



THE TAX INSTITUTE

2 November 2018

Ms Rebecca McCallum
Manager, Retirement Incomes Policy Division
Department of the Treasury
Langton Crescent,
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Ms McCallum,

Work test exemption for recent retirees – Draft legislation and regulations

The Tax Institute welcomes the invitation to make a submission to Treasury in relation to the Government's work test exemption for recent retirees.

The stated objective to the proposed legislation and regulations is to provide a one- year exemption from the work test for superannuation contributions, to allow recent retirees to boost their superannuation balances.

In summary, The Tax Institute submits the following:

- The Tax Institute supports the concept behind the proposal. However, as currently drafted, the proposed exemption is very complex and is likely to be costly for super funds to implement.
- We consider that key aspects of the administration of the proposal should be reconsidered. Specifically, The Tax Institute considers that the exemption should be administered by the ATO rather than by superannuation funds.
- The \$300k maximum balance to access the exemption should be increased to \$500k to align with the balance limit for the carry forward of the concessional contributions cap.
- We are concerned that this new measure will further increase the administrative burden on both trustees and the ATO in relation to monitoring the maximum balance restrictions to access the exemption.

- Further consideration is needed in relation to how genuine errors are treated.
- In the spirit of simplifying an already complex Superannuation system, we urge the Government to consider relaxing or simplifying the integrity measures so that there is no re-assessment by the ATO or trustees (retrospectively) of a member's eligibility.
- We submit that there is a risk that the complexity of the proposed measure will result in a limited number of members that can or will access and benefit from this measure.

The Tax Institute has had the benefit of reviewing the Financial Services Council submission on this issue dated 29 October 2018 (**FSC Submission**, refer Annexure A). The Tax Institute together with The Tax Institute's Superannuation Committee support the comments made in the FSC Submission in relation to this measure. Accordingly, rather than prepare a more detailed submission with similar content, The Tax Institute would like to register its support for the FSC Submission.

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If you would like to discuss, please contact either me or Tax Counsel, Angie Ananda, on 02 8223 0011.

Yours sincerely



Tracey Rens
President

Annexure A

FSC Submission

29 October 2018

Rebecca McCallum
Manager
Retirement Incomes Policy Division
Australian Treasury

BY EMAIL: superannuation@treasury.gov.au

WORK TEST EXEMPTION FOR RECENT RETIREES

The Financial Services Council (FSC) welcomes the opportunity to make a submission to the Treasury on draft legislation providing a one-year exemption from the work test for voluntary superannuation contributions.

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

We support allowing recent retirees with lower levels of retirement savings to make additional contributions to superannuation through an exemption from the work test. However, as drafted, the work test exemption (WTE) is likely to make it difficult for members to understand how much they can contribute to superannuation. This may mean individuals do not take up the WTE or need to pay for additional financial advice that they may otherwise not require.

This complexity will also increase the cost of implementation – particularly relative to the likely number of additional contributions.

The FSC proposes several changes to the practical implementation of the WTE that should simplify its implementation and operation while still achieving the desired policy outcome.

Please contact me for any questions in relation to this submission on (02) 9299 3022.

Yours sincerely

[signed]

Michael Potter
Senior Policy Manager, Economics & Tax



Exemption from work test for super contributions

Submission to Treasury



Summary of FSC Recommendations

FSC Recommendation 1

The FSC recommends that superannuation funds should be able to rely on a declaration from the member that they meet the work test exemption (**WTE**) requirements, consistent with the operation of existing measures. Funds should not be expected to determine a member's TSB before accepting a contribution.

FSC Recommendation 2

The FSC requests further consideration of how to deal with contributions made by a fund member under the WTE that later turn out to be ineligible, particularly focusing on how to minimise compliance and administrative costs for members, funds and the ATO.

FSC Recommendation 3

The FSC recommends the TSB limit for access to the measure should be increased to \$500k to align with the balance limit for the carry forward of the concessional contributions cap.

FSC Recommendation 4

The FSC recommends the proposed change to the bring forward rules for NCCs not be included as part of this measure, to simplify the operation of the WTE for members.

FSC Recommendation 5

The FSC recommends sub regulations 7.05(2) and (3) of the Superannuation Industry (Supervision) Regulations 1994 should also be amended to allow a defined benefit fund to grant an accrual of benefits in respect of members aged 65 to 74 where the member has been gainfully employed on at least a part time basis in the financial year prior to the financial year in which the contributions are made.

FSC Recommendation 6

The FSC recommends the Explanatory Statement be clarified to indicate that for a person to be ineligible for the WTE they must have *made* a WTE contribution in a previous year. Simply *qualifying* for the exemption in a previous year without contributions being accepted under the exemption in that year should not render a person ineligible for the WTE.

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About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

Introduction

The FSC believes that the superannuation system should be as simple as possible for individuals to navigate.

We support allowing recent retirees with lower levels of retirement savings to make additional contributions to superannuation through an exemption from the work test. However, as drafted, the work test exemption (**WTE**) is likely to make it difficult for members to understand how much they can contribute to superannuation.

This may mean individuals do not take up the WTE or need to pay for additional financial advice that they may otherwise not require.

This complexity will also increase the cost of implementation – particularly relative to the likely number of additional contributions.

The costs of implementing the WTE measure will be shared with all fund members, including those that never make use of the work test exemption. It is difficult to argue that significant expenditure on implementation is in the best interest of all members, when budget costings indicate the initiative is likely to be utilised by only a small proportion of members.

The FSC proposes several changes to the practical implementation of the WTE, which will simplify its implementation and operation while still achieving the desired policy outcome.

The potential areas of complexity include:

- requirements for funds to request information directly from members;
- adding an additional total superannuation balance (**TSB**) limit rather than aligning with existing thresholds;
- the interaction of the WTE with the non-concessional contribution (**NCC**) bring forward rule, including the 'one financial year' restriction;
- the potential need to return ineligible contributions; and
- additional fund reporting obligations, and potential creation of a new contribution type.

Administration of the scheme

The FSC considers that for consistency with other superannuation measures, key parts of the WTE should be administered by the ATO rather than by super funds.

The Explanatory Statement states that funds are required to confirm members are eligible for the proposed WTE:

‘Regulated superannuation funds would need to request information from members that would allow the fund to assess whether a member has a total superannuation balance below \$300,000 on the 30 June of the previous financial year. This is because a particular superannuation fund will not be in a position to independently calculate an individual’s total superannuation balance as the fund will not have oversight of an individual’s superannuation interests held in other funds.’

There are several current measures that link eligibility to TSB, but superannuation funds are not required under these existing measures to confirm TSBs before accepting contributions.

Under these existing measures it is the member, rather than the fund, who is responsible for determining if the member is eligible for the WTE. The ATO can then review this attestation. This is because the ATO, unlike a superannuation fund, has the ability to verify the TSB of a member.

The FSC considers this approach should extend to the WTE. If this approach is not followed, implementation of the WTE proposal will create substantial and unnecessary costs that will be shared with all members, including those that will not benefit from the proposal.

FSC Recommendation 1

The FSC recommends that superannuation funds should be able to rely on a declaration from the member that they meet the work test exemption requirements, consistent with the operation of existing measures. Funds should not be expected to determine a member’s TSB before accepting a contribution.

Contributions that are later found to be ineligible

Consideration should be given to the simplest way to administer integrity measures relating to the WTE, to avoid costly and inefficient outcomes.

In particular, further consideration is required in relation to how funds and the ATO deal can with a contribution where a member (or fund) genuinely believes that they were under the TSB cap, but this information subsequently turns out to be incorrect. For example, this could occur due to delays in updating TSB information.

This issue has already arisen in relation to the recent downsizer contribution measure. After a downsizer contribution is received, the ATO may determine that the member was not eligible to this type of contribution. Super funds then need to consider whether that contribution could have been accepted as a NCC in retrospect.

If the fund could not have accepted the contribution as a NCC, then the fund must return the monies back to the member as if the contribution never was accepted in the first place. However, the amounts have by then been subjected to concessional earnings tax and it is difficult to unwind the transaction. It will be even more complex if the contributions are no longer held by the fund or the member has started a pension. This adds to the complexity and cost of the super system for both funds and the ATO.

The situation will be more difficult for the proposed work test exemption, where it appears that all contributions that fail the test for the exemption will have to be returned.

Given there is an existing ATO framework for dealing with excessive NCC contributions, there appears no clear reason it could not be extended for use in relation to the WTE.

FSC Recommendation 2

The FSC requests further consideration of how to deal with contributions made by a fund member under the WTE that later turn out to be ineligible, particularly focusing on how to minimise compliance and administrative costs for members, funds and the ATO.

Maximum super balance for access to exemption

The FSC is concerned that the WTE proposal introduces an additional TSB threshold at \$300k, in addition to the TSB thresholds used elsewhere of \$500k, \$1.4m, \$1.5m, and \$1.6m.

Adding yet another threshold will create additional complexity for members trying to understand the contributions they can make as they plan for retirement. It may also result in additional costs being incurred by members for advice as they attempt to navigate the administrative requirements of the exemption.

It will also add unnecessary complexity into administration of the WTE due to the cost of updating systems to consider an additional threshold, as well as adding cost and complexity to the provision of financial advice.

The FSC considers the \$300k maximum TSB to access the WTE should be aligned with another TSB threshold, such as the existing \$500k threshold for catch-up concessional contributions, to prevent the addition of extra complexity into the system and allow more Australians to take advantage of opportunities to save for retirement.

FSC Recommendation 3

The FSC recommends the TSB limit for access to the measure should be increased to \$500k to align with the balance limit for the carry forward of the concessional contributions cap and allow more Australians to accrue adequate retirement savings.

Bring forward of non-concessional contributions

The complex rules about non-concessional contributions (**NCCs**), particularly bring forward rules for NCCs, are already one of the least understood areas of superannuation.

The proposed change in relation to the limitation on NCC bring-forward will further complicate the law, as will the interaction with the 'one financial year' to the work test exemption.

This complexity will likely have the largest adverse effect on unadvised members, making it difficult for them to understand and access the WTE. However, the added complexity will also create the risk of financial advisers making errors. This will require advice businesses to increase compliance requirements at additional cost.

The existing law accepts the bring-forward provision can be used in the year a member turns 65, provided their TSB is below \$1.4m as at the previous 30 June¹ and they meet the work test where the contribution occurs while 65. Given these measures already exist to limit the amount that can be contributed to super, it is unclear why additional restrictions should be added for those who are likely to be the least financially secure.

In addition, the proposed change to the bring forward rules will result in additional ATO reporting obligations for funds to allow the ATO to administer the NCC cap. Implementation of significant changes allowing for more frequent, electronic reporting to the ATO has commenced and will continue through to April 2019. It will be difficult and costly to make changes to this implementation, or to implement subsequent changes, to support the new reporting obligations required because of the change to the bring forward rules.

Despite this substantial increase in implementation costs, existing contribution restrictions mean that changing the bring forward rules is unlikely to have a major impact on contributions and costs to the Government.

FSC Recommendation 4

The FSC recommends the proposed change to the bring forward rules for NCCs not be included as part of this measure, to simplify the operation of the WTE for members.

¹ Or a two year bring forward period where their TSB was at least \$1.4m and under \$1.5m.

Extension to defined benefit plans

The FSC recommends that the amendments proposed for SIS regulation 7.04 are also made to regulation 7.05 to ensure that members of defined benefit superannuation funds are able to take advantage of the WTE.

FSC Recommendation 5

The FSC recommends sub regulations 7.05(2) and (3) of the Superannuation Industry (Supervision) Regulations 1994 should also be amended to allow a defined benefit fund to grant an accrual of benefits in respect of members aged 65 to 74 where the member has been gainfully employed on at least a part time basis in the financial year prior to the financial year in which the contributions are made.

Eligibility

Draft regulation 7.04(1a)(c) relates to the condition that the WTE is only available in relation to one financial year. It appears draft regulation 7.04(1a)(c) would exclude a member from being eligible to utilise the WTE in a year if they have utilised the WTE **to make a contribution** (or to enable contributions for them to be accepted) in a prior year.

However the draft Explanatory Statement (on page 5) states that a member would be ineligible if they have “previously *qualified* for the exemption” (italicisation added), without adding the proviso that to be ineligible under this condition the member must have **made a contribution** by utilising the WTE in a prior year in which they qualified to use it.

FSC Recommendation 6

The FSC recommends the Explanatory Statement be clarified to indicate that for a person to be ineligible for the WTE they must have *made* a WTE contribution in a previous year. Simply *qualifying* for the exemption in a previous year without contributions being accepted under the exemption in that year should not render a person ineligible for the WTE.