3 May 2017

Manager

Melbourne Unit

Retirement Income Policy Division

The Treasury

Langton Crescent

PARKES ACT 2600

By email: superannuation@treasury.gov.au

To Whom It May Concern

**Submission: Integrity of Limited Recourse Borrowing Arrangements**

1. Taxpayers Australia Limited trading as Tax & Super Australia welcomes the opportunity to submit our views in relation to the Treasury’s draft legislation and associated explanatory materials for changes to improve the integrity of the superannuation system (the draft legislation).
2. We note that the consultation period for the draft legislation was less than a week and consider such a short time to be unacceptable for a government initiative that is intended to impact a large number of superannuants. We request that any subsequent consultation entails a more appropriate public consultation period.
3. Our submission focuses only on item 2 in Schedule 1 in the draft legislation.

# About Tax & Super Australia

1. Taxpayers Australia Limited trading as Tax & Super Australia is a membership-based organisation. Our membership primarily comprises small to medium sized tax practices, sole tax practitioners, small businesses and individual taxpayers. We are a voice for our members in relation to law and policy matters.

# Item 2: Transfer balance credit

1. Item 2 in Schedule 1 proposes to add section 294-55 to the *Income Tax Assessment Act 1997*. This proposed section contains rules regarding a new transfer balance credit. This new transfer balance credit would arise if a payment is made in respect of a limited recourse borrowing arrangement (LRBA) which results in an increase in the value of a superannuation interest that supports a superannuation income stream.
2. We wish to highlight that in unsegregated superannuation funds, otherwise known as superannuation funds using a proportionate approach, specific assets are not tied to any of the fund’s members. The whole pool of the fund’s net assets supports all members’ interests in the fund and none of the fund’s members has any particular share of any asset. Consequently, if a payment is made in respect of an LRBA by an unsegregated superannuation fund, then there can be no disproportionate increase to any member’s interest at the expense of another interest in the same superannuation fund.
3. We propose to add a subsection to the proposed section 294-55 that acknowledges the previous statement and gives greater certainty to superannuation trustees and their advisers that the existing practices of the vast majority of superannuation funds where the whole pool of net assets supports all membership interests are not going to be questioned.
4. The intent of the proposed subsection is to avoid any doubts in interpreting the rules. The main idea conveyed is that in a superannuation fund, in which none of the assets was segregated on any day of the financial year, a repayment of an LRBA will not result in an increase in the value of a superannuation interest that supports a superannuation income stream.
5. We highlight that several existing provisions are already contained in the *Income Tax Assessment Act 1997*, for instance in subsections 328-450(2) and 108-5(2), that serve a similar purpose.

# Concluding comments

1. Thank you for this opportunity to contribute to the development of the Government’s superannuation reforms.
2. We strongly support the application of the rules in the draft legislation only to LRBAs entered into after the commencement of the proposed legislation.
3. This submission has been limited in scope to the proposed additional transfer balance credit due to the short consultation period. We are keen to be involved in any ongoing consultation in relation to other measures proposed in the draft legislation.
4. If you would like to discuss this submission further, please contact our Tax & Superannuation Specialist, Mr Denys Smerchanskyi, on 03 8851 4555 or dsmerchanskyi@taxandsuperaustralia.com.au.

Yours sincerely

Moti Kshirsagar

Chief Executive Officer

Tax & Super Australia