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Retirement, Advice and Investments Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email to superannuation@treasury.gov.au

Dear Adam,

AustralianSuper submission to Better targeted superannuation concessions consultation paper

AustralianSuper welcomes the opportunity to provide a submission in relation to the better targeted superannuation concessions consultation paper.

AustralianSuper is Australia's leading superannuation fund and is run only to benefit members. Over 3 million Australians are members of AustralianSuper and we invest over $280 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

Taken together, AustralianSuper's investment outperformance and its uplift to national savings have made a meaningful impact to the Australian economy. Through these two impacts, a KPMG report estimates that AustralianSuper's investment activities directly and indirectly contributed $7.2 billion to Australia's GDP and 11,800 additional ongoing FTE jobs across the Australian economy in FY2022.

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 life time. 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.

Whilst AustralianSuper is broadly supportive of the proposed policy, we believe there is an opportunity to ensure this policy aligns more closely with the broader purpose of superannuation and is longer term in its purpose and impact. In particular, we make the following key submissions.

Indexation of the $3 million threshold

Indexation, and its reflection of the time value of money, is integral to the superannuation system.

Given the long term horizon of superannuation savings, we have concerns about the lack of indexation of the threshold. The lack of indexation creates uncertainty and undermines stability and confidence in the system. This is because, as a greater proportion of the community reaches the $3 million threshold, future parliaments will have to consider whether or not to adjust the threshold.

Improved redistribution of superannuation concessions

We believe that the equity of the retirement income system would be increased if a modest portion of the budget savings from the measure were directed to proposals such as paying superannuation on paid parental leave and increasing the Low Income Superannuation Tax Offset (LISTO).

Reporting obligations

We support the consultation paper's aim of avoiding the imposition of significant and costly systems and reporting changes. These would be borne by members generally and negatively impact their retirement savings. The proposed calculation method balances meeting the stated policy objective with maintaining simplicity, sector neutrality and minimising administrative costs for the vast number of members unimpacted by the measure.

Additional comments in relation to these key points and the questions raised in the consultation paper 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 Nick Coates, Acting Head of Government Relations and Public Policy (**ncoates@australiansuper.com**).

Regards

C.N.Cramond

Mark Comer & Chris Cramond

Joint Acting Chief Strategy & Corporate Affairs Officer

Attachment: Responses to Questions and Additional Comments

Attachment: Responses to questions and additional comments

Measures to improve equity in the superannuation 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]

AustralianSuper has advocated for including superannuation guarantee (SG) payments on paid parental leave. 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 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.

Increasing the Low Income Superannuation Tax Offset (LISTO) is an overdue reform. 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 10.5% 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.

The introduction of the new tax applying to balances above $3m presents an opportunity to improve equity in the system, by redirecting some savings from the cap toward LISTO and to pay superannuation on paid parental leave.

Indexation

The lack of indexation creates uncertainty and undermines stability and confidence in the system. As a greater proportion of the community reaches the $3 million threshold, future parliaments will have to consider whether or not to adjust the threshold and in effect there is a creeping and eroding impact on the time value of people's retirement savings.

The paper notes that neither the thresholds for LISTO and Division 293 are indexed. However, this is accounted for by the fact that both are directly related to the thresholds at which personal income tax rates apply (which are not indexed). The application of Division 293 depends not an individual's superannuation balance nor on the amount they contribute, but on an individual's income. Likewise, 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.

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

By contrast, thresholds in the superannuation system that relate to an individual's balance or their contributions are all indexed. This includes the transfer balance cap, the concessional contributions cap and the non-concessional contributions cap. This reflects the long-term horizon of superannuation savings, and allows certainty for individuals making decisions about saving for their retirement. Many payments and thresholds across Australia's tax and transfer system are indexed.

Methods for calculating tax liability

1. Do you consider any further modifications are required to the TSB calculation for the purposes of estimating earnings? If so, what modifications should be applied?

We understand and appreciate the simplicity and balance the Government is seeking to achieve with the TSB calculation for the purposes of estimating earnings. However, as noted above, given the long term horizon of superannuation savings, we have concerns about the lack of indexation of the threshold. The lack of indexation creates uncertainty and undermines stability and confidence in the system. As a greater proportion of the community reaches the $3 million threshold, future parliaments will have to consider whether or not to adjust the threshold.

2. What types of outflows (withdrawals) should be adjusted for and how?

Our focus is on types of inflows, as per our response to question 3.

3. What types of inflows (net contributions) should be adjusted for and how?

We agree with the exclusion of personal injury or structured settlement contributions paid into superannuation from the total superannuation balance. This is consistent with the approach under the transfer balance cap.

4. Do you have an alternative to the proposed method of calculating earnings on balances above $3 million? What are the benefits and disadvantages of any alternatives proposed including a consideration of compliance costs, complexity and sector neutrality?

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 that the proposal will result in the taxation of unrealised gains. However, in relation to the existing 15% tax that superannuation funds pay on earnings, large super funds already typically incorporate tax on an accruals basis. This includes capital gains tax liabilities. Members' superannuation balances reflect crediting rates, which are determined daily. These are net of the 15% 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 Australian Taxation Office (ATO).

If there was a departure from the proposed approach to calculating earnings on balances above $3 million, then there would be a significant administrative and system change burden on superannuation funds. This would ultimately be borne by members.

5. What changes to reporting requirements by superannuation funds would be required to support the proposed calculation or any alternative calculation methods?

Please refer to our comments at question 15.

Earnings that are subject to the additional tax rate

6. Do you consider any modifications are required to the proposed proportioning method? If so, what modifications should be applied?

Please refer to our comments at question 7.

7. Do you have an alternative to the proposed proportioning method? What are the benefits and disadvantages to any alternatives, including a consideration of compliance costs, complexity and sector neutrality?

The Government's stated policy aim is an additional tax of 15 per cent on the earnings on any balance that exceeds the $3 million threshold. The proposed proportioning method is a reasonable way of achieving this aim.

Tax liability

8. Does the proposed methodology for determining the tax liability create any unintended consequences?

An undesired outcome of the proposed methodology is that there can be circumstances where a member is taxed on an unrealised gain that is not in fact realised or derived by the member at the point the member exits the superannuation system in a future year.

We encourage the Government to consider a mechanism that enables equitable outcomes for these scenarios. A way to do this would be to allow losses to be carried back to offset the tax paid on increases in an individual's TSB in previous years, allowing the member to gain a tax refund.

This could be limited to circumstances where an individual's TSB has fallen below $3 million. This would reflect that these are circumstances where the individual would be unlikely to have the opportunity to carry forward the losses against future gains and that the losses would otherwise be trapped. Consistent with previous measures allowing for the carry back of losses, carry back could be limited to a set number of income years.

9. Do the proposed options for paying liabilities create any unintended consequences?

The proposed options are aligned with existing methods for members that have a choice to fund a tax liability from personal monies outside of superannuation or direct the monies to be released from their superannuation assets.

Defined benefit interests

AustralianSuper is solely an accumulation fund and does not offer or hold defined benefit products. Accordingly, we do not provide a response to questions 10 to 14.

Reporting process for funds

15. What would be the most effective method for collecting the required information? What are the benefits and disadvantages for the method identified, including a consideration of compliance costs, complexity and sector neutrality?

We strongly agree with the aim of avoiding the imposition of significant and costly systems and reporting changes. As the paper notes, these costs would be borne by other members not impacted by the measure. AustralianSuper is always working to reduce fees and costs. As a profit to member fund, any reduction in fees and costs results in greater returns for members. Accordingly, we welcome the approach of minimising the administrative burden by using information already collected by the ATO and other regulators to determine liability.

Changes will be needed to the ATO's collection of data on withdrawals or benefit payments, which will be essential to determining liability under the new proposal.

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 from administration systems. This can be used in the interim as the reporting mechanism.

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