

8 May 2013

The Manager
Contributions and Accumulation Unit
Personal Retirement and Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation2013bill@treasury.gov.au

Dear Sir/Madam

Exposure draft: Tax Laws Amendment (Sustaining the Superannuation Contribution Concession) Bill 2013

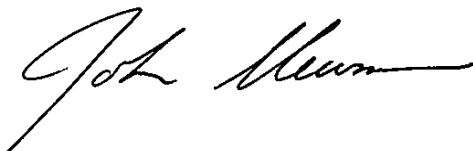
The Actuaries Institute is the sole professional body for actuaries in Australia. It represents the interests of over 4,000 members, including more than 2,000 actuaries. Our members have had significant involvement in the development of insurance regulation, financial reporting, risk management and related practices in Australia and Asia.

We refer to the Exposure drafts of the Bill and Explanatory Memorandum (EM) and thank you for the opportunity to provide comments. Our comments are set out in the attachment and relate to the following aspects of the draft material:

- The determination of defined benefit (DB) contributions;
- The time at which the DB debt account becomes payable; and
- The determination of the 'end benefit cap' of the DB debt account.

If required, we would be happy to discuss our views on this matter. Please do not hesitate to contact Melinda Howes, Chief Executive Officer of the Actuaries Institute (phone 02 9239 6106 or email melinda.howes@actuaries.asn.au) to arrange this, or for any further information.

Yours sincerely



John Newman
President



Attachment - Comments on Exposure Draft of the Tax Laws Amendment (Sustaining the Superannuation Contribution Concession) Bill 2013

There are two matters relating to the Exposure drafts of the Bill and Explanatory Memorandum (EM) on which we wish to comment. These are dealt with in turn below.

Determination of defined benefit (DB) contributions

The EM indicates that the method of determining DB 'contributions' for the new high income superannuation contributions tax (HISCT) is to be specified in regulations which are not yet available.

We note that most funds are already required to determine and report notional taxed contributions (NTCs) for DB members. NTCs are used as the measure of DB 'contributions' for the purpose of the concessional contribution limits. A member's NTCs are capped at the member's concessional contribution limit if the member is eligible under grandfathering rules established for this purpose.

The Institute strongly recommends that NTCs also be used for determining DB 'contributions' for the purpose of the additional 15% contributions tax for high income earners (although we understand that it is not intended that the grandfathered cap would apply for the purpose of this new measure).

Our reasons for this recommendation include:

- Avoiding substantial additional implementation costs for the majority of funds, since they are already required to determine and report NTCs for DB members. From our discussions with the Australian Government Actuary's (AGA's) office and Treasury, we are concerned that the implementation costs for taxed DB funds in the private sector may be significantly higher than the revenue raised by the new HISCT if any other approach is taken.
- Avoiding the substantial additional lead time that would be involved in implementing the measure for the majority of funds if a different set of DB contribution rates had to be actuarially determined for each fund and then fund administration systems updated to calculate and report DB contributions amounts on the additional basis.
- Ease of understanding for members – the NTC system of calculating DB contributions is already in place for most funds and is reasonably simple, with one NTC rate per benefit category.
- Many DB funds have small numbers of members, none of whom are on high incomes – it is highly desirable to avoid imposing additional costs on these funds which are likely to have no members subject to the new HISCT.



We understand that another method which has come up for consideration is the method which was used for determining surchargeable contributions for the purpose of the superannuation surcharge tax which applied from 1996 to 2005. We would not support this approach, given that the NTC system is already in place for most funds. We note that:

- The surchargeable contributions factors were much more complex for the actuary to determine and for the fund to apply; in many cases there were hundreds of factors per category (depending on the member's age and service) as compared with one NTC factor per category; furthermore, some benefit designs or features such as 'greater of' benefits, which are very common due to superannuation guarantee (SG) underpins, were very problematic to deal with.
- The number of factors involved added substantially to the cost of administration and the complexity of member communications.
- If surchargeable contributions were to apply for the new HISCT, funds would need to communicate the factors to all DB members even though very few members are likely to be affected.
- Separate sets of factors may be required for each year from 2012 to 2019 due to the increase in the SG rate over this period.
- If surchargeable contributions were to apply for both concessional contribution limits and the new HISCT, the grandfathering eligibility rules based around no increase in the NTC (new entrant) rate would require a total overhaul (as surchargeable contributions factors usually increase with age/service without any benefit improvement being required); it would be even more confusing if NTCs were retained for concessional contribution limits and surchargeable contributions were used for the new tax.

It is also relevant to note that, as the vast majority of DB funds are closed to new members (and have been for many years), the number of defined benefit members affected (and associated revenue) is likely to decrease significantly in coming years. Large implementation costs become even harder to justify when this is taken into account.

We understand from discussions with the AGA's office and Treasury that a higher number of DB members might be affected in some of the much larger public sector funds (which do not currently have NTCs) and that it may be more straightforward to produce and implement surcharge factors for those funds. However, in our view, an unnecessarily costly burden should not be placed on the private sector funds for this reason alone.

Hence we would strongly prefer to use the much simpler NTC rates already in use for taxed funds for the new HISCT as well as for the contribution caps.



End Benefit Cap

Under the draft Bill, the Australian Taxation Office (ATO) will maintain a 'debt account' relating to deferred tax on DB contributions.

The DB debt account will have to be paid when the first benefit becomes payable from the superannuation interest (should this be DB interest?) to which the debt account relates. Draft s134-70 refers to the debt being due and payable 21 days after the 'end benefit is paid'. It is unclear what is meant by 'is paid', but the commentary in the draft EM suggests this is when the benefit is paid out of the fund (unless to a successor fund). We note that in the private sector it is common for DBs to be crystallised well prior to being paid out of the fund (e.g. on termination of service with an employer or on conversion to accumulation).

We suggest it would be preferable to target the time when the DB is crystallised (i.e. ceases to be a DB interest) in the case of a lump sum benefit. However care would be needed to allow sufficient time for payment as the member's benefit may not be determined for some time after the effective date of crystallisation (particularly in the case of conversion to accumulation).

Draft s134-65 specifies that the DB debt account will be subject to an 'end benefit cap', being "15 per cent of the employer financed component of the value of the superannuation interest that accrued after 1 July 2012".

We note that determination of "the employer financed component of the value of the superannuation interest that accrued after 1 July 2012" will not necessarily be straightforward, particularly where 'greater of' benefits apply, which is very common due to SG underpins. Complexity can also occur when pension or deferred benefits become payable as it is necessary to place a value on them.

This may require the fund's administrator to keep additional records, such as the member's accrued multiple at 1 July 2012 and/or separate account balances relating to pre- and post- 1 July 2012, purely for the purpose of this end benefit cap – again, for all DB members even though very few are likely to be affected by the new HISCT and even fewer by the end benefit cap.

Given the complexity involved, and that it will be required so infrequently, funds are likely to strongly consider manual rather than mechanised calculations. Actuarial input is likely to be required for the calculation in some circumstances. Hence we consider that the requirement for the fund to provide the end benefit cap within 7 days of a request by the ATO (as per draft s134-65(3)) is unreasonable. We suggest that 30 days would be a more reasonable period.

Finally, we suggest that 'end benefit cap' should be defined by reference to the DB interest rather than the superannuation interest (i.e. "15 per cent of the employer financed component of the value of the defined benefit interest that accrued after 1 July 2012").