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| Manager Melbourne Unit Retirement Income Policy Division The Treasury Langton Crescent PARKES ACT 2600 | |
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| **RE: Superannuation - integrity of limited recourse borrowing arrangements**  Thank-you for allowing us to comment on the exposure draft legislation and explanatory memoranda in relation to the Superannuation – Integrity of Limited Recourse Borrowing Arrangements.  We are writing to express our concern regarding the policy objective of this proposed new legislation.  Our particular concern is having the Limited Recourse Borrowing Arrangement (LRBA) count towards total superannuation balance. We understand Treasury’s concern that a strategy could be employed by SMSF members to use LRBAs to circumvent contribution caps.  Our concern is by simply adding the outstanding balance of the LRBA to members total superannuation balance you will be disadvantaging those members who have not used the above strategy. For example, Peter aged 54, is the sole member of an SMSF and has an account balance, and a total superannuation balance, of $1.3 million. His benefits are held entirely in cash and shares. The Trustee of his Fund identify an opportunity to acquire a property worth $850,000 under an LRBA. In order to maintain investment diversity within the Fund they decide to borrow $450,000 from a bank to acquire the property. Therefore, after the property has been acquired the Fund’s total assets will equal $1.75 million, whilst the Fund’s liability totals $450,000. Hence, under the proposed legislation amendments Peter’s actual account balance is still $1.3 million, however his total superannuation balance will be $1.75 million ($1.3 million + $450,000 being the outstanding borrowing). Consequently, Peter is unable to make any further non-concessional contributions into super even though his account balance is $1.3 million, and he has not employed any strategies to circumvent the contribution cap rules.  As can be seen from the above example Peter is unfairly disadvantaged as he is unable to make any further non-concessional contributions into super whilst his balance is below $1.6 million. This may become a bigger issue if the Fund runs into any liquidity problems. It should be noted, had he kept his money invested in cash and shares he would still be able to make further non-concessional contributions.  Although the proposed legislation is planned to capture a certain strategy to circumvent the contribution caps, in doing so it unfairly captures innocent members who have not artificially reduced their total superannuation balance.  An alternative method to deter the use of this strategy is let it be known that the general anti avoidance rule for income tax Part IVA will apply. | |
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| Yours sincerely, | |
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| Sharif Eldebs |
| Assured Super |
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