

SUBMISSION

Submission to Treasury —
Work test exemption for
recent retirees: draft
legislation and regulations

26 October 2018

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Ms Rebecca McCallum
Manager, Retirement Income Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: superannuation@treasury.gov.au

26 October 2018

Dear Ms McCallum

Work test exemption for recent retirees — draft legislation and regulations

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation package on the work test exemption for recent retirees, released on 2 October 2018.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 15.6 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0808 or by email gmccrea@superannuation.asn.au, or Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or by email jstannard@superannuation.asn.au.

Yours sincerely

Glen McCrea
Deputy Chief Executive Officer and Chief Policy Officer

1. General comments

ASFA strongly supports measures that will improve retirement outcomes for all Australians, and is pleased the Government is proceeding with its May 2018 Budget commitment to provide an exemption from the contributions work test for recent retirees with low superannuation balances.

However, while we welcome the measure, ASFA is concerned that the implementation and administration of the exemption and related amendments to the contribution cap arrangements will involve unwarranted complexity for individuals and impose a significant compliance burden and cost on superannuation providers and the Australian Taxation Office (ATO).

Significantly, the proposed criteria for accessing the exemption introduce a new monetary threshold (total superannuation balance of less than \$300,000 as at the previous 30 June) as well as a new restriction to the already complicated rules for accessing a 'bring forward' of an individual's non-concessional contributions cap. This will potentially create complexity for individuals, making it difficult for them to understand what amount they can contribute to superannuation.

The added complexity may potentially act as a disincentive to the very group the exemption is intended to assist — those with low superannuation balances, who have the greatest need to increase their retirement savings. We anticipate that many individuals would require financial advice to fully understand the implications of the exemption, yet the exemption is targeted at individuals with modest superannuation balances who are, in ASFA's view, unlikely to seek advice.

ASFA encourages the Government to consider expanding access to the exemption to individuals with a total superannuation balance under \$500,000. As well as reducing complexity (by avoiding the introduction of an entirely new threshold into the contribution rules), this would enable a greater number of individuals to take up the opportunity to increase their superannuation savings ahead of retirement.

The interaction of the work test exemption with the non-concessional contributions cap 'bring forward' rules substantially increases the administrative complexity associated with the exemption. The current proposals for how the ATO will administer this interaction potentially require superannuation providers to amend their administration/registry systems to enable them to separately identify contributions made by members utilising the exemption. It further appears there is an expectation that the ATO will make corresponding changes to the electronic reporting system providers must use to report contributions, the Member Account Transaction Service. These changes would be costly and extremely challenging to implement by the intended start date of 1 July 2019.

ASFA further anticipates that the likely volume and quantum of work test exemption contributions would not be significant. It is unlikely that large numbers of individuals will qualify, or be financially in a position, to utilise the exemption, and an individual can only utilise the exemption for one financial year.

Taking into account these factors, ASFA considers that additional restrictions to limit access to the bring forward rules seem unnecessary and inappropriate, given the potential cost of implementation. ASFA is of the view that the limitation on accessing the bring forward rules should not proceed.

We urge Treasury to reconsider the proposed restriction on individuals accessing the 'bring forward' rules under the work test exemption, and to consider the alternative arrangements for administration of the exemption as outlined in the following sections of our submission.

2. Specific comments in relation to the consultation package

2.1. Individual self-attestation should be adequate to establish eligibility for the exemption

When considering whether it is permissible to accept contributions from or for an individual aged 65-74 inclusive (other than mandated employer contributions), a superannuation provider will currently obtain from the individual an attestation that they have satisfied the work test. Such attestations — commonly referred to as ‘work test declarations’ — are the long accepted means for administering the work test. A provider is not currently required to undertake any additional steps to verify that the individual has, in fact, satisfied completed the requisite number of hours of gainful employment.

The draft Regulations introduce a requirement that a superannuation provider may only accept contributions, under the work test exemption, if the individual’s total superannuation balance (TSB) at the end of the previous financial year was less than \$300,000. The explanatory statement further indicates that providers will need to “request information from members that would allow the provider to assess whether a member has a total superannuation balance below \$300,000 on the 30 June of the previous financial year”.

This approach is problematic, as superannuation providers do not have comprehensive oversight of their members’ TSBs. In particular, providers have no awareness of benefits that individuals may have in, or received from, other providers. Accordingly, providers will have no basis on which to “assess” an individual’s TSB and the information provided by the individual would have to be taken at face value. ASFA considers that the proposed requirement for the provider to “request information” from the individual in order to “assess” whether their TSB was under \$300,000 provides no greater safeguard than a simple self-attestation from the individual via a modified work test declaration.

The proposed work test exemption effectively represents an extension to the existing contribution acceptance rules. In ASFA’s view, it would be appropriate to allow superannuation providers to administer the work test exemption via an appropriate expansion of the current work test declaration process.

In particular, the expanded work test declaration would require an individual to state that they:

- were gainfully employed on at least a part-time basis during the financial year before the financial year in which the contributions were made (that is, they satisfied the work test in the prior financial year)
- had a TSB at the end of the previous financial year of less than \$300,000 (or the selected threshold – see section 2.2 of this submission)
- have not previously relied on the work test exemption to make contributions (if this restriction is maintained – see section 2.4 of this submission).

This approach would reduce the administrative cost and burden on superannuation providers and would be consistent with the ‘self-assessment’ approach that has long been adopted for administration of the existing work test. As the integrity of the superannuation tax concessions is managed through caps on concessional and non-concessional contributions, the additional criteria proposed in the consultation package appear to be unwarranted.

To the extent it is considered necessary for the ATO to monitor contributions made under the exemption, we consider that this could be included as an additional item in the individual personal income tax return.

Recommendation 1

The proposed administrative requirement on superannuation providers to request information from individuals in order to **assess** whether their total superannuation balance was under \$300,000 should be removed. Providers should be entitled to rely on a self-attestation from the individual, via a modified work test declaration, that their total superannuation balance was under \$300,000 at the relevant time.

2.2. Appropriateness of the proposed \$300,000 eligibility threshold

The Budget announcement indicated that a condition for accessing the work test exemption would be that the individual had a TSB below \$300,000 as at the end of the financial year. The draft regulations reflect this \$300,000 eligibility threshold. ASFA has a number of concerns regarding this threshold.

In particular, we note that the basis for the selecting a threshold of \$300,000 is unclear and, in ASFA's view, arbitrarily low. Further, the threshold is not indexed, which means it will not keep pace with changes to the non-concessional contributions (NCC) cap and the exemption will reduce in efficacy over time. Increasing the threshold would enable more individuals to take up the opportunity to increase their superannuation savings as they enter retirement.

The addition of a new monetary threshold also further complicates the contribution rules, which have increased in complexity in recent years and have become extremely difficult for the average individual to understand, even where financial advice is obtained.

It would, in ASFA's view, be preferable for the threshold to be aligned to an existing monetary cap or threshold. In particular, ASFA considers that the exemption should be available to individuals with a TSB less than \$500,000. This would align it the threshold for the exemption with that set for the recently introduced measure that allows eligible individuals to 'carry forward' their unused concessional contributions cap.

At the proposed \$300,000 threshold, utilisation of the exemption will — based on the current contribution caps — leave an individual well short of the retirement savings that the ASFA Retirement Standard shows as necessary to fund a comfortable retirement. Adoption of a \$500,000 threshold would allow recent retirees with lower super balances to accrue a more adequate level of retirement savings while also reducing complexity in the system by avoiding the introduction of a new and discrete monetary threshold.

Recommendation 2

The proposed cap on eligibility for the work test exemption — a total superannuation balance of less than \$300,000 — introduces additional complexity and is set too low. The cap should be increased to \$500,000 to align with the new 'carry forward' measure for concessional contributions and to allow more individuals to take advantage of the opportunity to increase their retirement savings as they move into retirement.

2.3. Identification of work test exemption contributions and interaction with the bring forward rules

The exposure draft Bill includes amendments to the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure that an individual cannot rely on contributions made under the work test exemption to trigger access to a 'bring forward' of their NCC cap.

The proposed amendments to address this interaction between the work test exemption and the bring forward rules involve substantial complexity as well as a significant administrative cost and burden.

From the proposed amendments to section 292-85 of the ITAA 1997 and the accompanying draft explanatory memorandum, it appears it will be necessary for the ATO to be able to separately identify contributions made in reliance on the exemption ('work test exemption contributions') for the purposes of determining an individual's NCC cap. In particular, we understand that it will be necessary for the ATO to identify contributions made under the work test exemption from the date that an individual has reached age 65 in order to monitor access to the bring forward rules.

Assuming an individual turns age 65 during 2019-20 (the first year of the work test exemption), and satisfied the work test in 2018-19 but not in 2019-20, the individual's potential NCC cap outcomes for 2019/20 are as follows:

- If the individual has made NCC during the financial year but prior to them turning age 65 and these exceed their general NCC cap, the bring forward will apply even if additional contributions are made on or after the individual's 65th birthday, in reliance on the work test exemption
- If the individual's NCC during the financial year but prior to them turning age 65 are at or below their general NCC cap, any subsequent NCC made in reliance on the work test exemption will not trigger the bring forward rules.

It is implicit from this that superannuation providers will be expected to separately identify, in their reporting to the ATO, NCCs made prior to the individual reaching age 65, and any work test exemption contributions made after age 65 .

This is a matter of significant concern to ASFA members, as it would appear to require the creation and reporting of a new contribution type. This would involve significant changes to providers' (internal) administration/registry systems, as well as to the message standard for the Member Account Transaction Service (MATS), which is the approved form for reporting contribution-related data to the ATO. These changes would involve substantial cost and administrative effort for both superannuation providers and the ATO.

The changes would also be extremely challenging to implement before the proposed 1 July 2019 start date for this measure — while the changes to the regulations may be relatively easy to effect, there is no guarantee when the necessary amendments to the tax legislation might be introduced into, let alone passed by, Parliament. ASFA envisages that further consultation will be required, between industry stakeholders and the ATO, to develop an appropriate reporting process.

ASFA is firmly of the view that superannuation providers should not be required to separately report work test exemption contributions as a separate contribution type on the MATS at this time. Rather, such contributions should continue to be reported by providers to the ATO as part of the individual's total NCC for the relevant period.

It is, in ASFA's view, important to reiterate that the **sole rationale** for separate identification of 'work-test exemption contributions' is to ensure these contributions are not counted when considering whether an individual has exceeded their general NCC cap and triggered the bring forward rules. This is an issue that will arise only in the year in which an individual reaches age 65 and has work test exemption contributions, because an individual must be under age 65 at some time during a financial year to trigger the bring forward rules, and the work test exemption is only relevant once an individual has reached age 65.

ASFA further anticipates that the likely volume and quantum of work test exemption contributions would not be significant, as it is unlikely that large numbers of individuals will qualify — or be financially in a position — to utilise the exemption.

Taking into account these factors, ASFA submits that additional restrictions to limit access to the bring forward rules seem unnecessary — and inappropriate, given the potential cost of implementation. ASFA is of the view that the limitation on accessing the bring forward rules should not proceed.

In the event that the restriction on the bring forward rules is maintained, necessitating separate identification of work test exemption contributions, it is critical that this is achieved in a manner which minimises the costs and effort of implementation and ongoing administration, for superannuation providers and the ATO.

The message standard for MATS was only recently implemented, at significant cost and effort to superannuation providers and the ATO. The standard is not currently scheduled for an update and ASFA submits that it is unreasonable to require one simply to accommodate ATO monitoring of the bring forward rules, particularly since it is feasible to provide for that monitoring through other means. It may be appropriate to provide for mandated reporting of work test exemption contributions at a later date, however this should be effected as part of a scheduled update of the MATS message standard, with an appropriate timeframe allowed for industry consultation and implementation by superannuation providers and the ATO.

The reporting issues raised by the work test exemption are not dissimilar to those experienced with the recently introduced 'downsizer measure'. To avoid mandatory change to the MATS to create a new contribution type for the downsizer contributions, the ATO has adopted a practical online portal solution. Under this process, superannuation providers are able to report any downsizer contributions they receive as part of an individual's total NCCs via MATS, then access a separate ATO online portal to record the relevant amount as downsizer contributions.

ASFA considers that — if separate identification of work test exemption contributions is required — the ATO should allow providers to report these amounts via the portal as for downsizer contributions. We note that this approach would still require providers to be able to internally identify work test exemption contributions, and is therefore not without cost and administrative effort. It would, however allow a measure of flexibility in the way that providers administer their reporting obligations.

Recommendation 3

The proposed restriction on access to the 'bring forward' rules should be removed.

Alternatively, if the restriction is maintained, the solution adopted by the ATO to monitor access to the bring forward rules should allow providers flexibility in terms of how they report work test exemption contributions. Any mandated reporting of a new contribution type via the Member Account Transaction Service (MATS) should only occur as part of a future, scheduled update of the MATS with an appropriate industry consultation and implementation timeframe.

2.4. Limiting the exemption to one financial year only

Proposed sub-regulation 7.04(1A)(d) effectively restricts the utilisation of the work test exemption by an individual to one financial year.

In ASFA's view, this restriction significantly adds to the complexity of the exemption for individuals and superannuation providers and will appreciably increase the administrative burden and costs associated with the measure.

ASFA considers that this restriction is inconsistent with the objective of encouraging individuals to save for their retirement through superannuation, and inconsistent with changing work patterns that may see individuals moving in and out of regular employment. ASFA is of the view the restriction is unnecessary and should be removed— particularly if our recommendation to increase the proposed \$300,000 TSB threshold (see section 2.2) is not accepted.

Recommendation 4

The proposed condition restricting use of the work test exemption to one financial year only should be removed.