18 October 2023

To: Director Superannuation Tax Unit, Retirement, Advice and Investment Division, Treasury

This submission relates to the Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023.

The main concern I have with the Bill is that the tax is a very punitive (including effectively taxing unrealised gains, without a clawback if those gains reverse) penalty tax that one can't manage if under the preservation age. The tax office gets a free option based on the volatility of your investment portfolio. There are also cash flow issues of paying tax on unrealised gains.

If you are under the preservation age, you are unable to mitigate this tax for having 'too much' in super as you are not allowed to make withdrawals. And you still are required to make further contributions on any wages. At least those above preservation age have the choice to withdraw and then hold the assets in a non-super environment.

The Explanatory Material is deficient with respect to the absence of information with respect to the impact of the new tax on long (more than 12 months) capital gains. Long gains are currently taxed at 10% in the superannuation fund and a maximum of 22.5% in a non-super environment. An additional 15% tax on capital gains (realised and unrealised) increases the tax on capital gains within super to 25%. This is above that outside of super at the maximum marginal tax rate, even including the Medicare levy. It is not "slightly less generous" as described by the Treasurer. It is a penalty tax with respect to long capital gains.

The tax, especially given its element of taxing unrealised gains without clawbacks, and the penalty level of tax on long capital gains, has the potential to lead to reduced level of capital allocation to domestic equity and property markets. This may increase the cost of capital for Australian companies leading to a weaker domestic economy. This risk has not been described in the Explanatory Material.

The tax should be reduced to a level, such as 10%, where long capital gains are not punitive when compared to the top marginal tax rate.

Clawbacks should be made available for those who have paid the tax on unrealised gains from market movements but in later periods those gains are lost from declines in market values.

For those under the preservation age, tax deferral should be made available, similar to that made available for those in a defined benefit fund.

Martin Hickling