Wilson
Asset Management
Making a difference

25 YEARS

18 October 2023
Director
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TREASURY LAWS AMENDMENT (BETTER TARGETED SUPERANNUATION CONCESSIONS) BILL 2023

Dear Director,

I am writing to object to the draft Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023.

On behalf of Wilson Asset Management, I welcome the opportunity to provide a response to the consultation on the proposed legislation relating to Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 (the Bill) and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023.

Wilson Asset Management is the investment manager for eight listed investment companies, investing more than $5 billion on behalf of more than 130,000 retail investors. We are passionate about making a difference, including advocating for the fair and equitable treatment of retail shareholders.

We object to the proposed taxing of unrealised gains and the failure to index the "large superannuation balance threshold" of $3 million.

We object to the proposed changes based on the significant stress they will place on Australian superannuants, who will be expected to pay tax on unrealised capital gains that may never be realised. Further, we object to the lack of indexing, therefore transferring tax liabilities to younger generations. We also believe these changes place self-managed superannuation funds (SMSFs) at a significant disadvantage to large industry funds due to the practicalities of managing capital flows on taxed unrealised gains. We believe these changes will distort investment markets and alter the incentive for retirement plans.

Taxing unrealised gains places Australian investors at a disadvantage.

The current government proposal will have many unfortunate consequences including discouraging superannuants from providing patient risk capital, investing in illiquid or volatile assets or forcing superannuants to sell illiquid or volatile assets to fund tax bills. It is our understanding that there are no other Australian taxes that tax unrealised gains.

Many individuals have chosen to hold illiquid assets such as property, in their self-managed superannuation fund. The taxation of unrealised gains made on these assets will not only result in the individual paying tax on gains that they may never receive, it may also result in significant cash flow issues. Various investable assets have no liquidity and cannot be sold to fund the unrealised tax liability. It is not possible for a self-managed super fund to simply sell part of an asset to pay the tax liability that may result from a sharp rise in the asset. This will be less of a burden on industry funds who have more options to liquidate assets.

Liquid assets such as equities can also have periods of considerable volatility that could significantly disadvantage Australian superannuants. In FY2007, the Australian stock market increased 30.3% then fell over 50% during the Global Financial Crisis. Under the proposed legislation, the increase in 2007 would have resulted in a significant tax liability. However, the gain was wiped out two years later. This example of investment volatility is by no means isolated and is an example of the unfairness of the proposal.

Whilst a loss can offset future gains under this legislation, there is no provision to claim back tax that has been charged on a gain which disappears due to a subsequent fall in value.

There is a strong possibility a member can be cumulatively taxed on investments that make an overall loss and will be unable to recover this tax expense.

Proposed solution

We appreciate that the application of this tax is difficult where an individual has multiple superannuation interests (or funds) and for this reason the Government has chosen to apply this tax using the concept of "Total Superannuation Balance". In other words, the tax is based on the increase in the amount of superannuation an individual has and as a result, unrealised gains are caught up in the calculation.

We do not believe it was the Government's initial wish to tax unrealised gains. Instead, the tax is being applied to unrealised gains so that the calculation is easier where an individual with a balance over $3 million has multiple funds. In reality, the majority of individuals with a balance of this magnitude only have one fund or could easily rearrange their superannuation affairs by the time the legislation commences so that they have only one fund. If an individual only has one fund, the taxation of earnings could be easily calculated on balances over $3 million therefore removing the requirement to tax unrealised gains.

There are many circumstances where the tax act allows taxpayers to make elections. We would propose that taxpayers who have only one "superannuation interest" should be able to elect to have this additional tax applied to that one fund only and, as a result, only pay tax on actual realised taxable earnings.

Not indexing will put unnecessary strain on younger generations

To make the proposed changes fair and equitable for future generations, we propose the "large superannuation balance threshold" be indexed to inflation.

When introduced in 2025, Treasury estimates that the changes will affect only 80,000 superannuation balances. The Financial Services Council (FSC) has calculated that for those entering the workforce today it is estimated about 500,000 super balances will eventually breach the cap. About one-third of these super fund members are now under 30, meaning today's 80,000 estimate is set to grow exponentially. A $3 million cap for today's 30-year-old will be worth about $1 million when they leave the workforce.

Between 1982 and 2022, wages have increased 5.8 times, Sydney house prices increased by 4.6 times and the Australian Securities Exchange by 13.9 times (Tony Negline CA, Superannuation and Financial Services Leader, Chartered Accountants ANZ). Many young people with normal working years before retirement, higher than average salaries and super fund investment experience will be caught by this proposed legislation.

While the numbers are low now, mostly impacting those in retirement phase, this change will impact hundreds of thousands of Australians over time. This will undermine Australia's superannuation system as we know it, encouraging younger people to take on more risk in their investments and older superannuants to restructure their investments away from providing patient risk capital in illiquid assets.

In conclusion

Treasury and the Government are underestimating the long-lasting and broad-reaching impact these proposed laws will have on those saving for their retirement.

Amendments should be made to focus on realised capital gains with an index introduced to safeguard younger generations.

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We respectfully request these proposed changes are reconsidered and a Senate Inquiry alongside thorough independent research are undertaken to properly understand the significant unintended consequences of these proposed changes.

If you have any questions on our submission, please call me on (02) 9247 6755 or 0412 242 712, or email gw@wilsonassetmanagement.com.au or call Chief Financial Officer Jesse Hamilton on (02) 9247 6755 or 0401 944 807 or email jesse@wilsonassetmanagement.com.au.

Yours sincerely,

Geoff Wilson AO
Chairman & Chief Investment Officer
Wilson Asset Management