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The Manager  
Contributions and Accumulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**RE- CONCESSIONAL SUPERANNUATION CONTRIBUTION CAPS FOR INDIVIDUALS AGED 50 AND OVER**

Dear Sir/Madam

SCOA is a not-for-profit member organisation representing close to 500,000 people across Australia with branches in every state and the ACT.

For more than 85 years, SCOA has represented the interests of:

- Retired Australian and Territory Government employees and Government business enterprise employees;
- People in the public service who will receive a Commonwealth superannuation benefit or lump sum on retirement;
- Former employees who have deferred (preserved) their pension entitlement; and
- The dependants of all of the above.

One of SCOA's key priorities includes changes to superannuation to remove discrimination against public sector pension recipients.

Please accept the attached submission on behalf of all of SCOA's members.

Dr. Annette Barbetti  
SCOA President

Dr. Vivienne Teoh  
SCOA Federal Secretary

## **CONCESSIONAL SUPERANNUATION CONTRIBUTION CAPS FOR INDIVIDUALS AGED 50 AND OVER**

The following are SCOA's comments on the preliminary views of the Treasury in relation to the Government's proposal to allow individuals aged 50 and over with total superannuation balances below \$500,000 to make contributions of more than \$25,000 per year and up to \$50,000 per year.

Our members are mainly retired Commonwealth employees who are in receipt of benefits from the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS). They are generally in receipt of a pension and in addition also received lump sum payments from those funds. As older Australians and encouraged by the Government through incentives such as the mature age workers tax offset, many have returned to the workforce. They are again contributing to superannuation to supplement their CSS or PSS retirement benefits and to avoid accessing age retirement benefits from Centrelink. The "catch all" proposals to limit the amount of concessional contributions that can be made to superannuation funds for those over age 50 are not fair and equitable to our members when compared to other members of the community.

In summary SCOA recommends that the following should apply when assessing the amount of concessional contributions to be subject to the concessional superannuation contribution cap for those aged 50 and over:

1. Withdrawals and pension payments made before any announcement should not be included in account balances for assessment against the account balance threshold of \$500,000.
2. The tax-free component of account balances should not be included in the account balance threshold of \$500,000.
3. The untaxed component of account balances should not be included in the account balance threshold of \$500,000.
4. Employer notional untaxed superannuation contributions should not be regarded as concessional contributions for the purposes of the concessional superannuation contribution cap.
5. If the untaxed component of account balances is included in the account balance threshold of \$500,000 then only 85% of the untaxed component of account balances should be assessable.

The following are further details of the SCOA recommendations.

### **Including withdrawals in account balances**

SCOA disagrees with including past withdrawals in the account balance of superannuation fund members when assessing their account balance against the account balance threshold of \$500,000.

Our members are generally in receipt of superannuation pensions and in addition some have also received lump sum payments. Most have had no alternative other than

commence to receive their pensions. Others may have chosen not to take lump sums out of the superannuation system if they had known that those lump sum payments would be counted when assessing their superannuation balances against the account balance threshold of \$500,000. It is unfair to include retrospectively any benefit payments that have been paid before the commencement of this measure on 1 July 2012 or prior to any public announcement stating that past withdrawals will be included in account balances for assessment against the account balance threshold of \$500,000.

Including past withdrawals from 1 July 2012 or from the date of a public announcement will ensure that superannuation fund members are not disadvantaged by the introduction of retrospective changes to the method of determining concessional superannuation contribution caps.

### **Inclusion of the tax-free component of account balances**

SCOA believes there would be a fundamental flaw in the policy objective of providing a concessional contribution cap if account balances for assessment against the account balance threshold of \$500,000 were to include the tax-free component of the member's account balance. In the past, membership of the CSS and PSS required members to make compulsory non-concessional superannuation contributions to their superannuation fund. Due to the amount of non-concessional contributions contributed to their superannuation account, their account balances would contain a considerable amount of non-concessional contributions which comprise the tax-free component of their superannuation account balances. The tax-free component has been established by contributions paid into the superannuation fund after paying income tax at marginal tax rates. It is unfair and inequitable for the tax-free component of account balances to have the same status as the taxed component of account balances where members have received concessional tax treatment in accumulating the taxed component of their account balances.

Our understanding is that the policy objective is to limit the tax-concessions that are available through the payment of concessional superannuation contributions to superannuation funds. Including the tax-free component as part of the account balance would also limit the contribution of non-concessional contributions where no tax concessions are available.

### **Inclusion of untaxed amounts in account balances**

SCOA believes it is not appropriate to include the accrued untaxed component of member benefits as part of the account balance to be assessed against the account balanced threshold of \$500,000. There already exists a limit to the amount a member can withdraw from an untaxed superannuation fund before penalty tax at the top marginal tax rate is applied. This is known as the "untaxed plan cap amount" and is provided at section 307-350 of the *Income Tax Assessment Act 1997*.

It does not seem appropriate for two contribution caps to apply to untaxed superannuation amounts. It is our understanding that the already existing "untaxed plan cap amount" was put in place to avoid applying concessional superannuation contribution caps on notional untaxed employer superannuation contributions to untaxed superannuation funds because of the administrative difficulties in determining and reporting the amount of notional untaxed employer superannuation contributions.

## **Requirement to report notional untaxed employer superannuation contributions to members and the ATO**

Superannuation funds that pay untaxed superannuation benefits do not receive superannuation contributions to support the payment of those benefits. Untaxed benefits are funded at the time the benefit becomes payable. Tax is paid on the contribution funding benefit payments by superannuation fund members at the time their benefit is paid.

As no superannuation contributions are actually paid, sometimes assessments are made of what would have been the superannuation contribution if contributions had been paid. These are often referred to as notional superannuation contributions. This procedure was applied when determining the superannuation surcharge tax that applied to members of untaxed superannuation funds before the superannuation surcharge tax was abolished from 1 July 2005. Nonetheless members of untaxed superannuation funds are still carrying superannuation surcharge debts that are accruing at the 10 year bond rate and those debts are still required to be paid when the member retires and receives a superannuation benefit.

It appears from the consultation paper that it is proposed to go back to the days of the superannuation surcharge to determine the amount of notional untaxed superannuation contributions notionally paid each year in order to determine the member's account balance including the untaxed component of that account balance. It is understood that it is proposed to use the Family Law methodology to determine the value of the notional untaxed superannuation contributions added to the member's account balance each year. This information is not currently available to superannuation fund members and would need to be calculated by the superannuation fund administrator and included on the member information statement so that the member is aware of the amount of the account balance including the taxed and untaxed components.

Information regarding the amount of the untaxed component included in the account balance will also need to be reported to the Australian Tax Office (ATO) in the superannuation funds' annual returns. At present information regarding notional untaxed superannuation contributions is not reported to the ATO.

To determine the notional untaxed superannuation contribution for a particular year will require two Family Law calculations: the determination of the amount of the superannuation interest for Family Law purposes at the end of the previous financial year, and at the current financial year. The difference between them will be the amount of notional untaxed superannuation contribution notionally paid for the financial year. The cost to superannuation fund administrators such as the Government funded ComSuper, the requirements for extra reporting to the ATO, and the need for the ATO to record these amounts to determine if excess contributions tax is payable will be considerable. SCOA's view is that the cost in establishing all the required processes and administration will far outweigh the amount of additional tax collected for exceeding the concessional superannuation contribution cap.

It is unclear if additional tax is to be applied should a notional untaxed superannuation contribution for a particular financial year exceed the concessional superannuation contribution cap. Is it proposed to introduce another form of surcharge tax on notional untaxed superannuation contributions and accrue a future tax liability similar to the current

surcharge liabilities? It would be extremely unfair to increase current surcharge liabilities by adding further unfunded liabilities on concessional untaxed superannuation contributions that exceed the concessional superannuation cap.

### **Calculation of the amount of the untaxed component of account balances**

If untaxed superannuation contributions are to be included in superannuation account balances for determining the superannuation concessional superannuation cap, a different calculation needs to be applied in relation to the untaxed component of account balance. This is because when untaxed benefits are paid, those benefits attract an additional 16.5% tax. For example, a lump sum superannuation payment paid from a taxed source to a recipient aged 60 and over is tax free. However, the same lump sum payment paid from an untaxed source is taxed at 16.5% (with the balance over \$1.155M taxed at 46.5%).

To provide fairness and equity between those with taxed and untaxed benefits, the amount comprising the untaxed component of the member's account balance assessable against the account balance threshold \$500,000 should be 85% of the untaxed component of the member's account balance.

This is the principle that was adopted for the Reasonable Benefit Limits (RBLs) that applied before 1 July 2007. Only 85% of untaxed benefits counted towards the RBLs in order to achieve equity with between those receiving taxed and untaxed superannuation benefits.