

Submission on the Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023

I wish to make a submission on the Bill. I am a trustee and beneficiary of a SMSF that will be impacted by the proposed legislation. My submission has two points which are set out below.

1. 15% Tax on Unrealised Capital Gains

The legislation proposes an additional 15% tax on funds with a TSB over \$3 million. My objection to this proposal is that the additional tax will apply to unrealised capital gains, which I believe is unfair and excessive.

My understanding of how the tax will operate is that on disposal of assets held for more than one year a SMSF (fund) will pay capital gains tax of 10% (as currently exists), but will in addition pay 15% tax each year on any unrealised capital gains. This will in effect result in a capital gains tax rate of 25%, similar to the highest tax rate on capital gains outside of superannuation. However, the effect of paying tax on unrealised capital gains each year will result in an effective tax rate that is higher than the maximum capital gains tax outside of super. This is because the payment of the tax at an earlier time, prior to the disposal of the asset, brings forward the time at which the tax is paid and results in a much higher effective tax rate, due to the opportunity cost of the tax paid up front.

I do not believe that it is appropriate for a superannuation fund to have, in effect, a higher rate of capital gains tax than the maximum rate that applies outside of super. I believe that the legislation should be amended so that superannuation funds do not pay capital gains tax in excess of the maximum rate outside of super. This would be most responsibly achieved by only taxing capital gains when an asset has been disposed. If this is not feasible, then a lower rate than 15% should apply to the tax on unrealised capital gains.

The Government's stated objective for superannuation states in part that it be "equitable". **I do not believe that it is equitable for superannuation funds to have, in effect, a higher rate of capital gains tax than the maximum rate outside of super.**

2. Non-Deductibility of Tax Payments for TSB Calculation

The proposed legislation does not allow for any tax payments made from a fund to be deducted from the calculation of a TSB. This would then result in a 15% tax being imposed on money used to make a tax payment. This would be grossly unfair. **The legislation should be amended to identify that any tax payments made by a superannuation fund are exempt from the calculation of a TSB.**