**From:** Noel Beharis [mailto:noelb@affinity.com.au]   
**Sent:** Wednesday, 3 May 2017 3:08 PM  
**To:** Superannuation  
**Subject:** Submission Concerning the Exposure Draft legislation TLA (2017) No.2) Bill: Limited Recourse Borrowing Arrangements

Dear Manager – Retirement Income Policy Division

I have reviewed the Exposure Draft legislation and I make the following Submission:

1.            Please confirm in the EM the that the transfer balance credit under section 294-55, only applies in relation to borrowings entered into on or after the commencement of the Schedule.  As an Integrity measure, I recommend that EM or the legislation expressly states that if the borrowing is to “maintain a borrowing” (ie a refinancing) under s.67A that the transfer balance credit does not apply if original borrowing occurred before the application date of the legislation (please see Item 7 of the Exposure Draft legislation).

2.            Please confirm in the EM that the Amendment to section 307-230 (Item 3 of the Schedule) only applies to LRBA amounts in respect of borrowings that entered into on or after the commencement of the Schedule.

3.            The amendment to section 307-230 potentially double counts amounts in the total superannuation balance calculations or includes in the total superannuation balance amounts that may never be realised as a part of the amounts payable to members.

For example, assume that the value of the assets of a fund net of LRBA amounts were $2.5m split equally between spouses with an individual member balance of $1.25m each which is $350,000 short of the cap per member.  The value of the unpaid LRBA amount is $2m resulting in a total superannuation balance of $4.5m.  There is no prospect that beyond a further $700,000 (ie $350,000) of non concessional contributions or repayments out of the ordinary earnings from the borrowing, that the unpaid LRBA unpaid balance will be paid by the fund.

The earnings of the Fund from the asset would otherwise be taxed and taken into account in calculating the total superannuation balance.  The same conclusion would apply to additional non concessional contributions up to $700,000.  Say there are no earnings, that would mean that $1.3m of the outstanding LRBA amount of $2m will never be repaid in the fund and will never be available for the benefit of the members.  When the asset is subsequently sold, the $1.3m amount that can’t be funded by non concessional contributions will be used to repay the lender and will not be available to the SMSF to fund pensions.

Therefore, increasing the total superannuation balance beyond what could possible by used by a fund to repay the unpaid LRBA Amount would result in the inclusion in the total superannuation balance of the member.

In addition, there is no mechanism to create a transfer balance debit to unwind or reduce the credit included in amount included in the unpaid LRBA Amount when the $700,000 contribution is made to the Fund that is used to repay the LRBA Amount that was formerly included as a Transfer balance credit.  As such, in my view, there is a double counting of amounts in the transfer balance amounts.

4.            There needs to be some recognition that the LRBA amounts is often guaranteed by a member.  If the SMSF is unable to repay the loan because the asset value has fallen, what will be the position of the Transfer balance cap if the Member is called under the guarantee to make good any shortfall.  Will that be treated as a contribution?  Will there be another debit to the Transfer balance amount if the asset value supporting the LRBA falls below the amount due under the LRBA?

I recommend that consideration and thought be given to these issues.  Please call me on 0412 651 858 if you have any queries.

Regards

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