Tuesday, 18 December 2012

Inspector-General of Taxation
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excesscontributions@igt.gov.au

Dear Sir,

Review into the Australian Taxation Office’s compliance approach to individual taxpayers – superannuation excess contributions tax

We thank you for the opportunity to comment on the review of the Australian Taxation Office’s administration of the excess concessional contributions tax (ECT). This submission is written from the perspective of a super fund with a large number of members who have been affected by the ECT. We do not wish to make any specific comments on administrative practices of the ATO; rather, we feel that there is a broader issue worth considering, a point you make in paragraph 1.4 of the submission guidelines, namely: "ECT assessments effectively penalising taxpayers for breaching the contributions cap in circumstances beyond the taxpayer’s control".

In this submission, we outline the concerns our members have with the ECT and submit that the final report should include a recommendation that both the law and the administration of the ECT should be changed to ensure that taxpayers are not penalised for breaching the cap in circumstances beyond their control.

UniSuper members are concerned about the ECT

Many of our members are concerned about the ECT. Since the halving of the caps in 2009, many of our members have been caught by this tax. And more recently, since the end of the transitional cap for those aged 50 and over, we anticipate a doubling of the number of members caught out. The inadequate level of the concessional contributions caps is also a big issue for our broader membership, many of whom feel they are now discouraged from making self-provision for retirement.

From our reckoning, the current concessional contributions cap of $25,000 will be reached by members with salaries of around $100,000 because those members receive standard employer contributions of 17% while typically making standard member contributions of 8.25% (pre-tax). While our members can reduce their contributions or make them after-tax to reduce the likelihood of their exceeding the cap, they have no influence over the 17% employer contribution.

Many of our members who regard themselves as middle income earners are being caught by this tax; not because they receive unusually high incomes, but because they receive employer superannuation support in excess of the 9% required by law. This reflects the historic design of our fund (see Appendix) and

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the long-standing accord in the higher education sector to trade off higher wages for higher superannuation benefits.

We estimate that as many as one-in-five of our members in our Defined Benefit Division or Accumulation 2 fund have salaries in excess of $100,000 – that is close to 20,000 members or about 9% of our active membership.¹

Our members and our participating employers have little or no capacity to influence the level of employer support which is one of the reasons we think special consideration should be given to taxpayers in these circumstances.

While we recognise that many of our members receive superannuation contributions higher than in many other industries, higher superannuation often makes up for lower cash salaries. Many of our members, therefore, have expressed dismay upon receiving an excess concessional contribution tax bill.

Our experience is that the caps do not only affect members on salaries over $100,000: many other members on lower salaries, who voluntarily make higher contributions, are also getting caught by the reduced caps. We have found that some members feel that they are being penalised for receiving standard sector-wide employer superannuation support over which they have no control.

Many members are, in effect, having a portion of their contributions taxed as though they were top rate taxpayers (46.5%) even though they typically find themselves in lower tax brackets, earning well below $180,000.

**Consideration for those who have no control over the level of employer support**

We think our members are disadvantaged by the existing rules because they have little or no control over the level of superannuation support they receive. Recently, the issue of members and employers having little or no control of the level of employer support has been recognised in superannuation law. When announcing the *Tax Laws Amendment (2011 Measures No 2) Act 2011*, the then-Minister, Mr Bowen stated "that contributions made on behalf of an individual, which the individual or their employer have no real capacity to influence, are being captured by the RESC (Reportable Employer Superannuation Contribution) definition and hence being considered income for means-tested tax and transfer system programs... The Government will amend the law so that RESC does not include contributions made on behalf of an individual pursuant to legislation or other requirement that the individual and their employer cannot directly control".²

We think this principle could also be applied to the issue of excess concessional contributions and suggest either that both the law and the administration of the ECT should be changed to ensure that taxpayers are not penalised for breaching the cap in circumstances beyond their control.

We understand that there are complex policy decisions to be made when targeting tax concessions. However, we think this is very much an issue of equity. It would be far more equitable were those taxpayers who have little or no influence over the level employer

¹ This figure will include members currently 50 or older & members in the DBD who are “grandfathered”. However, as the transitional over 50 cap ended on 20 June 2012, and grandfathering can be lost, our estimates include all members with salaries over $100,000 because they are all potentially affected.

² Minister for Financial Services, Superannuation & Corporate Law, Reportable Employer Superannuation Contributions, Media Release No 80, 30 June 2010
superannuation support, to be excluded from the ECT and not taxed as though they were
top-rate taxpayers exceeding the cap by choice.

While we understand this is not strictly in the terms of reference, we believe we have
addressed a concern raised in the submission guidelines. We ask that you give
consideration to the issues we have raised.

Yours faithfully,

Terry C. McCredden
Chief Executive Officer
Appendix: Background history of UniSuper

UniSuper was established in 1983 as a defined benefit (DB) scheme modelled on then-contemporary DB schemes in the Australian public sector. The benefit design from its outset was for a fully-funded scheme across all participating employers, and coverage of all permanent employees in the sector, including general, academic and professional staff.

The multi-employer and industrially-inclusive nature of the fund led to some important distinguishing features from its commencement, in particular:

- a fixed contribution rate of 14% of salary p.a. for employers and 7% post (or 8.25% pre-tax) for members;
- a formula-based benefit related to member’s salary, tenure and employment experience.

Over its foundation years, the fund succeeded in obtaining close-to complete coverage of permanent employees in the Australian university sector, and in “folding in” a large number of legacy DB superannuation and pension schemes from individual institutions on a successor fund and/or optional transfer basis.

In the late 1980s, with the advent of Award Superannuation, a second multi-employer scheme, was established as an accumulation fund to accept the new 3% award (and later SG) contributions of employees who were not eligible to join the DB fund, such as casual and short-term contract staff.

In 1998 an accumulation category was introduced as an alternative to defined benefit membership. This is an accumulation-based benefit, now known as Accumulation 2, based on the same 14% employer contributions and death and disablement benefits offered through the DB.

Over the ensuing years, the two funds operated side by side as dedicated superannuation providers to the university sector with a common administrator (UniSuper Management Pty Ltd), until the two funds formally merged in 2000 to form UniSuper Limited as it exists today.

Today, the original scheme lives on in the form of the UniSuper Defined Benefit Division (DBD) and Accumulation 2, which remain funded by the original 14% employer contribution. The original 3% award employer contributions are either held in an associated DBD accumulation account, an Accumulation 1 account or an Accumulation 2 consistent with where the member receive the 14% employer contributions.

DBD members and Accumulation 2 members have the flexibility to reduce their contributions below the standard (7% post tax or 8.25% pre-tax) but at present the vast majority still contribute at the full rate. Where a member reduces their member contribution rate the additional 3% employer contribution will be redirected to the DBD and DBD benefits are appropriately adjusted.
In summary, UniSuper members can receive employer contributions to:

**DBD:** Permanent employees generally receive 14% employer contributions. They generally also receive an additional 3% (i.e. for a total employer contribution of 17%) to an associated accumulation account; or

**Accumulation 2:** Permanent employees generally receive 14% employer contributions. They generally also receive an additional 3% (i.e. for a total employer contribution of 17%) to the account; or

**Accumulation 1:** Other employees receive their Superannuation Guarantee contributions (i.e. for a total employer contribution of 9%)

The DBD remains the default option for new permanent employees upon their commencement of employment, and there continues to be full portability of UniSuper benefits across all 37 participating universities around Australia, as well as a number of other employers within the broader higher education and research sector (e.g. various medical research institutes, subsidiary companies, and commercial spin-offs).