Actuaries Institute.

16 October 2023

Director, Superannuation Tax Unit
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

Consultation: Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 – October 2023

The Actuaries Institute ('the Institute') welcomes the opportunity to provide feedback on the draft legislation and explanatory materials proposing to reduce the tax concessions for individuals with higher superannuation balances.

The Institute is the peak professional body for actuaries in Australia. Our members have had significant involvement in the development and management of superannuation in Australia, and work across APRA regulated funds, SMSFs and public sector funds.

The draft legislation proposes an additional 15 per cent tax on the earnings on superannuation balances that exceed $3 million. This would be legislated via insertion of a new Division 296 within the Income Tax Assessment Act 1997 (the **Division 296 Tax**). The Institute supports initiatives such as this measure that aim to reduce superannuation tax concessions so that the retirement income system is more sustainable and equitable. This is with the proviso that the improvements in sustainability and equity do not create disproportionate additional complexity or reduce public confidence and support for superannuation as an effective long-term savings vehicle for retirement.

Our specific comments therefore focus on helping Government design this measure in a way that reduces potential complexity and is likely to maintain public confidence in superannuation.

We welcome:

- That the Division 296 tax will be levied directly on individuals, as applies for Division 293 tax, and with similar flexibility regarding payment methods for the tax.
- Adjusting the Division 296 tax calculation of the total superannuation balance by decoupling it from the transfer balance cap so that it more closely reflects the ongoing value of an individual's superannuation balance over time. This simplification could be extended in the use of the total superannuation balance for its other purposes such as determining eligibility for concessional contributions as part of a broader simplification measure in the future.

Actuaries Institute
Level 2, 50 Carrington Street, Sydney NSW 2000
P +61 (0) 2 9239 6100 | actuaries.asn.au
ABN 69 000 423 656

- The draft legislation including more detailed adjustment items for the calculation of adjusted total superannuation balances for the Division 296 tax.
- Providing a transfer mechanism for all individuals who have carried forward losses from previous years to reduce a Division 296 Tax liability in future years, given the unusual precedent proposed for the taxation of unrealised capital gains.

We recommend the Government further consider:

- The adverse impact that the proposed taxation of unrealised capital gains would have on individuals' confidence and certainty in the superannuation system. Even beyond those individuals directly affected, this precedent could lead to a more widespread reduction in voluntary superannuation savings, which would increase future age pension obligations and run counter to promoting the sustainability of the overall retirement income system.
- Extension of the transfer mechanism for all individuals who have carried forward losses from previous years to apply more generally – as proposed, the losses can only be used to reduce future Division 296 Tax liabilities. If this remains unchanged, some individuals will be unnecessarily restricted from recouping tax that was overpaid.
- Indexation of the fixed $3 million threshold once it equals the Transfer Balance Cap threshold (currently at $1.9 million but is indexed). Incorporating indexation into the long-term design of this measure now would simplify taxation settings of higher superannuation balances. It would also provide greater confidence in the superannuation system as it provides certainty for individuals to assist in their financial planning for retirement.
- Inclusion of terminal illness benefits in the contribution adjustment item relating to insurance benefits dependent on the termination of the life of the person (draft subsection 296-55(1)(e)(ii)). Terminal illness benefits are not necessarily dependent on the termination of the life of the person as these benefits are paid prior to a person's death.
- Ensuring concessional contributions captured by draft subsection 296-55(1)(f), such as employer contributions in deemed defined benefit funds, are on a net of tax basis. We note that this item directly refers, via subsection 291-25(3)(6) of the regulations, to the gross of tax employer contribution amount allocated from a reserve.
- Clarification of what kinds of remediation payments would be captured in the contribution adjustment item in draft subsection 296-55(h)(ii). Remediation payments is not a term defined in the Income Tax Assessment Act and therefore it should be made clearer whether remediation payments would include benefit corrections due to administrative errors, incorrect information from employers or items like earnings adjustments for compensation not related to fraud or dishonesty.
- The release of details in a timely manner setting out how the ATO will administer the Division 296 tax, as it is important that the new tax minimises the ATO reporting compliance burden and cost on superannuation funds. Otherwise, the tax will have the overall impact of increasing fees and reducing member outcomes for individuals with balances that do not exceed $3 million. In this regard, we strongly recommend targeted rather than comprehensive reporting for APRA regulated funds.

- Extended consultation on the matters prescribed in supporting regulations commencing as soon as possible, to allow sufficient input in complex areas such as the methodology adopted for treatment of defined benefit interests.

If you would like us to provide further information, please contact me on (02) 9239 6100 or executive@actuaries.asn.au.

Yours sincerely

(Signed) Elayne Grace

CEO