THE TAX INSTITUTE

THE MARK OF EXPERTISE

24 April 2017

The Manager
Retirement Benefits Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Sir/Madam:

Treasury Laws Amendment (2017 Measures No. 2) Bill 2017

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the Treasury Laws Amendment (2017 Measures No. 2) Bill 2017: Superannuation Reform Package Amending Provisions (**Bill**).

As an introductory observation, The Tax Institute expresses its disappointment with the extremely short consultation period that was provided for this measure. The Institute firmly believes that it is in the best interests of all stakeholders to provide adequate consultation periods.

Submission

The provisions in the Bill are intended to clarify the current law affecting Superannuation. However, in our view, the drafting of the proposed amendments has given rise to a few issues.

1. Uncertainty about commuting death benefit pensions

There is uncertainty about the ability to commute death benefit pensions to accumulation phase before 1 July 2017. The effect of the proposed amendments that apply from 1 July 2017 is that death benefit pensions that exist on that date cannot go back to accumulation. They will, however, be able to be rolled over within the system to commence another death benefit pension. The effect of this will be that the recipient of a death benefit pension that is in place on 1 July 2017 and that exceeds the transfer balance cap (**TBC**) will have to take the excess out of superannuation as a lump sum.

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There are many people still in receipt of death benefit pensions, such as reversionary pensioners. Those pensions will not be able to be commuted back to accumulation after 30 June 2017. In effect, if a member has a death benefit pension even one that has been paid for many years, which exceeds the TBC, they will have to take the excess out as a lump sum.

Notwithstanding how the legislation is currently drafted, The Tax Institute considers that where the relevant death occurs before 1 July 2017, death benefit pensions should be able to be rolled back to accumulation. The Institute accepts that if death or reversion occurs from 1 July 2017 and a member has a death benefit pension which exceeds the TBC, they should have to take the excess out of superannuation as a lump sum.

We request that Treasury please confirm that the effect of items 17 and 18 of the Bill is that, for the period from the introduction of the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017* until the end of 30 June 2017, the commutation back to accumulation of any death benefit pension is permitted as a valid roll over benefit.

2. Retirement Phase Income Stream

The decision to amend the definition of a "retirement phase income stream" at item 9 rather than the definition of a transition to retirement income stream (**TRIS**) means that there are now two types of TRIS - those that also meet the definition of a retirement phase income stream and those that do not.

For example, a reversionary TRIS is not a retirement phase income stream until the recipient satisfies a condition of release (**COR**) within 307-80(2)(c), even if it has been in place for years. A reversionary TRIS that is in place as at 30 June 2017 will (assuming it is a valid option) need to be stopped and restarted to satisfy the definition unless the recipient has met a relevant COR.

The Tax Institute considers that amending the definition of a "retirement phase income stream" in this manner is confusing.

In practice the automatic conversion of a TRIS will be an issue. This means that on the satisfaction of a relevant COR the pension becomes a "retirement phase income stream". These events can be as simple as the termination of a gainful employment after the age of sixty. This is an issue especially where the TRIS balance exceeds the TBC. While this can be managed reasonably well in an SMSF by planning and the flexibility of the fund assets all being held in one pool it will still be an issue. In larger funds with separate pools of assets they would need to know ahead of the event that the pension is now a retirement phase income stream.

3. Transfer Balance Account - Credits and Debits

Items 2 and 6 will create an ability for regulations to effect transfer balance account credits and debits.

The Tax Institute is concerned that this ability for regulations to effect transfer balance credits and debits may be used to enact the proposed limited recourse borrowing arrangement amendments (**LRBA**). The Tax Institute considers that the LRBA amendments require separate and detailed consultation before such a measure is introduced.

Any change to the treatment of LRBA in this context should be effected through a thorough Parliamentary process rather than by regulation.

If you would like to discuss any of the above, please contact either me or Senior Tax Counsel, Bob Deutsch, on 02 8223 0011.

Yours sincerely

Matthew Pawson
President