THE TAX INSTITUTE

20 May 2013

The Hon. Bill Shorten, MP
Minister for Financial Services and Superannuation
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Minister

SUSTAINING THE SUPERANNUATION CONTRIBUTION CONCESSION

The Tax Institute recommends that the Government defers to 1 July 2013 implementation of the 2012-13 Budget measure to increase superannuation contributions tax to 30% for taxpayers with income greater than $300,000.

This will:

- Allow sufficient time for consultation to minimise unintended consequences and allow consultation on the draft accompanying regulations alongside consultation on the primary legislation;

- Allow sufficient time for superannuation funds and affected taxpayers to prepare for the application of this measure; and

- Prevent the potentially harsh consequences of the law's retrospective application.

Insufficient consultation

The draft legislation to give effect to this measure was released for consultation on 1 May, 2013. Consultation closed on 8 May 2013, after five business days. The legislation has been subsequently introduced into the House of Representatives on 15 May 2013 via the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Bill 2013*.

Treasury, the Australian Taxation Office ("**ATO**") and private sector participants have all repeatedly acknowledged that sufficient capacity for consultation is essential in order to achieve sound tax policy outcomes and more certainty for taxpayers and the ATO. Thorough consultation is especially important in relation to significant and complex legislation, such as that required to effect this measure, in order to minimise unintended consequences.

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A consultation period of one week in relation to such complex and multi-faceted legislation is grossly insufficient. It is especially concerning that the haste shown by the Government with respect to this measure is not related to any integrity concerns.

The significant Government delay from the policy announcement of 8 May, 2012 to the release of this exposure draft and explanatory memorandum on 1 May, 2013 is no justification for the rushed consultation process. This is especially so as the form of the legislation may not have been fully anticipated by taxpayers and superannuation funds.

The Tax Institute has not been able to make a detailed submission on the proposed legislation within this truncated consultation period. Should the Government reconsider the proposed time line for consultation on and introduction of this measure, we would be pleased to reconsider our capacity to make a submission.

Consultation on accompanying regulations

The implications of the measure, especially for defined benefit funds ("**DBF**"), can only be fully evaluated after consideration of the accompanying regulations. Specifically, the regulations are relevant for:

- setting out how the scope of and the method of determining the amounts of DBF contributions that will be valued as notional contributions so there is equity with contributions to accumulation fund; and
- the exclusion of certain low tax contributions for constitutionally protected funds in respect of State higher level office holders.

As such, we recommend that the draft regulations also be exposed for consultation to facilitate a better informed review of and consultation on the full suite of rules and regulations to implement this measure.

Insufficient preparation time for superannuation funds and taxpayers

The delay in implementation of this measure has resulted in significant uncertainty for the multitude of affected superannuation funds. Each such fund will be required to amend their relevant system/s in order to facilitate compliance with this measure. Further consultation should be undertaken with the superannuation industry to ensure that the implementation of this measure results in minimal compliance costs.

In order to comply effectively with this measure, such system changes will need to be fully operational by the time the first of the fund's affected members has lodged his/her income tax return for the 2012-13 income year – a window that could be as short as a few months after the passage of the amending legislation. The uncertainty caused by the delay is further compounded by ongoing uncertainty in relation to the ability of the legislation to be passed by both Houses of Parliament.

A deferral of the application date of this measure would greatly assist both superannuation funds and affected taxpayers in preparing for the introduction of the measure.

Retrospectivity

Retrospective application of this measure is inappropriate as the form of implementation may not have been readily anticipated by taxpayers and superannuation funds. Specifically, the following extract from your press release of 8 May, 2012: “From 1 July 2012, individuals with income greater than $300,000 will have the tax concession on their contributions reduced from 30 per cent to 15 per cent (excluding the Medicare levy)” would have been construed by many taxpayers to apply at the super fund level.

Instead, the implementation mechanism contemplated by the exposure draft will apply the liability at the member level, with the responsibility for obtaining a right to release authority in order to satisfy the liability from the superannuation account falling on the taxpayer.

This mechanism of implementation may pose inappropriate and adverse implications for deceased estates and salary packaging arrangements that were administered/entered into since 1 July 2012 on the basis of a misunderstanding as to how the measure would be implemented.

In order to avoid such adverse consequences, the measure should only apply prospectively.

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Should you wish to discuss any of the above, please do not hesitate to contact Tax Counsel, Deepti Paton on (02) 8223 0044.

Yours sincerely

Steve Westaway
President

CC: Mr Paul Tilley, General Manager, Personal Retirement and Income Division, The Treasury