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Predictions for how super proposals will fare post-election

With Malcolm Turnbull finally forming government following the tight election results, the proposed changes to superannuation will depend on his ability to negotiate the Senate. Here's how it might shake out.

1. $1.6 million cap on pension assets

The Turnbull-Morrison 2016 budget proposal called for a cap on superannuation assets in the tax-free pension phase of $1.6 million from 1 July 2017, with the balance held in the taxable accumulation phase. Pension account balances currently over $1.6 million would have until 1 July 2017 to bring pension assets under the cap.

The budget proposal is akin to the British system which measures benefits on payment against a lifetime cap and taxes them if they exceed that limit. It is reasonably simple to implement: super funds would report in the annual Member Contributions Statement (MCS) the pension account balances on 30 June 2017, and in following years, the amounts transferred to and from pension phase. The ATO works it all out.

Although the $1.6 million threshold is arguably low (below ASFA's suggested cap of $2.5 million released in April 2015 and the recently reduced UK lifetime benefits cap of £1 million), it likely to get through parliament with Labor support, as it is roughly comparable to the ALP's own proposal. The ALP proposal is an annual limit of $75,000 of tax-free investment earnings in pension phase. Unlike the $1.6 million cap, Labor's proposal is practically unworkable.

2. $500,000 lifetime cap on non-concessional contributions

The $500,000 lifetime cap applies to contributions made from 3 May 2016 will look back and take into account non-concessional contributions made since 2007.

Consequently, the proposal has been heavily criticised from all sides as retrospective. Since the budget, the government has already given ground to SMSFs who had entered into contracts before the budget and flagged that there may be more exemptions for specific cases.

The retrospective nature of the $500,000 lifetime cap makes it difficult to get through parliament easily. The opposition has already said it will not support retrospectivity, but so far it has not objected to the lifetime cap itself.

3. A reduced concessional contributions cap of $25,000 from 1 July 2017 and the ability to carry forward unused cap amounts for up to four years if the account balance is under $500,000

Although there is general support for the carry forward provisions, there is strong opposition to the reduced cap within the Coalition and outside, particularly as it impacts older workers and women who make catch-up contributions later in life. Currently those turning 50 or older have a cap of $35,000 and the reduction will seriously impact those who intended to make catch-up contributions prior to retirement.

This should be seen in the context of the huge gender gap in superannuation benefits. The recent Senate committee report into Economic Security for Women in Retirement quoted the gender gap in superannuation at retirement at 46.6 per cent, based on 2011/12 figures where the average superannuation balance at retirement was $105,000 for women and $197,000 for men. Lowering the concessional contributions cap to $25,000 will reduce the opportunity for many older women to make catch-up contributions when they can afford to.

4. Removing the work and employment income tests for making contributions to super and claiming tax deductions for those contributions from 1 July 2017

This will mean that contributions can be made up to age 75 regardless of employment status and both personal and employer contributions can be tax deductible. This is a sensible and positive initiative, and should get through parliament on its own merits. It recognises that there should be no tax distinction between super contributions made personally and those made by an employer. For many employees it will be easier to make personal contributions and claim them as a tax deduction rather than negotiate a salary sacrifice agreement with their employer.

The proposal is commendable, however, the government should consult on implementation issues. For example, if most contributions to super – personal and employer – are tax deductible, should we continue with s. 290-170 Tax Deduction Notices?

5. 15 per cent tax on investment earnings for transition to retirement (TTR) pension accounts

Contrary to early media reports, this proposal will not spell the end of transition to retirement pensions, as the key attraction for TTR is access to benefits, rather than tax-free investment earnings.

The government is likely to get this through parliament with ALP support, however, it is important that the government consults widely on the implementation details. Should these accounts continue to be treated as pension accounts? If they were treated as accumulation super accounts, they could accept contributions, and this would save on the need to have both pension and super accounts. Also, if the accounts remain as pensions, how will they be treated under the $1.6 million pension cap?

What next?

If (and that is a big if) the super reforms make it through the government's backbench intact, the next step is to get it through parliament, and especially the fragmented and fractious new Senate. The government will probably need the support of Labor senators, who agree with most of the super reforms, other than any retrospective elements.

Other Senate parties are not as close to the government's position. The Greens want a complex progressive tax on contributions, Nick Xenophon's team wants superannuation to be accessible for first home buyers, and Jacqui Lambie campaigned for no changes to super at all.

The important thing for financial services is that the government consults as widely as possible on implementing the superannuation changes. There are practical consequences involved and getting the best outcome for super fund members should be the priority.

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