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Manager
Financial Services Unit
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: instalmentwarrantcorpregs@treasury.gov.au

Dear Sir / Madam

Exposure Draft - Corporations Amendment Regulations 2012 (No.) - Limited Recourse Borrowings by Superannuation Funds (Instalment Warrants)

CPA Australia represents the diverse interests of more than 139,000 members in 114 countries around the world. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We welcome the opportunity to provide comments on this discussion paper. These comments are made not only on behalf of our members but also for the accounting profession generally and in the broader public interest.

This submission has been prepared with the assistance of CPA Australia's Retirement Savings Centre of Excellence (CoE). The CoE is a member based committee that includes leading experts from the superannuation industry. Our superannuation experts work across major components of the superannuation industry ranging from some of the largest industry, corporate and retail funds through to self-managed superannuation funds.

It is our understanding that the objective of regulating limited recourse borrowing arrangements (LRBAs) is to ensure adequate consumer protection. This includes reducing the risk of a consumer receiving inappropriate advice and the mis-selling of LRBAs.

However, CPA Australia believes that opting to make a LRBA a financial product under the proposed regulatory framework will fail to appropriately achieve this objective.

Further, professional accountants often provide advice and guidance on LRBAs. If these arrangements are regulated as a financial product, professional accountants would no longer be able to provide this guidance and in effect, consumers' access to trusted, qualified advice would be severely diminished.

We believe it would be premature to implement any proposed regulation in this area until after the government has finalised their policy position on the replacement for the accountants' licensing exemption.

Other key recommendations raised in our submission include:

- The proposed regulation of limited recourse borrowing arrangements should not be finalised until after the government has announced their policy reform for the replacement of the accountants' licensing exemption.

- Limited recourse borrowing arrangements should not be deemed a financial product, as this measure will not adequately address the provision of inappropriate advice and mis-selling of these arrangements by unqualified participants.
- Consumers must continue to have ready access to qualified advice on limited recourse borrowing arrangements from their choice of appropriately qualified adviser, including recognised accountants.
- Regulation 7.1.04H should be amended to specifically exempt both the SMSF and the trustee of the holding trust from the requirement to be licensed, where the LRBA is a related party loan.
- Regulation 7.6.01AB should be amended to provide that an AFSL which covers the provision of a financial service in relation to 'superannuation' is taken to cover limited recourse borrowing arrangements.

Should you have any questions on either the above or the attached submission, please do not hesitate to contact Keddie Waller, Policy Adviser – Financial Planning on 03 9606 9816 or Keddie.Waller@cpaaustralia.com.au.

Yours sincerely

Paul Drum
Head – Business and Investment Policy
CPA Australia

Removal of the accountants' licensing exemption

In April 2010, the government announced the removal of the accountants' licensing exemption as part of the Future of Financial Advice (FoFA) reforms.

To date, the government has not announced their policy reform for the replacement of the accountants' licensing exemption.

CPA Australia strongly believes that it would be premature to implement any proposed regulation in this area until after the government has announced their policy position on the replacement for the accountants' licensing exemption.

Professional accountants often provide advice and guidance on LRBAs. If these arrangements were to be regulated as a financial product, that was not covered by the exemption replacement professional accountants would no longer be able to provide this guidance and consumers' access to trusted, qualified advice would be severely diminished.

Further, the regulations are proposed to commence three months after registration. Imposing such a short transition may also in effect lead to a shortage of qualified advice if professional accountants are prevented from continuing to provide this advice to their clients.

Recommendation:

The proposed regulation of limited recourse borrowing arrangements should not be finalised until after the government has announced their policy reform for the replacement of the accountants' licensing exemption.

Regulating limited recourse borrowing arrangements as a financial product

CPA Australia does not believe that regulating LRBAs as a financial product is an appropriate policy outcome. Not only would this framework fail to appropriately prohibit unqualified individuals from discussing these arrangements, it would actually restrict consumers' access to qualified professional advice. Further, the proposed regulatory framework would prevent related party lending which we believe is not an appropriate policy outcome.

Promoters of property investment and LRBAs

Limited recourse borrowing arrangements can be used to purchase shares, securities and real property. However, changes to the *Superannuation Industry Supervision (SIS) Act 1993* to implement the single acquirable asset rule has resulted in LRBAs being an expensive and often impractical option to acquire different parcels of shares.

This has resulted in LRBAs primarily being used by SMSFs to acquire residential, commercial and rural property.

Real property can be a sound investment for a SMSF. Further, LRBAs can be an effective mechanism for the SMSF to acquire the property. However, there appears to be an increasing number of property promoters and other unqualified individuals marketing property investment. Often, these individuals also provide advice on the advantages of setting up a SMSF to acquire the property and how a LRBA can be used to finance the acquisition.

While regulating a LRBA as a financial product would limit the advice property promoters and other unqualified individuals can provide in respect of LRBAs, it would not prevent them from recommending property investment for a SMSF. Further, it would not prevent them from then providing 'factual' information how the consumer can finance the acquisition.

CPA Australia supports the need for adequate consumer protection to reduce the risk of consumers being provided inappropriate advice. However, there is no evidence to suggest regulating a LRBA as

a financial product would be an effective means to ensure consumers are appropriately protected from receiving unqualified advice.

It should also be noted that consumers are increasingly turning to the internet for information, guidance and to facilitate financial transactions. There are now established websites where consumers can purchase the necessary legal documentation to set up a LRBA. In this instance the consumer may never seek professional advice on their investment decision.

Regulating a LRBA as a financial product will not prevent online providers of legal documents from continuing to provide this service. It is also likely that consumers who actively choose not to seek professional advice would continue to use these services to implement a LRBA, even if the proposed regulatory framework is implemented.

Recommendation:

Limited recourse borrowing arrangements should not be deemed a financial product, as this measure will not adequately address the provision of inappropriate advice and mis-selling of these arrangements by unqualified participants.

Restricting consumer's access to professional advice

Qualified professional accountants regularly advise and provide guidance on LRBAs. If LRBAs are made a financial product under the proposed regulation, this would prevent these qualified individuals from continuing to provide trusted advice to their clients.

We do not believe a licensed financial adviser is more appropriately qualified or experienced to provide advice on LRBAs than a professional accountant. Further, requiring all individuals who advise on these arrangements to be licensed will add further complexity and cost to LRBAs, with arguably little benefit to the client.

While we support the need for adequate consumer protection, we do not believe further restricting consumer's access to qualified is in the public interest.

Recommendation:

Consumers must continue to have ready access to qualified advice on limited recourse borrowing arrangements from their choice of appropriately qualified adviser, including recognised accountants.

Related party loans

Draft regulation 7.1.04H proposes that each party to the arrangement is an issuer of the LRBA. As the LRBA would be a financial product, each party to the transaction would be required to be licensed under the Australian Financial Services Licensing (AFSL) regime.

Under the *Corporations Act 2001*, the SMSF will be exempt from the requirement to be licensed. However, any related party lender or the trustee/s of the holding trust would not fall under this exemption and would in fact be required to be licensed.

Where the lender or trustee/s of the holding trust is a related party, it would be impractical, financially unviable and possibly even unattainable for the related party to become licensed to enable the one-off LRBA transaction.

This would be further compounded by the requirement for both the related party lender and the trustees of the holding trust to provide a product disclosure statement and possibly comply with other licensee obligations such as providing a financial services guide and a statement of advice.

In effect, the proposed regulation would make related party lending commercially unviable for SMSFs to use as a legitimate financing method to acquire an asset for the fund.

We do not believe this is an appropriate policy outcome nor is it in the public interest. We recommend that should regulation be implemented regulating LRBAs, the regulations are amended to specifically exempt the trustee of the SMSF and the holding trust where there is a related party loan.

Recommendation:

Regulation 7.1.04H should be amended to specifically exempt related parties to the SMSF from the requirement to be licensed.

Provisions of a financial service in relation to a 'security' or 'derivative'

It is unclear why the specific licensing authorisations of 'security' and 'derivatives' have been selected to cover limited recourse borrowing arrangements.

A limited recourse borrowing arrangement will not necessarily be a sophisticated product, as derivatives often are.

Further, as previously mentioned LRBAs are primarily used by SMSFs to acquire property not securities or shares.

We believe that should LRBAs be regulated as a financial product, the appropriate authorisation to cover LRBAs would be 'superannuation'. The draft regulations specifically relate to limited recourse borrowing arrangements for superannuation funds. It would therefore be appropriate for a licensed financial advisor with a superannuation authorisation to advise a fund when acquiring an asset for the superannuation fund using a LRBA.

Recommendation:

Regulation 7.6.01AB should be amended to provide that an AFSL which covers the provision of a financial service in relation to 'superannuation' is taken to cover limited recourse borrowing arrangements.