release to be made to the member or to their finance provider.

3.4.4 *Restriction based on release authority having been issued previously is unduly restrictive*

The exposure Draft Legislation proposes that an individual will be prohibited from accessing the FHSSS if previously they have requested the Commissioner of Taxation to issue a FHSSS release authority.

There may be a range of circumstances, which prevent an individual from purchasing a first home after applying to access an amount under the scheme. We are concerned that it would be unduly restrictive to exclude a person from accessing the scheme simply on the basis of their having made an application. Instead, we submit that a member should be restricted from reapplying where they have accessed the funds and either used them to purchase a first home or, if not, have failed to repatriate the funds back into superannuation.

We note that, if the scheme is redesigned to have the ATO release funds to the finance provider, this should cease to be an issue, as unused funds would be repatriated by the finance provider to the ATO and then by the ATO to a superannuation fund.

If the scheme design remains as it is we submit that, in circumstances where

- a member's superannuation provider has been unable to release the required amount in accordance with a release authority; or
- a member
 - receives an amount from their superannuation under the scheme
 - is unable to purchase or construct a first home within 12 months (or such longer period, up to 24 months, as agreed by the ATO); and
 - has re-contributed the amount back to superannuation

then the member should not be prohibited from accessing the scheme in future.

3.5 Technical issues

Member superannuation providers have raised a number of technical issues, which necessitate clarification, as follows.

3.5.1 *Tax component*

Member superannuation providers have sought clarification as to the determination of the tax components of the amount released by the fund and whether the existing proportioning rule would apply.

3.5.2 *Calculated Associated Earnings – transitional period*

Item 1.129 of the exposure draft Explanatory Memorandum (EM) states that, for the 2017/2018 financial year, the ATO will apply earnings from the beginning of the financial year as the ATO will only know the annual, aggregated, amount of contributions received by the fund. From the 2018/2019 financial year, utilising the proposed more frequent reporting of contributions by superannuation funds to the ATO (MATS), the ATO has indicated that it proposes to calculate earnings from the beginning of the month in which the payment was received by the superannuation fund.

As the transition period/timeline for MATS has yet to be designed/finalised, should it extend beyond 1 July 2018 the methodology for calculating associated earnings from the start of the financial year may need to continue for a longer period, until such time as MATS is in place.

C. Downsizing measure

Overall ASFA superannuation member providers have expressed support for this policy.

They do, however, have some serious concerns about the onerous obligations proposed to be placed upon funds with respect to this measure.

1. Contribution not a ‘downsizer’ contribution – fund breach

ASFA superannuation provider members have expressed a strong concern with respect to item 2.87 of the exposure draft EM to the bill, which states as follows: -

“2.87 It is also expected that if an APRA-regulated superannuation provider is aware that a downsizer contribution that it received does not meet the definition of a downsizer contribution in section 292-102, it must report this as a serious breach on its breach register”.

Superannuation providers feel strongly that – as this would not represent a breach on the part of the fund itself, but instead would represent a breach of the regulatory requirements by the member - funds should not be liable to record this as a breach. A superannuation fund does not have access to the necessary information to determine the eligibility of the contribution and, accordingly, is only in a position to accept the contribution on the basis of a member’s self-assessment/declaration. Provided the member has used the approved form the fund should not be held accountable/responsible for any error, omission or deception on the part of the member and it should not be considered to be a breach by the fund.

2. Administrative / operational implications

ASFA member superannuation fund providers have indicated that they need time to assess whether the ‘downsizer’ provisions will necessitate the building of a new contribution type in their information technology systems and processes. Preliminary analysis is being performed to ascertain whether the existing categories of contributions will be sufficient to enable accurate reporting to the ATO with respect to amounts, which are counted towards the contribution cap and the transfer balance cap.

As part of this assessment providers will need to know whether either ATO and/or APRA reporting is going to require these items to be identified separately – ideally this will not be the case but these items need to be identified separately then new fields will need to be built. Accordingly, funds would appreciate any details with respect to ATO and/or APRA reporting as soon as practicable.

3. Design issues

3.1 Acceptance of downsizer contributions

Superannuation provider members have indicated that it appears that provisions with respect to the acceptance of downsizer contributions mirror those that currently exist with respect to the acceptance of CGT ‘Sale of Business’ and Personal Injury contributions. These require that, in order to accept the contribution, the fund needs to receive the appropriate/relevant ATO ‘approved form’ prior to, or together with, the contribution.

Currently there is no discretion to accept the ATO form after the money has been received. Superannuation provider members have expressed desire for some form of trustee discretion to be introduced to enable them to accept the form late (say within 30 days of receiving the contribution) to avoid the circumstances where a member or adviser is not across the administrative requirements and makes the contribution without the appropriate accompanying paperwork.

3.2 Indexation of prescribed limits

To ensure that the measures continue to provide the intended outcomes as the non-concessional contributions caps increase with indexation over time, we submit that indexation should be applied to the prescribed limits for the downsizer contributions as well. We would suggest that the downsizer contribution cap is set at three times the annual non-concessional contribution cap, which will ensure that the downsizer cap increases in line with any future indexation to AWOTE.

We would like to thank you for the opportunity to provide comments on the *Housing-Related Superannuation Measures*: Draft legislation.

We would welcome the opportunity to discuss with Treasury the matters raised in this submission.

Should you have any questions on any of the matters raised in this submission please do not hesitate to contact me on (03) 9225 4021 or 0431 490 240 or via fgalbraith@superannuation.asn.au.

Yours sincerely

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