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Dear Sir or Madam

UniSuper submission on Sustaining the superannuation contribution concession – Division 293 tax- Calculating notional contributions for defined benefit interests

On behalf of the Management of UniSuper, I'm pleased to make the attached submission in response to the exposure draft outlining a proposed method for calculating notional contributions for defined benefit interests.

UniSuper strongly supports the use of Notional Taxed Contributions (NTCs) for 2014/15 and later years. The NTC method is now reasonably well understood and is clearly preferable to the alternatives canvassed to date.

This submission also highlights some outstanding issues with the Division 293 tax that we believe require further consideration and consultation about the practical implications of certain aspects of the tax's design.

We would be happy to expand upon any of the comments made in our submission or to answer any questions you may have. Please contact Benedict Davies, National Technical Adviser, on 03 9910 6670 or benedict.davies@unisuper.com.au should you wish to discuss our submission further.

Yours faithfully

Kevin O'Sullivan
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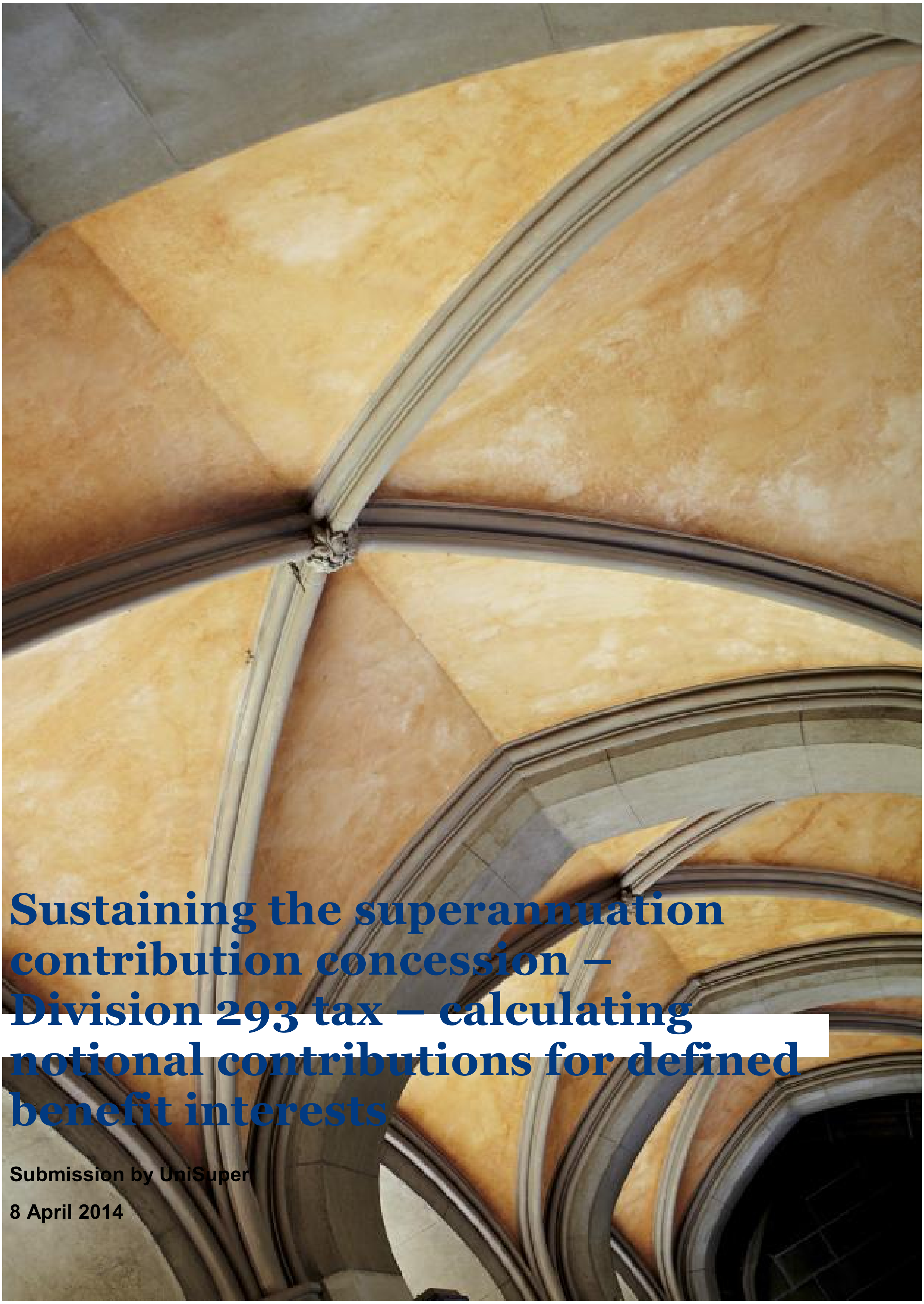

Sustaining the superannuation contribution concession – Division 293 tax – calculating notional contributions for defined benefit interests

Submission by UniSuper

8 April 2014

. Introduction

. ABOUT UNISUPER

UniSuper is the superannuation fund dedicated to people working in Australia's higher education and research sectors. With more than 440,000 members and $40 billion funds under management (as at December 2013), UniSuper is one of Australia's largest superannuation funds and has one of the very few open defined benefit schemes.

This submission has been prepared by UniSuper Management Pty Ltd (ABN 91 006 961 799), which acts as the administrator of the Trustee, UniSuper Limited (ABN 54 006 027).

UniSuper Management Pty Ltd would welcome the opportunity to discuss the submission further and to provide additional information in respect of the comments made in this submission. To discuss these matters further, please contact Benedict Davies, National Technical Adviser on (03) 9910 6671 or benedict.davies@unisuper.com.au.

Exposure draft and explanatory statement

UniSuper is supportive of the use of Notional Taxed Contributions (NTCs) methodology as the relevant method for calculating the value of employer contributions to a defined benefit fund. The NTC method has been in place since 2007, and is now reasonably well understood. Adopting this method is clearly preferable to the approach adopted in the earlier exposure draft which would have imposed excessive compliance costs on superannuation funds.

The definition of "funded benefit interest" in proposed ITAR 293-115.15(2) is important because failing to meet the definition could mean that funds, such as UniSuper, would need to maintain two separate calculations; one, under ITAR Schedule 1A for concessional contribution cap purposes; and a second under proposed Schedule 1AA for the purposes of the Division 293 tax.

While we believe that traditional private-sector defined benefit funds would fall within the definition of "funded benefit interest", we would like to see this clearly outlined in the explanatory statement.

Outstanding issues with the Division 293 tax

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We understand that the law supporting this new tax measure is now largely settled and that the ATO has even commenced issuing assessments to members of defined benefit funds. We still have some outstanding issues that we suggest require further thought, clarification and possible amendment via legislative instrument to facilitate a smooth functioning of this new tax.

. PARTIAL OR FULL COMMUTATIONS?

In December 2013, the Superannuation Legislation Amendment (2013 Measures No 2) Regulation amended the SIS Regulations to enable amounts to be paid from an individual's superannuation or income stream under a release authority to meet tax liabilities arising from certain superannuation contributions. While SISR 1.06(2)(e)(vi)(c) was inserted as a new type of permissible release authority, we are concerned that, on one reading, only full commutations are permissible. SISR 1.06(2)(b), which allows for variation to the size of a benefit, allows for commutations to pay a superannuation contributions surcharge but makes no reference to other similar amounts released.

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As a result of this, we are concerned that funds may not be able to offer a partial commutation to a member because if monies were released from the pension interest, an adjustment to its ongoing value will need to be made. Thus, in effect, these regulations seem to work only for full commutations from a pension to lump-sum i.e. the termination of a member's defined benefit pension (which is ordinarily payable for the life of the member and his or her spouse) to a lump-sum benefit instead.

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We submit that this would be a poor outcome for members and the approach is akin to "taking a sledgehammer to crack a nut". Instead, consideration should be given to amending SISR 1.06(2)(b)(ii) to explicitly allow for commutations for release authorities to meet tax liabilities arising from the operation of the Division 293 tax.

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A related issue arises under the Social Security Act which itself outlines consequences for the commutation of long term assets-test exempt income streams. Section 9A of the Social Security Act 1991 contains the rules for lifetime income streams that are exempted from the assets test. Allowable commutations include 2(h)(iv) "to the extent necessary to cover any superannuation contributions surcharge relating to the income stream". We understand, however, that commutations for the purposes of Division 293 would be treated as "non-allowable" by the Department of Social Services (DSS).

We believe that similar changes are required to this definition to allow taxpayers to take full advantage of the ATO's release authorities.

END BENEFIT NOTICES

Section 133-140 of the Tax Administration Act 1953 requires funds, in certain circumstances, to give a notice to the Commissioner stating the amount of the "end benefit cap". Section 133-120 gives further meaning to "end benefit cap", stating that it is 15% of the *employer-financed component*.

An employer-financed component is an undefined term. We understand, informally, that the ATO has been advising funds to get advice from their actuaries about how to calculate this amount. Our actuaries have informed us that they do not know how to calculate this figure. We suggest that further guidance is critically important to all parties: the ATO, funds and their actuarial advisers.

CONSIDERATIONS IN MANAGEMENT OF DEBT ACCOUNT

We also have significant concerns about the practicality of the proposed process for members who have deferred debt accounts. The draft paperwork we have received from the ATO indicates that funds:

…must provide this information on the End benefit notice – superannuation provider (NAT 74728) within 14 days of receiving the benefit request from the member, or the superannuation benefit becoming payable (whichever is earlier).

We believe this process is confusing and problematic. By way of example, a defined benefit member (or in fact, any member) would not ordinarily request a benefit to be paid at some future date. Instead, once a member requests that a benefit be paid, super funds have an administrative agreement to fulfil that request in a specified time frame. While this does not affect a fund's ability to issue a notice in the approved form in the legislated time-frame, it does mean that a defined benefit will have been dealt with (i.e. taken as a pension or lump-sum) long before the ATO is in a position to issue an appropriate release authority to a taxpayer.

The likely outcome of this is that a taxpayer's attempts to make use of an ATO release authority will be defeated because the defined benefit has already been taken. If taken as a lump-sum and used to purchase an account-based pension, for example, a different accumulation-style release authority will need to be issued. If taken in the form a defined benefit pension, under the current rules, that pension would, in all likelihood, need to be fully commuted to a lump-sum and the member's pension rights terminated.

We submit that an alternative approach is for a debt account to be discharged either by voluntary payments prior to an end benefit being payable, use of a release authority from an accumulation interest (either before or after an end benefit has been paid) or by releasing (ie partially commuting) funds from a defined benefit pension, subject to the proposed regulation changes suggested in 3.4 above.

This will ensure there will be no encumbrances imposed on our members' accounts and will limit the amount of complexity and cost in administering their interests. UniSuper will continue to meet the reporting obligations to the ATO under the scheme to notify member balances though the Member Contributions Statement MCS reporting process and any defined benefit account that is closed.