

28 July 2017

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Dear Manager

## **RE: Housing related superannuation measures**

BT Financial Group (BTFG), part of the Westpac Group, welcomes the opportunity to provide feedback on the *First Home Super Saver Tax Bill 2017, Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2017: First home super saver scheme and contributing the proceeds of downsizing to superannuation* and *Treasury Instruments Spring 2017: withholding amounts for FHSS released amounts and contributing the proceeds of downsizing to superannuation* the Explanatory Materials (the Exposure Draft), which aim to implement the following superannuation measures announced in the 2017-18 Federal Budget:

- First Home Super Saver Scheme (FHSSS); and
- Downsizer contributions.

BTFG strongly supports these housing-related superannuation measures. We believe the First Home Super Saver Scheme will help more Australians achieve home ownership. At the same time, this measure offers a valuable incentive to Australians to engage with their superannuation.

While alleviating pressure on housing affordability, the downsizer contributions will also allow older Australians to make contributions to superannuation to maximise their retirement savings and achieve an adequate income in retirement.

Our review of the Exposure Draft has, however, identified several areas where we believe the current drafting may generate practical issues for Australians wishing to utilise the new measures.

We have detailed our concerns below, including why we believe changes to the drafting may be considered and some suggested solutions.

### **1 Salary sacrifice contributions satisfying employer SG obligations**

On 14 July 2017, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer, announced the Government will legislate to close the existing loophole allowing employers to use salary sacrifice contributions made on behalf of employees to satisfy their SG obligations for those employees. BTFG strongly supports the proposed reforms which are long overdue.

These proposed amendments are critical to ensure that the retirement savings of individuals who choose to take advantage of the new FHSSS by making additional salary sacrifice contributions to superannuation for the purposes of saving for a first home are not unfairly eroded.

#### **Recommendation 1**

BTFG recommends that the legislative amendments announced by the Minister on 14 July 2017 are introduced before or at the same time as the legislation to enact the FHSSS to ensure the FHSSS operates as intended and does not result in the erosion of individuals' retirement savings.

## **2 Indexation of prescribed limits**

To ensure that the measures continue to provide the intended outcomes as the concessional and non-concessional contributions caps increase with indexation over time, the Government should also apply indexation to the prescribed limits for the First Home Super Saver Scheme and downsizer contributions.

#### **Recommendation 2**

BTFG recommends that the First Home Super Saver Scheme annual and total voluntary contribution limits of \$15,000 and \$30,000 respectively are subject to annual indexation to AWOTE rounded down to the nearest \$2,500.

We recommend that the downsizer contribution cap is set at three times the non-concessional contribution cap to ensure this cap increases in line with any future increases in the concessional contribution cap based on annual indexation to AWOTE.

## **3 Limiting FHSSS to permanent residents**

The Exposure Draft does not apply any residency requirements to the FHSSS meaning that foreign residents and temporary residents of Australia who have accumulated superannuation in Australia could access the scheme to assist them to purchase residential property in Australia. To better satisfy the Government's policy objective of reducing pressure on housing affordability, the scheme should be restricted to permanent residents and New Zealand citizens.

#### **Recommendation 3**

BTFG recommends that the eligibility criteria for requesting a FHSS determination (*Taxation Administration Act 1953 s138-5(2)(c)*) be amended to require that the individual is an Australian resident for tax purposes and not the holder of a temporary resident visa, or at all times when they held a temporary visa they were a New Zealand citizen.

#### 4 Timeframes for processing FHSS determinations and release authorities

To assist individual's in the planning process we recommend including processing timeframes for the ATO issuing FHSS determinations and release authorities within the legislation.

*Taxation Administration Act 1953* Schedule 1, Division 131, as it applies from 1 July 2018, provides that an individual must request a release authority within 60 days of receiving a FHSS determination and that superannuation providers must release required amounts within 10 business days of receiving a FHSS release authority. It also requires the Commissioner of Taxation to include interest on any credits not paid to an individual within 60 days of receiving the amount from a superannuation provider. Prescribing timeframes for issuing FHSS determinations and release authorities will allow individuals to determine the maximum time required to receive amounts from their superannuation in time to purchase a first home.

##### **Recommendation 4**

BTFG recommends that the Commissioner of Taxation be required to issue a FHSS determination within 30 days of receiving a valid request and to issue a release authority to a superannuation provider(s) within 10 business days of receiving a valid request.

#### 5 Restriction based on release authority being issued is prohibitive

The Exposure Draft proposes that an individual will be prohibited from accessing the FHSS if they have previously requested the Commissioner of Taxation to issue a FHSS release authority.

If an individual's superannuation provider(s) is unable to release the required amount in accordance with the release authority, the Exposure Draft prohibits the individual from accessing the scheme in future despite not having accessed any amount from their superannuation under the scheme.

Likewise, if an individual receives an amount from their superannuation under the scheme but is unable to purchase or construct a first home within 12 months, or such longer period as agreed by the Commissioner of Taxation (but no longer than 24 months), the Exposure Draft prohibits the individual from accessing the scheme in future regardless of whether they recontributed the amount previously received to superannuation.

There may be a range of genuine personal or financial circumstances outside an individual's control which prevent the individual from successfully purchasing a first home after accessing an amount under the scheme. It would be unjust to exclude such individuals from again accessing the scheme to assist them to purchase a first home where they have recontributed previously accessed amounts back to superannuation ensuring no previous concessions have been gained.

To ensure otherwise eligible individuals are not inadvertently and unfairly excluded from accessing the FHSS we recommend amending the eligibility criteria for requesting a FHSS determination in *Taxation Administration Act 1953* s138-5(2)(c) to require that the individual has not previously received a payment from the Commissioner of Taxation in respect of an amount released from superannuation in accordance with a FHSS release authority unless the payment amount has been recontributed to superannuation within the required period.

**Recommendation 5**

BTFG recommends amending the eligibility criteria for requesting a FHSS determination to require that the individual has not previously received a payment from the Commissioner of Taxation in respect of an amount released from superannuation in accordance with a FHSS release authority unless the payment amount has been recontributed to superannuation within the required period.

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We would be pleased to meet with The Treasury to discuss any element of our submission.

Yours sincerely

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BT Financial Group