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Senate committee inquiry into Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to appear before the Senate Economics Committee Inquiry into the Provisions of the Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009.

ASFA is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of funds through research and advocacy and to serve ASFA members by providing a range of services. Our members, which include corporate, public sector, industry and retail superannuation funds, account for more than 5.7 million member accounts and over 80% of superannuation savings.

The Bill deals with three different measures, namely the taxation treatment of overseas employment income, the temporary scaling back of the superannuation co-contribution, and the reduction in the caps on concessional superannuation contributions.

The first measure, dealing with overseas employment income, is not a matter on which the Association has any view as it is outside the scope of issues considered by superannuation funds and associated organisations. However, ASFA does have comments to make in regard to the other two measures.

The temporary reduction in the Government co-contribution

ASFA considers that the co-contribution as previously designed was a well-targeted measure. It has provided both direct assistance to the retirement savings of low to middle income earners and as well provided an incentive for such individuals to make their own contributions.

However, hard times apparently call for some hard decisions. In this context we understand that the co-contribution has been scaled back because of budgetary considerations rather than concerns about the design or effectiveness of the co-contribution. However, an unintended consequence of this cut may be further reductions in voluntary contributions to super. These are already down around 50% on the levels achieved a year ago.

ASFA is heartened that it is scheduled to return to its previous level in 2014-15, with a transition to that level through a partial reversal of the reduction in 2012-13 and 2013-14. ASFA will be arguing in future pre-Budget submissions and in submissions to reviews of retirement income provision that co-contribution be both increased and paid at a higher level for low to middle income earners. Currently the low income threshold for the co-contribution is $31,920. For individuals on modest levels of wages ($40,000 to $60,000 a year) receive only a small proportion of the maximum contribution.

The reduction in the concessional contributions cap

ASFA has more concerns about the measure in Schedule 3 of the Bill reducing the concessional contributions caps.

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ASFA's primary concerns fall under the broad areas of

- The message being sent to the community about contributing to superannuation.
- The impact on those approaching retirement.
- Inequities between those protected by "grandfathering" provisions and those that are not.

In regard to the message being sent to the community, this measure does raise some concerns about the level of government support for and commitment to voluntary superannuation contributions. The reductions in the caps are more than 50% given that a foreshadowed indexation adjustment to the $50,000 cap to $55,000 now will not happen if the Bill is passed. On top of recent developments in investment returns, change and uncertainty in regard to taxation settings for superannuation contributions does not engender public confidence in superannuation. ASFA is concerned at what appears to be a winding back and a constraining of the incentives for voluntary superannuation.

An associated issue is that the new caps constrain the ability of at least part of the community to take out insurance cover (for death, disability and/or salary continuance) through superannuation. Many individuals choose to salary sacrifice into super to fund premiums when insurance is held inside super. However, in the situation where a substantial amount of the concessional contribution limit has already been used, this leaves little room to make those salary sacrifice contributions.

While it could be argued that individuals will then simply choose to hold insurance outside super, they will not be able to take advantage of the tax savings available through super and therefore may either choose a lower level of cover (due to affordability) or none at all.

The overall end result could be that more individuals are under-insured and may then need to rely on government support.

The impact on those approaching retirement

In ASFA's view the proposed new concessional contribution caps are not appropriately targeted in that they will have a significant impact on individuals who do not have significant current superannuation savings but who are attempting to catch up at a time of their life when they can afford to make substantial contributions. This can particularly be the case when a woman has re-entered the fulltime workforce after a break from paid work or having worked part-time.

In various public statements by the government and in the interim report of the Henry Review dealing with the retirement income system it has been claimed that it is very high income earners with relatively high superannuation account balances who make contributions over the proposed caps. However, the provenance of such estimates is not clear. The only public authoritative data available is not supportive of such an assessment.

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For instance, the ABS 2007 Survey of Employment Arrangements, Retirement and Superannuation indicates that only 6% of those surveyed had incomes of $100,000 or more a year. Of those falling within that category only 32.5% made salary sacrifice contributions of $5,000 or more a year.

More specifically in the ABS survey there were only 9 observations of total superannuation contributions of between $25,000 and $50,000, with an average account balance of $237,000. There were 14 observations of total contributions exceeding $50,000, with an average account balance of $355,000. There was only one observation of an account balance of over $800,000 which received contributions of more than $50,000. Treasury would also have access to data from Member Contribution Statements sent by funds to the ATO. However, these statements have only very limited information concerning account balances. The MCSs do not place much emphasis on account balances given that this information is only used for selecting a fund to which to send an individual's co-contribution.

Given the very low number of observations in the ABS survey together with the average account balances that are actually involved, the data available provides a very questionable basis for public policy arguments to halve the caps on concessional contributions, as proposed in this Bill.

Other data from specific funds confirms the impression given by the ABS unit record data. For instance, one public sector fund, the 8th largest in Australia with around 550,000 members, has approximately 2,000 members with contributions in the current year over the new caps, with an average account balance of $247,000.

A survey sample of retail fund members comprising some 10,000 employees found that of the over 50 year old age bracket who were contributing more than $50,000 to super, the average account balance was $206,500. 26% of this group were women. The under 50 year old age bracket who were contributing more than $40,000 to superannuation had an average account balance of $151,500, of which 30% were women.

These data suggest that the current caps are substantially used by those seeking to catch up in their retirement savings. The proposed reduction in the caps will significantly limit their capacity to do so. The age based limits that applied to deductible contributions by employers prior to the introduction of the Simpler Super changes acknowledged that some individuals need to catch up, with then limits of $15,260 for those under 35 rising to $105,113 a year for those aged 50 and over.

ASFA suggests that the Committee recommend to the Government that provisions be put in place to allow a higher cap to apply for those with relatively low superannuation account balances who are seeking to catch up in their retirement savings through salary sacrifice.

Inequities between those protected by "grandfathering" provisions and those that are not

While special arrangements will apply to certain members with a defined benefit interest on 12 May 2009 where notional taxed contributions exceed the concessional contributions cap, there are many individuals who will face tax at the highest personal marginal income tax rate on their contributions even when they are unable to reduce contributions. In a number of cases the tax rate on some of the

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superannuation contributions will be higher than the marginal personal income tax rate that they face.

One example is the accumulation division of the Public Sector Superannuation Scheme, which newly appointed Commonwealth public servants generally are enrolled in. This receives contributions set at 15.4% of salary. For such a public servant on more than $162,000 a year some of their superannuation will be taxed at more than their personal income tax rate.

While the Superannuation Guarantee only applies to salaries up to $152,720 (2008-09 figure) there are a number of industrial agreements and employer practices which do not apply any cap to relevant salary. This will result in individuals breaching the caps despite not making any decision to salary sacrifice.

More specifically, ASFA member funds have identified:

- a considerable number of participating employers that are contributing at higher levels than the 9% levy. These employers operate in a number of sectors including State Government, Local Government, Steel, Manufacturing and Finance.
- a number of Defined Benefit Schemes that contain a compulsory salary sacrifice component. As these amounts do not fund the scheme they are therefore treated as concessional contributions.
- many participating employers that pay an additional productivity rate (that can range from 1-4%) depending on their particular enterprise agreement.
- employers that have incentive programs in place whereby they will match up to 5% (for example) of contributions.

ASFA has also received comments from its members indicating that the benefit of the grandfathering provisions can be lost when successor fund arrangements are put in place and when individuals exercise benefit and contribution options available to them within the set rules of superannuation scheme.

ASFA suggests that the Committee recommend to the Government that the grandfathering provisions be extended to cover arrangements in place as at 12 May 2009 where:

- **individuals have concessional contributions over the caps because of superannuation scheme design.**
- **individuals have concessional contributions over the caps because of the general remuneration practices of their employer or because of an industrial award or agreement.**
- **individuals can increase their concessional superannuation contributions in order to obtain a higher employer financed benefit.**
- **individuals are subsequently involuntarily moved to a successor fund arrangement even where benefits are not strictly equivalent.**