

18/10/2023

Adam Hawkins
Assistant Secretary, Tax and Transfers Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email to superannuation@treasury.gov.au

Dear Adam,

Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023

AustralianSuper welcomes the opportunity to provide a submission in relation to the draft Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. AustralianSuper has over 3.2 million members and manages over \$300 billion of members' assets. AustralianSuper's vision is to be Australia's leading superannuation fund, in the world's best system for members.

AustralianSuper is broadly supportive of the measure proposed in the draft bill, on the basis that it will improve the sustainability of the system and rebalance superannuation tax concessions toward lower and middle-income earners.

To ensure the goals of the legislation, including improving the sustainability of the system and rebalancing superannuation tax concessions, are achieved, Treasury should consider the following changes:

- **A legislated post-implementation review three years after the measure first applies** to ensure that administrative arrangements for the new measure remain appropriate and minimise any unintended administrative costs. This would also present an opportunity to ensure the threshold from which this measure applies remains aligned with the original policy intent.
- **Indexing the \$3 million threshold** to provide greater certainty and promote stability and confidence in the system, which is important given the long-term horizon of superannuation savings.

The recent Intergenerational Report shows that Australia's superannuation system is living up to its design intent: the annual cost of Australia's retirement income system is steady over the next 40 years despite an ageing population. This includes both the costs of the age pension and superannuation tax concessions.

Tax concessions, and their equitable distribution, are fundamental to Australia's retirement income system. Superannuation tax concessions are provided to compensate members for delayed spending as part of a mandated system, and these benefits are compounded over a member's lifetime. They reflect the long-term investment horizon of superannuation and the benefits to the nation of the significant pool of patient capital that superannuation represents. Concessional tax settings for retirement income and pension savings are common across the OECD.

As a change to these settings, we consider that this measure is an example of where the application of a legislated objective of super would be beneficial. We also continue to support additional measures to increase equity in the superannuation system.

More detailed comments are provided in the **Attachment**.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact Gina Maio, Head of Tax (gmaio@australiansuper.com) or Nick Coates, Head of Government Relations and Public Policy (ncoates@australiansuper.com).

Regards

A handwritten signature in black ink that reads "Paula M. Benson". The signature is written in a cursive, flowing style.

Paula Benson AM

Chief Officer, Strategy & Corporate Affairs

Attachment: Detailed Comments

Attachment: Detailed comments

Post-implementation review should be included in legislation

A requirement to conduct a post implementation review three years after the measure first applies should be included in the legislation.

This review should encompass administrative arrangements to ensure that the lowest possible administrative costs are borne by superannuation members, and that administrative arrangements remain appropriate as more members become subject to the threshold.

While we remain of the view that the \$3 million threshold should be indexed, in the absence of indexation of the \$3 million threshold, this review should also be required to consider whether the threshold remains appropriate.

Indexation

Indexation of the threshold at which the measure applies would lead to greater certainty and promote stability and confidence in the system. This is important, given the long-term horizon of superannuation savings. This is important as members who are complying with the purposes of superannuation have a right to know how the earnings on their superannuation will be treated for tax purposes while it is compulsorily preserved.

As noted above, superannuation tax concessions are a key part of the superannuation system. Without indexation, as a greater proportion of the community reaches the \$3 million threshold, it will be for future parliaments to consider whether or not to adjust the threshold.

Thresholds in the superannuation system that relate to an individual's balance or their contributions are indexed. This includes the transfer balance cap, the concessional contributions cap and the non-concessional contributions cap. Many payments and thresholds across Australia's taxation and transfer system are indexed.

If the Government is minded to proceed without indexation, a post-implementation review would provide an opportunity to examine whether the threshold at which the tax applies remains appropriate.

Measures to improve equity in the system

A number of reviews, including the Henry Review and Retirement Income Review, have highlighted the need for superannuation tax concessions to be distributed more equitably between low and high-income earners, including in relation to the tax treatment of contributions.¹

We recognise the Government has indicated that it will proceed, when budget circumstances allow, with including superannuation guarantee (SG) payments on the Commonwealth paid parental leave scheme. AustralianSuper continues to advocate for this measure to be formally announced and implemented.

This would be a significant step forward in reducing the gender superannuation gap, a material part of which is attributable to women being more likely to take time off work to care for children.² The Retirement Income Review noted that taking a career break early in working life reduces superannuation balances at retirement more than a

¹ See Australia's Future Tax System, Final Report, 2009 – Part 1, page 34; Retirement Income Review, Final Report, 2020, page 235.

² Retirement Income Review, Final Report, 2020, page 261.

career break later in working life.³ Recipients of paid parental leave are overwhelmingly women. Most forms of leave include an entitlement to SG contributions: paid parental leave remains an unjustifiable exception.

Similarly, reforming superannuation tax concessions for low-income earners is overdue. The Low-Income Superannuation Tax Offset (LISTO) is directly related to personal income tax rates, in that it seeks to refund low-income earners to the extent that the 15% tax on superannuation contributions exceeds the effective tax rate they pay on their salary or wages. However, the current thresholds at which LISTO applies are designed for the tax thresholds and superannuation guarantee rate as they existed at 1 July 2017. Subsequent changes to the rates (the increase of the second income tax threshold from \$37,000 to \$45,000) and the superannuation guarantee rate (then 9.5%, now 11% with legislated increases to 12%) have not been matched by increases to LISTO. The cap on the amount of LISTO that is payable has also remained locked at \$500 a year. While other income earners receive a tax concession on superannuation contributions, the failure of LISTO to keep up with changes means that low-income earners pay higher rates of tax. This is an unfair outcome for low-income earners.

Administrative costs

We strongly agree with the Government's stated aim of avoiding the impost of significant and costly systems and reporting changes. For profit-to-member funds, these costs would be borne by all superannuation members, including other members not otherwise impacted by the measure. As a profit-to-member fund, any reduction in these costs results in greater returns for members.

A legislated post-implementation review would play an important part in ensuring an appropriate administrative approach as an increasing number of members fall within the measure and that compliance costs from this measure remain low.

It is appropriate that liability to pay Division 296 tax will accrue to the individual, rather than to superannuation funds of which they are a member. This will help to ensure that for large APRA-regulated superannuation funds, administrative costs are kept to a minimum. The proposed reliance on an election notice made by a member and release authority mechanism issued by the Australian Taxation Office (ATO) to facilitate the payment of the Division 296 tax, consistent with existing practices, is welcomed.

We welcome the approach of minimising the administrative burden by using information already collected by the ATO and other regulators to determine liability.

However, we note that further information will be required to be collected by the ATO to administer, monitor and govern the new Division 296 tax. Changes will be needed to the ATO's current collection of data on some withdrawals and benefit payments, which will be essential to determining liability under the new proposal.

Administrative costs of this measure to funds will depend in part on the final form of requirements set by the ATO in terms of fund reporting protocols and obligations, which are not settled in this legislation. We expect that implementation of this measure will require:

- An ATO reporting template for large funds to meet the data collection gap in the short-term; and
- The ATO fund reporting protocols to change aligned to the data reporting requirements of this measure, with a roadmap for the long-term data capability and reporting infrastructure with large funds and ATO.

We encourage and support the development of a standard template that the ATO can send to all large APRA-regulated funds on an annual basis which captures the data requirements that can be provided each year to the ATO

³ Retirement Income Review, Final Report, 2020, page 263.

from administration systems. This could be used in the interim as the reporting mechanism, potentially until a post implementation review commences.

As the longer-term solution, we encourage and expect that reliance is to be placed on the ATO and regulatory reporting requirements of funds for member data. Should additional data be required, then the fund reporting protocols need to be aligned and enhanced across the superannuation system to meet the data needs to administer this measure efficiently and sustainably.

Method of calculation

We consider that the proposed calculation method is an appropriate path to meet the Government's objective in a sector neutral way, while minimising compliance costs and complexity.

Concerns have been raised by some stakeholders that the proposal will result in the taxation of unrealised gains. The Government may wish to consider making clear in the Explanatory Memorandum that this is an exceptional approach and intended to be limited specifically to this measure.

However, we note that in relation to the existing 15% tax that superannuation funds pay on investment earnings, large APRA-regulated superannuation funds already typically incorporate tax on an accruals basis. This includes realised and unrealised capital gains tax liabilities. Members' superannuation balances reflect crediting rates, which are determined daily. These are net of the tax superannuation funds currently pay on investment earnings.

For example, if a large fund owned an infrastructure asset, and this increased in value, a proportionate amount of capital gains tax liability would be factored into the crediting rate. The fund would not wait for the asset to be sold and the CGT liability to crystallise before factoring the tax into the crediting rate. This is important to ensure that tax liability is borne equitably between members who join or leave the fund on different sides of the payment of tax to the ATO when the investment earnings are realised.

Insurance and structured settlement contributions

The treatment of a full exclusion for structured settlement contributions when calculating Division 296 tax liability should be equally extended to TPD insurance proceeds from a policy paid into a member's account that is held within superannuation.

The exemption of individuals who receive structured settlement contributions from the Division 296 tax liability is appropriate. Structured settlement contributions are also excluded from the total superannuation balance calculation, and the total superannuation balance is reduced by the sum of a structured settlement contribution made at or before a time in respect of an individual.

Although payments from a superannuation life insurance policy are not counted as taxable superannuation earnings, they will count toward the total superannuation balance. They may cause a member to be subject to a Division 296 tax liability or an additional Division 296 tax liability.

As the draft Explanatory Memorandum states, the treatment of structured settlement contributions reflects that these contributions are usually large payments that can provide the funds for ongoing medical and care expenses resulting from serious injury and income loss. In our view, the same reasoning applies in relation to these TPD insurance proceeds paid into a member's account pursuant to an insurance policy held within superannuation.

We would welcome a modification to the draft proposed law as the treatment should also be extended to TPD insurance proceeds from a policy held within superannuation.

Conclusion

The measure included in this legislation represents a step toward rebalancing tax concessions in the superannuation system toward low and middle-income earners. Indexation of the threshold at which the measure applies would lead to greater certainty and promote stability and confidence in the system, which is important given the long-term horizon of superannuation savings. To ensure a minimal administrative burden is born by other superannuation members, and to ensure the threshold remains appropriate, we recommend the bill include a legislated post-implementation review.

Paying the superannuation guarantee on Commonwealth paid parental leave and reforming superannuation tax concessions for low-income earners would mark additional and important steps toward the goal of greater equity in the superannuation system.

We encourage the ATO to enhance the existing fund reporting protocols for a long-term solution to accommodate the data-reporting requirements for this measure to achieve the greatest efficiency in administering the new Division 296 tax. We also encourage and would like the ATO to publish a standard template for large APRA regulated funds to complete and report to the ATO in the interim.

While we consider that the method of calculation is appropriate to meeting the objectives of this measure in a simple and effective way, the Government may wish to consider making clear in the Explanatory Memorandum that this is an exceptional approach and intended to be limited specifically to this measure.

We appreciate Treasury's consideration of the above points and would be pleased to provide further background and information as Treasury proceeds to finalise the bill for introduction into Parliament.