



Zoe Daniel MP

Independent Federal Member for Goldstein

2 November 2022

The Hon. Senator Katy Gallagher
Unit 3 40 Corinna Street
Phillip, ACT, 2606

Dear Hon. Senator *Katy* and Minister Gallagher,

Enquiry on behalf of Goldstein constituent s22 and request for an update

s22

s22 has been in contact with my Office regarding an ongoing matter that I understand is known to both the Government and the former Government.

The matter relates to his concerns over the administration of the superannuation balance transfer cap for non-commutable lifetime pensions by superannuation trustees from July 2017.

Namely that:

1. Superannuation funds are insisting that they are correctly applying amendments to the Income Tax Assessment Act 1997 (Cth) and the Taxation Administration Act 1953 (Cth), by counting **any** non-commutable lifetime pension in a superannuant's 'transfer balance account'.
2. Superannuation funds are asserting that any non-commutable lifetime pension must be included towards the 'transfer balance cap' and when this has been exceeded, to trigger expropriation (commutation), **irrespective** of whether the pension was assessable for income tax prior to 1 July 2017 and / or assessable for income tax after 1 July 2017.
3. s22 believes that superannuation funds are not administrating the different kinds of pensions and income streams by **quarantining the correct categories for reporting obligations**. He explains that this can mean the flooding of the 'transfer balance account' with monies that should not be there when calculating the superannuant's 'transfer balance account'.

s22 notes the following is to be quarantined from each other:

- a. Untaxed element in the non-commutable lifetime pension (which continue to be assessable income); and

- b. Income (other than the elements untaxed in 'capped defined benefit income streams', to the extent this income exceeds the 'defined benefit income cap'), where 50% of the excess is included in the superannuant's assessable income after 1 July 2017 to neutralise the concessional tax treatment above the tax-free cap; and
 - c. The income of non-capped defined benefit income streams (known as account-based income streams) get counted in the 'transfer balance account' towards the 'transfer balance cap'. The amount above which the account-based superannuation income stream is to be commuted or expropriated to remove any such excess (and in the interim to be subject to excess transfer balance tax).
4. s22 also raises concerns that the responsibility for accurately reporting the value of the superannuant's superannuation interests, in accordance with the applicable law, lies with each member's superannuation fund. In turn, "*superannuation funds are able to expropriate (or commute) any superannuation 'financial product', where there is more than the 'transfer value cap'*", and windfall gains can apply.

I understand that detailed correspondence regarding these concerns has been previously provided to the then Shadow Minister for Financial Services and Superannuation, Mr Stephen Jones MP, who replied in writing to s22 that..."*should we be successful in the next the election, we will look at this matter to ensure the administration of the TBC [transfer balance cap] requirements comply with the law. Thanks again for raising this issue*".

After the election, representations were also made to the Treasurer in June 2022 by Senator James Paterson on s22 behalf (before communications by s22 with my Office).

I understand this superannuation matter has also been circulated to members of the House of Representatives Standing Committee of Economics for consideration in February 2022.

I confirm, I will also be making similar enquiries with the Treasurer, Assistant Treasurers, the former Government, and the House of Representative Standing Committee on Economics.

With thanks and I would be pleased to hear from you, should you wish to discuss this further. Otherwise, I look forward to hearing from the nominated Minister to brief me in detail on this issue and confirm the status.

Regards,



Zoe Daniel MP

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