Association of Independent Retirees (A.I.R.) Limited
Working for Australians in Retirement

Superannuation Reform Package

Public Consultation on the Second Tranche of Exposure Draft Legislation

[Issued on 28 September 2016]

Submissions due
10 October 2016

The Association of Independent Retirees (A.I.R.) Limited is the national peak body representing partly and fully self-funded retirees.

A.I.R. works to advance and protect the interests and independent lifestyle of Australians in retirement. A.I.R. seeks to *secure recognition and equity for Australians who, through their diligence and careful management, fully or partly self-fund their own retirement needs.*

A.I.R. members have a clear understanding of the need for changes to allow for better management of the financial risks they face in retirement, and other issues of concern such as self-sufficiency and adequacy that impact on their capacity to have an independent and fulfilling retirement.

The release for public consultation of the second round of Exposure Draft Legislation for the superannuation reforms first announced in the 2016-17 Budget covers legislative amendments to:

1. Introduce a $1.6 million transfer balance cap and transitional arrangements for individuals who already have retirement phase balances above $1.6m. Included also is detail on amendments to provide commensurate treatment for defined benefit and constitutionally protected funds;
2. Reform the taxation of concessional contributions (i.e. lower the Division 293 tax income threshold to $250,000 and reduce the concessional contributions cap to $25,000);
3. Allow catch-up concessional contributions for those with balances less than $500,000;
4. Remove regulatory barriers to innovation in the creation of retirement income stream products;
5. Improve the integrity of transition to retirement income streams; and
6. Remove the anti-detriment provision.

A.I.R. is concerned at the impact of this draft legislation on those who are self-funding their retirement and the very short time allowed for consideration of and response to this Draft Legislation. As a result the Association's comments in this submission are necessarily brief and are only in regard to item 1 above.

Whilst there are issues associated with items 2, 3, 4, 5 and 6 the available time has not permitted us to examine this in any detail and make comment. The issue is that significant time is needed to fully assess and give meaningful comment on a document that comprises 85 pages with another 127 pages of explanation. A longer period for comment on complex legislation such as this would be welcomed by those directly impacted by it and the organisations seeking to respond adequately to the Government's call for public consultation.

A.I.R. supports the introduction of a cap on income stream retirement products as proposed in the Draft Legislation. However we consider there is discrimination against account-based retirement income stream pensions when compared to the proposed method of emulating this cap for the defined benefit retirement income stream pension products and constitutionally protected retirement income stream pension products.

In simple terms we have, we believe, two caps:

1. a $1.6m assets cap for account based pensions; and

2. a $100,000 income cap per annum for defined benefits, annuities and constitutionally protected pensions where there is an additional 15% tax on the income received above this “cap” to be paid in any financial year.

Where is the discrimination?

Account based retirement income stream pension holders carry all the investment risks and impact of market fluctuations along with a requirement to be in a conservative retirement investment phase (quite different from the accumulation phase) and earnings over the next 10 years; with 2% to 2.5 % inflation these people may struggle to return more than 5% per annum (with a 3% earning above inflation). At $1.6m this equates to just $80,000 per annum whilst the non-risk account based pension and annuities are assessed on $100,000 per annum.

(It should be noted that the latest ASFA Retirement Standard benchmarking of the annual requirements to fund either a comfortable or modest standard of living in the post-work years, the assessment of future earning has been revised to 5% per annum).

This is clearly discriminatory and it would a valid assumption that over time there will be additional enforced service asset and income tested user-pays fees. It may be further assumed that for self-funded retirees the resulting 20% assessment difference will also discriminate against account based retirement income stream pensioners.

To get this right there must be a more consistent value determined for assets and income no matter which income stream pension products or package of different products a retiree has.

A.I.R. believes this should be either:

1. the combination of $1.6m of assets for account based pensions and income of $80,000 per annum for defined benefit, annuities or constitutionally protected pensions; **or**
2. assets of $2m for account based pensions and income of $100,000 per annum for defined benefit, annuities or constitutionally protected pensions

A.I.R. therefore recommends that the Cap for account based pensions be raised to $1.8m and that the proposed treatment of defined benefits plans, annuities and constitutionally protected plans be reduced to $90,000 per annum in the final legislation.

This would give a more equitable and realistic 20 times multiplier rather than the talked about 16 times multiplier rule, and does not anticipate any further offsetting to compensate for an individual’s financial investment risk from the asset in an account based retirement income stream product.

In addition, A.I.R. believes there is further discrimination against account based income stream pension assets with the cap being adjusted for CPI but in $100,000 increments. So with 2% inflation the next increase will be to $1.7m, and it will be some four years’ time before this is increased. We believe this is not consistent with the treatment for defined benefit pensions and annuities with CPI indexation.

Finally we fail to understand how the cap is to be applied to a retiree who currently has $600,000 of assets in an account based pension and also receives an $80k per annum indexed defined benefit pension or an annuity or some other similar product. We presume this would assessed with the $600,000 added to 16 times $80,000 = $1.8m, and an instruction that the account based pension be reduced to $320,000 and $280,000 by transfer to an accumulation fund or cashed out.

A.I.R.'s concern is shared by the SMSF Owners Alliance and members with self-managed superannuation funds in place or who have plans to do so under the current rules. We support the submission from the SMSF Owners Alliance, particularly in regard to:

Implementation

The draft legislation anticipates that on or before 1 July 2017, people will know their superannuation balance down to the last dollar. However, for self-managed superannuation funds in particular, it can take months for the trustees and the fund's accountant to assess the value of the assets in the fund, identify the earnings, calculate the tax due and prepare tax returns.

Another complication is that people with self-managed superannuation funds may also have superannuation accounts with APRA funds and/or be members of defined benefit schemes.

It is not clear how relevant information from different funds and accounts will be drawn together so adjustments can be made to balances to comply with the new transfer balance cap and the new limits on non-concessional contributions.

It is anticipated there will be a lot of confusion and honest mistakes made before the system is bedded down and the period of 60 days allowed for the correction of excess amounts held in a pension account is too short.

We recommend that a period of at least 12 months be allowed for implementation of the new measures. During this period there should be no penalties applied for holding an amount in excess of the transfer balance cap in a pension account.

Retrospectivity

The $1.6m transfer balance cap is just as retrospective as the proposed $500,000 non-concessional cap that was withdrawn by the Government largely because of widespread concerns about its retrospectivity.

The Tranche 2 draft legislation is similarly retrospective as it catches people who had already moved their superannuation into pension mode and will require these people to re-engineer their superannuation, and pay tax for which they were not previously liable.

Had they known this change was coming, they might have made different decisions about when to retire and how to order their financial affairs.

It is a long recognised principle of taxation law that it should not be changed with retrospective effect to the disadvantage of those who had abided by the law.

The right thing to do would be for the Government to 'grandfather' the existing rules under which people have saved for their retirement and apply the new measures prospectively.

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