Level 2
95 Pitt Street Sydney, NSW 2000
Telephone 02 8223 0000
Facsimile 02 8223 0077
Email tia@taxinstitute.com.au
Website www.taxinstitute.com.au
ABN 45 008 392 372

22 February 2010

The Hon. Chris Bowen MP
Minister for Financial Services, Superannuation and Corporate Law
Parliament House
CANBERRA ACT 2600

Email: chris.bowen.mp@aph.gov.au

Dear Minister

Excess Superannuation Contributions Tax

I refer to our letter dated 10 August 2009 and your reply of 4 February 2010. Our letter followed a meeting with you on 10 July 2009 that related to various superannuation issues of particular concern to our members. The issue of the application of the excess superannuation contributions tax was one of these concerns.

I write to you to reiterate the Taxation Institute's strong view that the Government must act to stop people being hit with tax penalties of up to 93 per cent that apply to superannuation contributions in excess of government limits. I was encouraged by media reports that you have agreed to examine this matter at the recent national conference of the Self-Managed Super Fund Professionals' Association, so I have again outlined our position below.

The first area of concern is where a member is already close to both the concessional contributions cap and also the non-concessional contributions cap. This could occur, for example, where the person has more than one position of employment and has salary sacrificed to the $25,000 limit (or $50,000 for persons aged 50 or over) with one position and then be subject to compulsory superannuation guarantee contributions with one or more other positions. At the same time they may have also contributed close to the non-concessional cap amount (being currently $150,000 per annum or $450,000 if the person is 65 years or younger and the three year average rule is utilised). This might be a result of contributing funds available from say an inheritance or sale of a business or another investment. In such a case, the additional superannuation guarantee amounts may be subject to a total tax impost of 93%, comprising the initial 15% tax and penalty taxes of 31.5% and 46.5%. This is clearly a significantly onerous outcome.

The second issue can arise where the concessional contributions cap is inadvertently exceeded as a result of a person having employer contributions in excess of this amount due to a combination of factors such as two or more unrelated employers meeting their respective superannuation guarantee responsibilities in respect of the person, or pre-existing salary sacrifice arrangements and/or fixed contribution arrangements. In this case it is inequitable that the member might be subject to penalty tax of 31.5% as a result of matters largely outside their control.

The Taxation Institute notes that under the old “Reasonable Benefit Limit” regime there was scope for an employer to cease making superannuation guarantee contributions in respect of the employee if notified by the employee that the value of their accumulated superannuation entitlement(s) was already in excess of their Reasonable Benefit Limit. This facility then minimised the likelihood of penalty tax rates on excess benefits. However, under the current excess contributions tax regime there is no comparable relief from the imposition of penalty rates of tax.

The Taxation Institute considers that both the above examples are exacerbated by the reduction in the concessional contributions cap to $25,000. However, regardless of this, the Taxation Institute recommends that consideration be given to introducing some form of relief from excess contributions tax via refundable contributions (that is, allowing the member to withdraw the excess contributions within 12 months of the financial year in which they were made) and excising superannuation guarantee contributions from the calculation of excess contributions tax.

We look forward to providing any further information you may require or discussing the above matters in further detail. Please feel free to contact either me on 02 9958 3332 or Robert Jeremenko, Senior Tax Counsel, on 02 8223 0011.

Yours sincerely

David Williams
President