

Submission to the Treasury regarding the draft legislation of the Treasury Law Amendment (Better Targeted Superannuation Concessions) Bill 2023 and Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023.

Submitted by: Class Pty Limited, ABN 70 116 802 058

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About Class

Class Pty Limited (ABN 70 116 802 058), a wholly owned subsidiary of ASX listed company HUB24 Limited, commonly known as ("[Class](#)") was the first cloud-based software provider when it launched in 2009. Class Super is widely used by many accountants and specialist administration firms to manage all Self-Managed Superannuation Funds (SMSFs). As of June 30, 2023, over 186,220 SMSFs, which accounts for 30% of the total 610,287 SMSFs, are administered using the Class platform.

The Class software enables accounting and administration firms to prepare financial statements, member reporting, submit tax returns and handle regulatory reporting for SMSFs. Additionally, as part of its services, Class also performs analysis of these funds using de-identified data and publishes the result in the [Class SMSF Benchmark report](#) on annual basis.

About This Submission

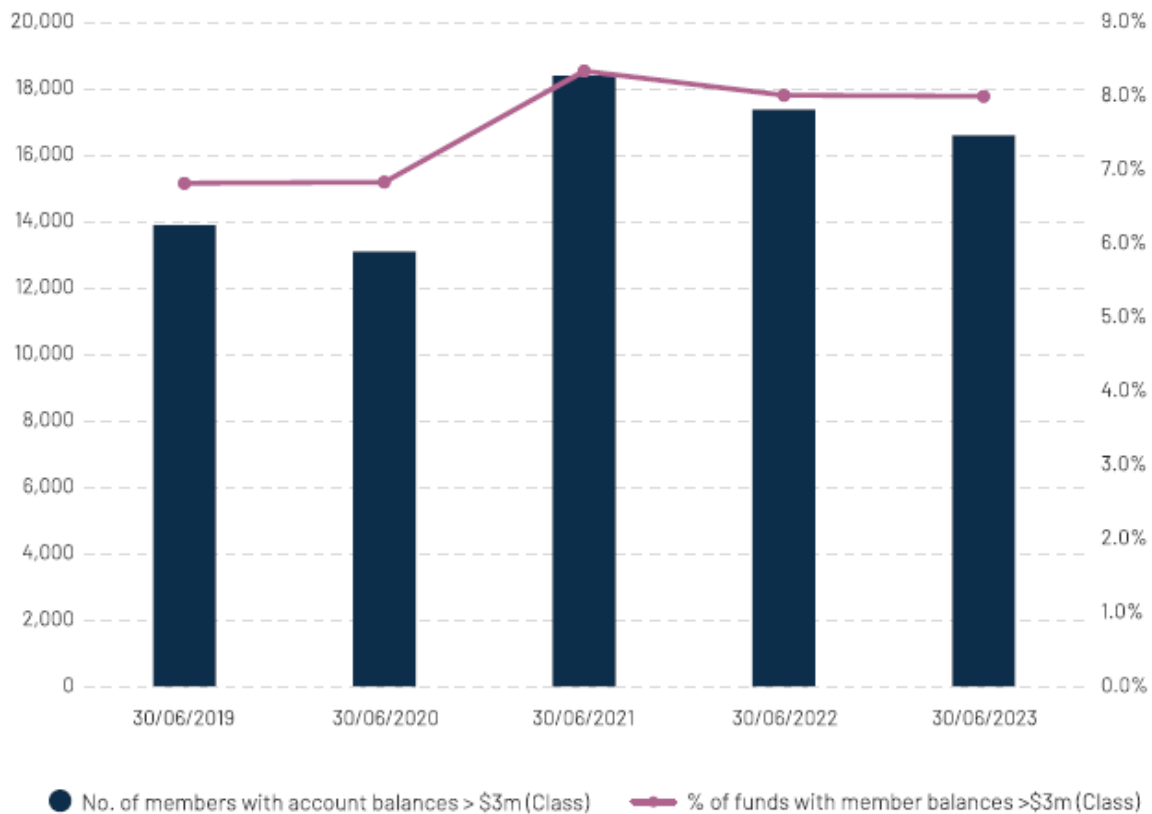
Class has thoroughly reviewed the exposure draft bill and its accompanying explanatory materials regarding the new Division 296 tax with great interest. This proposed measure seeks to impose a 15% tax on superannuation earnings linked to a member's total super balance (TSB) surpassing the large superannuation balance threshold of \$3 million, effective from the 2025-26 income year. Seizing this opportunity, Class would like to submit its concerns and articulate the following issues pertaining to the draft legislation.

1. Absence Of Indexation For The Large Superannuation Balance Threshold Of \$3 million

The draft legislation has set a firm limit for the large superannuation balance threshold at \$3 million, with no provision for indexation to adjust for future inflation rates. Over time, this could erode the real value of and the space available for superannuation members to save for their retirement.

According to our findings from the Class Benchmark Report 2023 data analysis of our SMSF clients, we identified that approximately 16,600 members (around 5%) among Class SMSFs have a TSB exceeding \$3 million. Additionally, there are 15,778 Class members with account balances between \$2 million and \$3 million as of June 30, 2023, representing roughly 4.7% of the total Class membership. By the time this legislation takes effect, it could potentially impact nearly 10% (9.7%) of SMSF members within Class.

Distribution of members and funds with member balances exceeding \$3m



Refer to page 34 of 2023 Annual Benchmark Report

On the contrary, the draft legislation introduces a general interest charge on Division 296 tax to *'...maintain the real value of the tax liability over time to ensure it is not abused by taxpayers to reduce the tax they are required to pay.'* It appears that the Government understands the value of money over time when safeguarding tax revenue, yet it disregards the same principle when it comes to taxpayers' superannuation balances, especially for young Australians.

This concern could be easily addressed by allowing indexation for the large superannuation balance threshold of \$3 million in line with the inflation rate or consumer price index (CPI), similar to the indexation of the transfer balance cap per ITAA 1997 Sect. 294.40. Such indexation would be seen as objective, fair, and equitable and could be readily implemented without too much effort.

2. Special Condition Of Release For Superannuation Members Who Exceed The Large Superannuation Balance Threshold Of \$3 million Prior To 1 July 2025

The proposed Division 296 tax was introduced abruptly in February 2023 and is set to commence on July 1, 2025. Many younger superannuation members who have diligently saved for their retirement now find themselves caught by the large superannuation balance threshold of \$3 million. The draft legislation does not provide them with the flexibility to release the excess amount before July 1, 2025, as they have not yet met any conditions of release. This leaves them in a difficult situation, subject to a tax they have no means of addressing and no fault of their own.

This concern can be resolved by introducing a new and special condition of release into the legislation, allowing these affected members with high balances the option to withdraw the excess from their superannuation by June 30, 2025, or within a reasonable grace period. This change would also enable members with substantial unrealised capital gains and limited cash flow to plan the exit of their assets from their superannuation fund.

3. An Option For Taxpayer To Choose Between “Tax On Actual Taxable Earnings’ And “Proposed Legislation Superannuation Earnings”

The proposed legislation indicates that Division 296 tax will apply to taxable superannuation earnings derived from the difference between the total super balance (TSB) at the beginning and end of the income year, adjusted for withdrawals and contributions. Consequently, such proposed legislation would encompass unrealised capital gains, which can be based on arbitrary valuations and accounting adjustments, making it susceptible to manipulation.

The calculation of superannuation earnings should be fair, consistent, and reliably measured, and excluding unrealised market movements. If the government proceeds with the draft legislation taxing unrealised capital gains, SMSF auditors may face an increased burden and may be more inclined to issue more Part A qualifications due to uncertain market values. Furthermore, as the Australian Taxation Office (ATO) lacks readily available data to verify

market values and movements of unlisted assets, conducting audits and investigations will drain more of its resources.

We understand that for large APRA funds, calculating tax earnings attributable to members can be a challenging and costly exercise. However, for SMSFs that use software like Class, computing taxable earnings attributable to members' level can be done with a degree of accuracy and in a fair and reasonable manner. Again, based on Class Benchmark Data, we estimated 70% of affected 80,000 high balance members will be SMSF members. Therefore, we suggest allowing small super funds (those with fewer than seven members) with no multiple fund interests to make an irrevocable election to calculate earnings based on either:

- (a) The proposed legislation's taxable superannuation earnings, derived from the difference between the TSB at the beginning and end of the income year, with adjustments for withdrawals and contributions; or
- (b) Actual taxable earnings (assessable income less deductible expenses without adjustments for exempt current pension income) attributed to members' weighted average balances. These earnings should still be apportioned for the portion exceeding \$3 million threshold.

4. 84 days To Pay Division 296 Tax

The draft legislation suggests that Division 296 tax is generally due and payable within 84 days (12 weeks) from the notice of assessment. However, this time allowance may not be justifiable for some SMSFs that hold illiquid assets such as farmland, commercial property, rural real properties, collectibles, and more. Considering the time from when they receive the notice of assessment, advertise for the sale of the illiquid asset, and up to the date of settlement, this period may well exceed 84 days. This could potentially put significant pressure on some trustees or members of the SMSFs, forcing them into a fire sale scenario to fund the tax liability. Among the Class SMSFs, approximately 14,240 (8%) have at least one member with a TSB exceeding \$3 million, and one in four (24.4%) of these 14,240 SMSFs have investments in direct properties (illiquid assets).

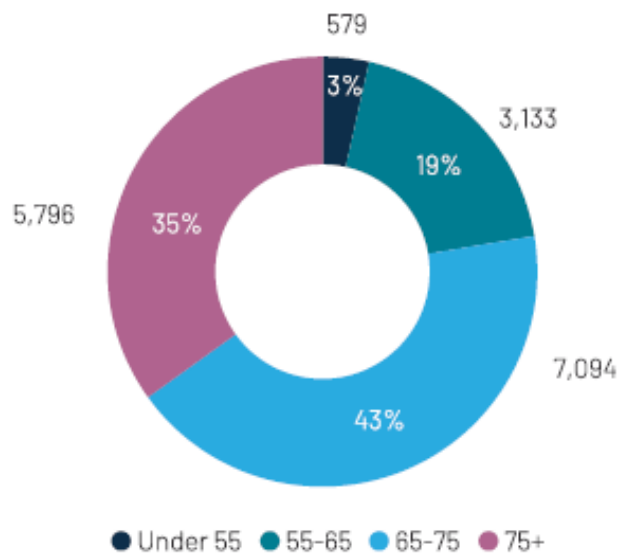
We suggest extending the number of days or enabling taxpayers or trustees of superannuation funds to easily apply for an extension of the Division 296 tax liability, especially for members in SMSFs that hold illiquid assets. This would provide affected members with sufficient time to obtain the best value from the sale of their assets to fund the tax liability.

5. Short-Lived and Short-Sighted Proposed Legislation

While the new Division 296 tax is targeting approximately 80,000 super members, which is about 0.5% of Australians in the 2025-26 income year and is expected to generate around \$2 billion in tax revenue annually, over time, rational superannuation members with a Total Super Balance (TSB) exceeding the large superannuation balance threshold of \$3 million will make active efforts in tax planning to reduce their exposure to the Division 296 tax.

Based on our findings from the Class Benchmark Report 2023 data analysis of our SMSF clients, we discovered that about 16,600 members, roughly 5% of the Class SMSFs members, have a TSB over \$3 million. Notably, 78% of these members, which is nearly 4 in 5, are aged 65 and over, and 35% of them, more than 1 in 3, are aged 75 and over.

Age brackets of members with balances over \$3m at 30 June 2023



Refer to page 36 of 2023 Annual Benchmark Report

We believe that the proposed revenue from taxing these high-balance members is likely to be short-lived and short-sighted. This is because most of these high-balance members are elderly and nearing their life expectancy. They have also met the conditions for release and are ready to withdraw their entire superannuation balance before the Division 296 tax comes into effect. Even if they decide to keep it in super, sooner or later, their superannuation balance is likely to be cashed out from the super system as compulsory death benefits.

Summary

We understand that the Government aims to increase tax revenue, and the release of the exposure draft legislation for Division 296 provides much-needed clarity. We also commend the Government for considering factors like structured settlements and deceased members, which could lead to unfair and unintended consequences.

However, certain aspects of the draft legislation can be further improved to ensure an equitable and fair outcome for all superannuation funds. Indexation of the \$3 million cap and taxation based on actual earnings are two crucial principles that we should strive to uphold. This will help support all Australians, including the younger generations, in their efforts to save for their retirement in a sustainable and equitable manner.