



Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
Parliament House
Canberra, ACT, 2600

06 June 2018

Dear Mr Fitt

**Re: Inquiry into Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018
[Provisions]**

Thank you for the opportunity to provide comments on the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018 [Provisions].

By way of background, Dixon Advisory provides administration and advice services to 8,000 self-managed superannuation fund (SMSF) trustees with a combined asset base in excess of \$5 billion.

Our comments are limited to Schedule 2 and 3 of the draft legislation.

Schedule 2 – Superannuation – employees with multiple employers and concessional contributions

The changes proposed in Schedule 2, which allows individuals to avoid breaching their concessional contribution cap when they receive superannuation contributions from multiple employers by opting out, would be a welcome improvement.

There are three hypothetical scenarios we would like to address: (1) issuing of a shortfall exemption certificate when there is no agreement between an employee and employer; (2) situations where an employer chooses to disregard a shortfall exemption certificate; and (3) situations where the employee cannot reach agreement with the employer. While the draft legislation does not explicitly avoid these hypothetical scenarios from occurring, we agree that in practice employees seeking to access the flexibility to opt out of superannuation guarantee payments with a particular employer would have a strong bargaining position, be able to self-advocate and appropriately record any agreement. Further, in our experience, employers seek to accommodate employees with such bargaining power and act in good faith in negotiations.

Scenario 1 and Scenario 2 - issuing of a shortfall exemption certificate when there is no agreement between an employee and employer and situations where an employer chooses to disregard a shortfall exemption certificate

Noting that the Commissioner, in assessing whether it is appropriate in the circumstances to issue a shortfall exemption certificate, may have regard to any other matter that is relevant (S19AB (3) (c) and (6)), we believe it would be necessary for the Commissioner to consider whether the employee will receive offsetting compensation (cash or non-cash remuneration) for opting out of superannuation guarantee payments.

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Issuing a shortfall exemption certification would not be appropriate where the employee does not receive adequate or any compensation for opting out of superannuation guarantee payments with the relevant employer or where the employee does not have a record of agreement with the employer being reached. An employee would have limited recourse to address a situation where the employer chooses to disregard a shortfall exemption certification that is issued if they could not substantiate a prior agreement with the employer subject to the issue of a shortfall exemption certificate.

Practically, this could be overcome via the Commissioner seeking confirmation as part of the application for a shortfall exemption certificate. While the employee must make the application under the proposed law, the Commissioner could require a standardised clause to be included as part of the application process that is required to be signed by the employer which attests to issues such as whether there is an agreement subject to the issuing of a certificate, the date the proposed agreement will take effect, and the changes to the cash and non-cash remuneration agreed. This documentation would ensure existing laws would apply to the enforcement of the agreement underpinning the application for a shortfall exemption certification that is granted – including ensuring the employer follows through with the new arrangement once the certificate is issued. As this the information provided would already need to be agreed under the smooth operation of the proposed policy, we believe such a process would not add to the administrative burden of the regime and may assist smaller employers to manage the implementation.

Scenario 3 - situations where the employee cannot reach agreement with the employer

We would expect that employees who would qualify for these provisions would have a strong ability to self-advocate due to the nature of their work (e.g. company director, surgeon, professional consultant). Employers would have an incentive to reach agreement with the employee and on balance act in good faith in negotiating such an outcome. Further, the employee would have more than one potential employer they could reach an agreement with.

Schedule 3 – Non-arm's length income of superannuation entities

We believe clarification of the position at law for non-arm's length borrowing arrangement in Schedule 3 is welcome from an industry and ATO perspective and will reduce dispute of the legislation by legal and tax professionals or clients.

If you require any further assistance or have enquiries, please contact Spiro Premetis at

[REDACTED]

Yours sincerely,

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