From: [redacted]
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Submission to Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023

Hello,

I would like to provide a submission as an Accountant to the Draft legislation.

In relation to the actual proposal, my submission is in relation to the mechanics of the proposal. At a recent Seminar for Accountants and Tax lawyers it was discussed openly and it was across the board agreed that the main problem with the legislation is that it is not a tax on Income, but a Tax on “earnings”.

The issue there is that a tax on earnings by definition under the draft legislation captures increases in values of assets. Commonly over time all Super Funds typically generate a small amount of cash income and a large of the long term growth in Superannuation comes from assets rising over time. By taxing the earnings this means that you are taking capital gains tax before an asset is sold. By doing that, the tax will produce some significant issues for cases.

For example, let’s take a case where a client has a Superannuation Fund that has a large property in it worth around $5million (due to the close location to the CBD making it’s land value very high), it was their business premises and they are now retired and are renting it out. The income is not high (the Building is old, as mentioned the Land value is high and that is what makes it valuable) but is enough to pay the bills and provide them with a decent income to live on, but not an extravagant lifestyle (except for the high value property in their Superannuation Fund which they count as good luck having bought in a good location, they are otherwise average people).
Every three years the property must be revalued for the Superannuation Fund, and it is not inconceivable that the property value will keep rising due to it’s location. Let’s say if due to the upcoming Games in Brisbane the next valuation increased by $1 million. They would then get a very large tax bill personally (around $75,000). They do not have the funds (or the level of income) to enable them to pay an amount like that, and they have no assets other than the Property owned by the Super Fund, and their Family Home. They would therefore have two options on how to deal with this bill – sell their family home, or sell the property owned by the Superannuation Fund. I presume this is not an intended consequence of the Act, but over time there will be cases where this is an issue.

There was then numerous other problems that were raised by various parties around the way that the Act seeks to tax amounts that have not been received. The Act is in stark contrast to every other part of the Tax Act which does not seek to charge Tax on unearned income. The way that the Tax Act works is that you pay tax on income, not on unearned income. Once a property or Asset is sold, Capital Gains Tax is paid and that is a fair system as it only charges the tax at the time that the Asset is sold and there are funds to enable the tax to be paid.

Additionally, the suggestion by the Government that it is too difficult to tax it any other way is completely wrong. Already there is a system embedded in the Superannuation Tax laws where an Actuary report is done for people with large Member balances (over $1.9 million), to determine the amount of income that is taxed at 15% and how much is tax free for a Member with a large account balance in their Fund (part in Pension mode and part in Accumulation mode). The system has been used for many years, is easily managed and could be done for any Superannuation Fund without complexity. The calculation for Taxable income would work in the same way as it always has, and then an Actuary Report used to determine the amount of that income that is taxed at the additional rate (i.e. the percentage of Taxable income that relates to the Fund balance in excess of $3 million). Importantly, Taxable income includes income earned during the year, but also Capital gains relating to any profits on the sale of shares, property etc (when they occur).

In summary, my submission is based on conversations with many Accountants and Tax Lawyers about this, with the request being that the Act should be changed so that the additional Tax is only levied on earned income (Taxable Income), which will tax income that has been received, and not seek to tax growth in the value of assets before they are sold (at which time the proceeds can be used to fund the additional tax amount).

Kind regards,
Lucas Garner

Chartered Accountant, B.Bus (Acctg), Registered Tax Agent, Registered ASIC Agent, JP (Qual)