The Tax Institute

17 April 2023

Director
Tax and Transfers Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Director

Better targeted superannuation concessions

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the consultation paper on better targeted superannuation concessions (the **Consultation Paper**).

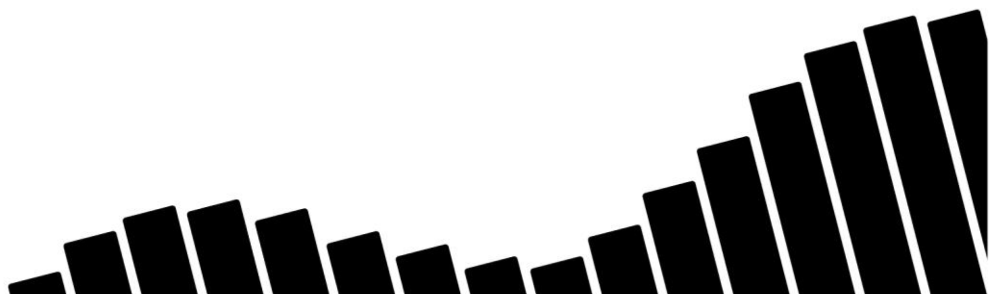
In the development of this submission, we have closely consulted with our National Superannuation Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

The Consultation Paper outlines further details of the Government's announcement regarding a proposed additional tax of 15% on superannuation balances above $3 million (the **additional tax**). If implemented, the additional tax could set an unwanted and precarious precedent regarding the taxation of unrealised gains.

The Tax Institute does not support the taxation of unrealised gains as a principle that should be used in Australia's taxation and superannuation systems. We consider that the additional tax should be implemented in a manner that does not tax unrealised gains. However, if the Parliament legislates the additional tax as proposed in the Consultation Paper, we consider it an imperative that the taxation of unrealised gains is quarantined to just this measure and is not used as a precedent for future taxation measures.

If the measure is implemented as proposed, we recommend that further adjustments are needed to the proposed total superannuation balance (**TSB**) that will form the basis of the calculation of the additional tax. These adjustments will better ensure that the tax is imposed only on the earnings of the superannuation balance.

L37, 100 Miller Street
North Sydney, NSW 2060
T 1300 829 338
E tti@taxinstitute.com.au
taxinstitute.com.au



ABN 45 008 392 372

Consideration should also be given to the payment options available to taxpayers to allow them to meet the significant tax liability imposed by the additional tax. For some taxpayers there will be considerable liquidity pressures caused by the imposition of the additional tax. The rules should recognise the financial impact of the misalignment between the tax liability and the associated flow by allowing taxpayers extra time and a greater range of payment options.

The Tax Institute recognises the difficulties associated with ensuring commensurate taxation between defined benefit interests and non-defined benefit interests. The fundamental differences between the two interests make it difficult to ensure that the proposed measure will be sector neutral. Modifications may need to be made to the proposed approach to ensure that the additional tax, as imposed on defined benefit schemes, achieves a better balance between increased compliance costs and the desired outcome. We also consider that the proposed $3 million threshold should be indexed, recognising changing economic circumstances over time.

This submission also takes account of discussion and feedback at roundtable meetings convened by representatives of the Treasury. A number of representatives of The Tax Institute attended both the Sydney and Melbourne meetings and were grateful for the opportunity to participate and be heard.

Our detailed response is contained in **Appendix A**.

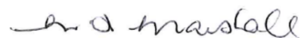
The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact The Tax Institute's Senior Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,

Scott Treatt

General Manager,
Tax Policy and Advocacy



Marg Marshall

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration. Our comments respond to the questions set out in the Consultation Paper.

Implementation detail

1. Do you consider any further modifications are required to the TSB calculation for the purposes of estimating earnings? If so, what modifications should be applied?

Broadly, the Consultation Paper proposes to calculate the estimated earnings upon which the additional tax will be levied by reference to the movement in the individual's TSB in a financial year. This is to be determined by reference to the difference between the individual's opening and closing TSB for the year, with some adjustments made for withdrawals and contributions. The proposed formula is extracted below (**earnings calculation**):[1]

$$\text{Earnings} = (\text{TSB}_{\text{current financial year}} + \text{Withdrawals} - \text{Net contributions}) - \text{TSB}_{\text{previous financial year}}$$

We understand that the TSB, for the purpose of this formula, will rely on the existing definition contained in subsection 307-230(1) of the *Income Tax Assessment Act 1997* (**ITAA 1997**). For APRA-regulated funds and self-managed superannuation funds (**SMSFs**), this would mean that the relevant TSB will be the sum of:

- the total value of the accumulation phase interests;
- retirement phase interests;
- in-transit rollovers; and
- certain outstanding limited recourse borrowing arrangements (**LRBA**),

less personal injury or structured settlement contributions.

The Tax Institute is of the view that the concept of the TSB proposed to be used in the earnings calculation requires additional adjustments or further consideration to ensure that it more accurately represents the earnings on the superannuation balance above the proposed $3 million threshold. These considerations are discussed in further detail below.

Limited recourse borrowing arrangements

Under the current law, limited recourse borrowing arrangements (**LRBAs**) are included in the definition of the TSB to ensure that it more accurately reflects the overall values of the assets in a superannuation fund that support an individual's superannuation interests.[2] Broadly, the proportion is based on the individual's share of the total superannuation interests that are supported by the asset that is subject to an LRBA.[3]

---

[1] Consultation Paper, page 7.

[2] Explanatory Memorandum to the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019, paragraph 3.17.

[3] ITAA 1997, subsection 307-231(3).

Historically, LRBAs were of some concern as they allowed funds to increase their investment in assets using borrowings. Some saw this as a possible circumvention of the contribution caps. However, subsequent legislative amendments place stringent conditions on LRBAs so the rationale for adding back the amount of borrowings appears to be no longer justified. We recommend that paragraph 307-230(1)(d) of the ITAA 1997 should not be included in the earnings calculation for this measure.

As discussed in recent meetings, The Tax Institute continues to support not adding back LRBA balances to the TSB for the purposes of the earnings calculation.

Balances that should be out of scope

The Tax Institute recommends that the Government should consider whether the policy intent should capture all superannuation balances above $3 million.

Death benefits

There are two methods by which a superannuation benefit is paid out following the death of a member. It may be paid out in its entirety as a lump sum payment or, alternatively, in the form of an income stream (a pension).

In the first instance, we consider that once a member has died, their death benefit account should not be subject to this measure. This is because the deceased's account is paid out to the relevant beneficiaries within a reasonable time following the death of the member.[4] The purpose for which the fund continues to hold the death benefits for the period from the date of death until the beneficiaries receive the death benefit is primarily to determine each beneficiary's entitlement and facilitate those payments, not to meaningfully grow the deceased's account.

When paid out in the form of an income stream (whether or not reversionary), the deceased member's benefits remain in the superannuation environment. The capital that supports the income stream should not be treated as 'earnings' in the financial year the income stream is established for the beneficiary. Accordingly, the following should be excluded from the earnings calculation in that financial year by deeming it to be included in the opening TSB or, alternatively, by way of specific subtraction from the closing TSB:

- a new pension commenced by a beneficiary from a deceased member's account (non-reversionary pension); and
- the receipt of a reversionary pension by a beneficiary as the result of the death of a member.

[4] Regulation 6.21 of the Superannuation Industry (Supervision) Regulations 1994 requires the payment of a death benefit to be cashed 'as soon as practicable' following the death of the member.

Structured settlements and compensation

Other examples of accounts that should be exempted from this measure include those where a large sum has been received as compensation for a life-altering circumstance, such as a serious and permanent injury. The compensation could be received in the form of a structured settlement, insurance payout for permanent or temporary incapacity, terminal illness or other arrangement. Certain insurance risks, such as trauma insurance, may still be insurable in a superannuation fund that preceded legislative changes that took effect on 1 July 2014. The risks on such 'grandfathered' policies should be similarly excluded.

Feedback from our members indicates that, on some occasions, compensation payments received by individuals who suffer debilitating injuries are contributed to superannuation. Although these amounts can exceed the proposed $3 million threshold, they reflect the higher costs the individual will incur to support their way of life with the injury or other circumstance. Many need ongoing and expensive support that will be possible only through the prudent investment of their compensation or insurance proceeds over the remainder of their lives.

Imposing a proposed additional 15% tax on notional earnings for capital above $3 million will have a significant impact on cash flow for many in this cohort and could reduce the longevity of the capital sum during the individual's life, resulting in them not being able to maintain the same level of ongoing support.

Loss carry back

The Tax Institute is of the view that the Government should consider allowing refunds of additional tax paid in prior years to the extent of 'negative earnings'.[5] Under this approach, taxpayers would carry forward their losses only to the extent they have not paid the additional tax in the past. This running account approach would ensure that taxpayers are able to realise their losses in a timely manner and remove any unintended timing consequences resulting from the movement in asset values that can oscillate above and below the threshold across the demarcation of the end of a financial year.

If the Government does not support the carry back of losses in all instances, we recommend that losses should be carried back in at least some circumstances. These include instances where the TSB falls below $3 million or following the death of the individual.

2. What types of outflows (withdrawals) should be adjusted for and how?

'Withdrawals' are proposed to be added back to the earnings calculation to reflect what the individual's current TSB would have been had the withdrawal from superannuation not been made. This adjustment is intended to ensure that a decrease in the TSB resulting from the withdrawal is not treated as negative earnings,[6] thereby limiting the taxpayers' ability to minimise or avoid the additional tax by withdrawing amounts to reduce their superannuation balance.

---

[5] Consultation Paper, page 11.

[6] Consultation Paper, page 9.

The Tax Institute is of the view that an amount withdrawn from superannuation should not be included as a 'withdrawal' in the earnings calculation where the amount is withdrawn to pay a tax liability incurred as a result of:

- the application of Division 293 of the ITAA 1997;
- exceeding the concessional or non-concessional contributions cap; and
- the additional tax (the proposed measure).

While legislation imposes these tax liabilities directly on the individual, subsection 131-5 of Schedule 1 to the *Taxation Administration Act 1953* allows impacted individuals to choose to release an amount from superannuation to fund the payment of the relevant tax. Amounts that an individual chooses to release from superannuation reduce the total available assets they can use to support a self-funded retirement. Taxpayers should not be penalised if they elect to pay any of these tax liabilities from the fund. Not treating these amounts as a 'withdrawal' would be a fairer outcome as the released funds are not withdrawn to reduce the overall value of the individual's TSB or to support their retirement.

Additionally, it is not clear from the Consultation Paper what is meant by 'net contributions'. This term would be expected to take into account the income tax payable by the fund on a concessional contribution, but it should also include the taxes listed above that directly relate to contributions made by or for the individual that are assessed to an individual. We suggest that the term 'net contributions' explicitly take into account all taxes that directly relate to contributions made to a fund and not just those imposed on the trustee of the fund.

Further, adjustments between spouses (or former spouses) under a family law split should be excluded from the withdrawal calculation where an amount is split within superannuation from one spouse's account to the other. If this is not excluded, a spouse splitting their superannuation would effectively be subject to a 15% penalty on the transfer of their superannuation to their spouse (or former spouse).

3. What types of inflows (net contributions) should be adjusted for and how?

Contributions made during the financial year are subtracted from the earnings calculation to ensure that any increase in the TSB represents the earnings for the financial year and not as a result of contributions made by or for an individual. Currently, the Consultation Paper proposes to recognise the following as a contribution (**excluded contribution**) for this purpose:[7]

- superannuation guarantee (**SG**) contributions;
- voluntary contributions;
- downsizer contributions;
- payment of insurance benefits for polices owned inside superannuation; and
- transfers such as family law splits.

---

[7] Ibid.

We consider that the following amounts should also be recognised as an excluded contribution (that is, subtracted from the earnings calculation) as, in our opinion, they do not reflect the earnings of the fund for the financial year:

- transfers from reserves (as the contribution will have been received by the fund in the previous financial year, but is not allocated to the member's account, and therefore is not reflected in their TSB, until the year in which the transfer from the reserve occurs); and
- transfers from overseas pension funds.

If the measure and the earnings calculation proceeds as proposed, we consider that the excluded contributions should be expressly set out in the legislative provisions. This would provide taxpayers, tax practitioners and the ATO with the certainty that is needed to ensure better compliance, reduced strain on resources to clarify any uncertainties and reduced occurrences of possible disputes with the ATO.

4. Do you have an alternative to the proposed method of calculating earnings on balances above $3 million? What are the benefits and disadvantages of any alternatives proposed including a consideration of compliance costs, complexity and sector neutrality?

Concerns with proposed approach

Taxation on unrealised gains

If enacted, the additional tax would, in effect, levy a tax on unrealised capital gains. We consider that the practical and financial impact of taxing a gain that is yet to be unrealised far outweighs any perceived macroeconomic benefits and sets a dangerous precedent for our taxation and superannuation systems more broadly.

The taxation of unrealised gains can often place taxpayers under significant pressure due to the mismatch between the tax liability and the cash flow associated with the underlying asset, potentially requiring them to realise other assets to meet their taxation liability. Significant concerns arise where the predominant investment is business real property that may be used by a related small business, or other illiquid assets where forced sales may be necessary to fund the additional tax. Taxpayers are also likely to be subject to increased compliance costs. In particular, asset valuations can be expensive and an uncertain factor for taxpayers and the administrator, especially for those assets that are difficult to value or whose values are volatile.

The Tax Institute is of the view that the proposed tax on unrealised gains should not be introduced into Australia's taxation and superannuation systems. However, if the additional tax is legislated as proposed, we are of the strong opinion that the concept of taxing unrealised gains must be confined (and quarantined) to this measure. It should not be used as a model for taxing other unrealised capital gains in the future. This principle should be clearly articulated in the objects of the provision.

Does not achieve commensurate treatment for defined benefit interests

Page 14 of the Consultation Paper states that:

> The Government intends for broadly commensurate treatment to apply to defined benefit interests relative to non-defined benefit interests.

However, we consider that the proposed measure will not achieve the desired sector neutrality between defined benefit interests and non-defined benefit interests. There is a fundamental difference in the calculation of the benefits to which superannuants are entitled under these different approaches. It is practically unfeasible to apply the proposed earnings calculation, even with amendments, that will ensure the interests under both schemes are similarly taxed. We note that the desired commensurate treatment may be better achieved through adopting a deeming approach, as described below.

Need for indexation of the proposed threshold

The Tax Institute is of the view that the proposed $3 million threshold should be indexed. The impacts of changing economic circumstances, especially in a high-inflation environment, will diminish the value of the threshold in real terms. Over time, more people than originally intended will fall within the scope of the measure.

If the proposed $3 million threshold is not indexed, we consider that the threshold should be set at a higher amount. A suggested alternative threshold is $5 million. The alternative could expressly provide for a review of the threshold at fixed intervals to calibrate it against the prevailing economic conditions (such as where there is significant inflation).

Complexity

Australia's superannuation system is one of the most complex in the world and the level of complexity increases significantly with each new measure. The current regulatory burdens place very high compliance costs on superannuation funds, individuals and the regulators. While simplicity has been prioritised, we consider that the proposed measure will further increase these compliance costs for a relatively small, expected revenue gain. If implemented, we consider that all steps should be undertaken to reduce the compliance and administration costs where possible.

Despite suggestions that the Government will seek to minimise compliance costs, there will be unavoidable new obligations and reporting requirements, and obligatory changes to existing systems and processes to administer the additional tax.

Alternative approaches

We have outlined below alternative approaches that the Government should consider in developing this policy. We recognise that some of the proposals below are consistent with the proposed measure in that they suggest an alternative methodology to the taxation of unrealised gains. As noted above, we reiterate our firmly held position that the taxation of unrealised gains should not be legislated. However, if the measure proceeds, the taxation of unrealised gains should be confined by legislation to this measure.

Deeming approach

As an alternative to the proposed earnings calculation, a deeming approach could be taken to determine the additional tax levied. Under this approach, the proposed movements in the closing TSB would be adopted, with the proposed adjustments for net contributions and withdrawals included. This TSB calculation would be used to determine whether an individual's superannuation balance exceeds the $3 million threshold, however it would not be used to determine the earnings amount.

A deemed earnings rate would instead be prescribed by the ATO each year and applied to the capital value above the $3 million threshold to determine the earnings amount, upon which the amount of additional tax would be calculated. This would result in a much fairer approach, as unrealised gains would not form part of the earnings amount. Alternatively, another approach would be to apply the deemed earnings rate to the opening TSB. Additional tax would then be levied on the amount of the deemed earnings.

A deeming approach would likely achieve more commensurate treatment for defined benefit interests and non-defined benefit interests and be potentially considerably simpler to understand and administer. We note that, as with the proposed earnings calculation, the lack of member pension reporting for APRA-regulated funds would still need to be addressed. However, the application to defined benefit interests would likely result in more logical and calculable outcomes. Feedback from our members suggests that this approach would not require significant system changes to implement.

The design of the deeming rate could factor in any year-on-year variances or loss years. Based on historical performance, a deeming approach would likely result in a more accurate calculation of the tax liability.[8] Further, if the deeming rate included only the forecast return for income, unrealised gains would not be included in the assessment of the additional tax as the deeming approach would estimate expected earnings based on realised gains.

Exclude retirement phase capital from both the additional tax and $3 million threshold

Currently, all individuals in retirement phase benefit from the transfer balance cap (**TBC**) which allows tax-free earnings on retirement phase capital up to $1.7 million. The benefit of tax-free earnings on capital up to the TBC is not upheld by the proposed measure which will subject earnings on capital over $3 million to the additional tax, having no regard to the TBC.

As an alternative to the proposed formula, retirement phase capital up to the individual's TBC (this is determined by the highest ever balance in the member's transfer balance amount (**TBA**)) could be excluded in calculating the additional tax and the $3 million threshold prior to the proportioning step. Under this alternative, retirement phase earnings would remain entirely tax-free up to the TBC, and the additional tax would instead apply only to earnings on capital that exceeds a threshold that is lowered by the TBC. This approach would ensure that every individual, regardless of their superannuation balance, benefits from completely tax-free retirement phase earnings up to their TBC.

By way of example, assume an individual has $5 million in superannuation, of which $1.7 million has been transferred to retirement phase (maximising their TBC), and no contributions were made during the financial year. The movement in the individual's TSB during the financial year is $200,000, resulting in a closing TSB of $5.2 million. Under this alternative approach, the individual would lower their TSB of $5.2 million by the $1.7 million TBC,[9] which results in an excess of $500,000 above the $3 million threshold. The additional tax would be calculated as follows:

---

[8] As an example, Vanguard publicly provides publicly available investment returns which demonstrate that there is no year where the worst returns exceeded the best across all asset classes. See Vanguard 2022, 'Stay the course – a timeless lesson', available at: https://intl.assets.vgdynamic.info/intl/australia/documents/resources/2022-Index-Chart-A4-Flyer-For-Web.pdf.

[9] The reference to TBC above should be the member's personal TBC, as indexed.

Earnings × ((Member's closing TSB – TBC – $3 million)/Member's TSB) × 15%

= $200,000 × (($5.2 million – $1.7 million – $3 million)/$5.2 million) × 15%

= $2,885 (rounded to nearest dollar).

The benefit of this alternative approach is that no add-backs would be required for pension drawings. Further, this approach would remove the need for APRA-regulated funds to commence reporting individual member pension drawings and assist in reducing complexity for defined benefit interests as the TBA entry would not require additional calculations. This alternative approach would provide cost savings and would be simpler to administer.

5. What changes to reporting requirements by superannuation funds would be required to support the proposed calculation or any alternative calculation methods?

Feedback from our members indicates that reasonable amendments to an SMSF's annual return reporting could be made to accommodate the information needed to administer this measure. For example, a new label could be created to capture the earnings proposed to be subject to the additional tax. However, APRA-regulated funds would likely be required to make larger changes to their reporting to allow the ATO to calculate the additional tax and carry forward losses.

Although the number of impacted people is expected to be relatively low at inception (estimated to be less than 80,000 in 2025–26), it will increase over time given the current threshold is not proposed to be indexed. The Tax Institute supports any reporting changes that minimise compliance costs for superannuation funds in the short-term and future-proof reporting processes to account for the increasing number of people who will be impacted by this measure in the long-term.

Earnings subject to additional tax

6. Do you consider any modifications are required to the proposed proportioning method? If so, what modifications should be applied?

We are of the view that the principle of taxing unrealised gains is not an equitable approach because the proposed calculation does not allow for the discounting of capital gains that taxpayers otherwise have access to.

When the CGT asset is realised by the superannuation fund, the resulting capital gain is eligible for a one-third CGT discount (assuming that the CGT asset has been held for at least 12 months). Similarly, individuals who have held a CGT asset for at least 12 months are eligible for a 50% CGT discount. The proposed measure does not provide commensurate treatment of unrealised capital gains in the earnings calculation. Accordingly, unrealised capital gains will be subject to the full 15% additional tax which is inconsistent with the treatment of realised gains.

We recommend that further consultation be undertaken to determine a method for allocating the earnings between income and unrealised capital gains and identify an appropriate discount percentage to apply to the portion of the earnings attributable to unrealised gains.

Tax Liability

8. Does the proposed methodology for determining the tax liability create any unintended consequences?

Taxpayer access to information

Page 12 of the Consultation Paper notes that the ATO will be responsible for collecting the relevant information and calculating the additional tax for impacted individuals. This implies that the ATO would also be responsible for determining and keeping track of a taxpayer's negative earnings and carried forward losses.

It is important that taxpayers and practitioners are able to access this information so they can check and validate the information and calculations used and undertaken by the ATO. This will enable potential issues to be promptly raised and resolved with the ATO in a timely and efficient manner, reducing the likelihood of disputes over tax liabilities.

If enacted, to provide full transparency to taxpayers, the proposed measure should also provide funding for the ATO to ensure information about the additional tax is readily available to taxpayers, tax practitioners and financial advisers. This information could be made available through myGov or online services for agents (OSfA).

9. Do the proposed options for paying liabilities create any unintended consequences?

Page 13 of the Consultation Paper proposes to allow individuals who are liable for the additional tax to meet their liability in a similar manner to Division 293. This would mean that individuals could pay their tax liability by either:

- using funds held outside their superannuation account; or
- releasing amounts held in their superannuation account.

Feedback from our members raises concerns about liquidity and cash flow management being significant worries for taxpayers when paying their additional tax liability. While individuals will have flexibility in how they fund the payment of the additional tax liability, the liability will potentially be in the tens of thousands of dollars and will place a significant financial burden upon impacted individuals to source the funds.

The inclusion of unrealised gains means that the additional tax assessments will be much higher than would be expected if the tax was applied only to the portion that represents taxable income. Further, funds with a low number of high-value assets (such as real property) may struggle from an economic perspective in wrestling with the decision to sell an asset earlier than they would prefer, predominantly to pay the additional tax liability.

We consider that taxpayers should be provided with options to defer the payment of the additional tax until capital gains are realised. Any deferral mechanism may need to account for a non-punitive level of interest to recognise the time value of money.

We also consider that a deferral mechanism is needed for members with defined benefit interests. Participants of defined benefit schemes may face extra problems as they often do not have access to the underlying interests until after retirement. This means those individuals will face a greater burden as a key payment option is not available. If the approach in Division 293 is adopted, a similar mechanism regarding existing payment deferrals will be needed.

Anecdotal feedback from our members has also raised concerns about taxpayers often being surprised by their Division 293 tax liability. Taxpayers often make unintended mistakes relating to repayments and are not aware of the consequences of the liability and late payment. It is likely that taxpayers will make similar mistakes with respect to the additional tax liability.

We note that Division 293 imposes a 21-day time limit (following the issue of the Division 293 assessment) for releasing the relevant amount from superannuation. Given the nature and potential size of the additional tax liability, no such time limit should apply to the proposed measure. Should a time limit be imposed, where an individual inadvertently misses the release deadline, they would not be able to release funds from superannuation and would have to bear the cost of the tax liability personally. This could have significant and adverse financial impacts on the member as it could involve them potentially losing their home or becoming heavily indebted.

We further consider that the significantly larger tax liability imposed by the additional tax will result in existing penalties being excessive and punitive. It is important that the administration of any new rules recognises the pressures placed on individuals and allows them a degree of leniency, supported payment options and the ability to defer payments to the extent they are not able to reasonably source the funds. Any penalties associated with delayed payments should be reduced given the greater amounts of tax payable. Further, taxpayers should be provided with longer repayment timeframes with multiple notice periods to ensure they are given every opportunity to meet the significant tax obligation.

Defined benefit interests

10. Do the existing valuation methods for defined benefit interests in the pension phase provide the appropriate value for calculating earnings under the proposed reforms?

Defined benefit schemes are likely to be a source of difficulty in the design and implementation of the additional tax. It is common for members with a defined benefit interest to be unaware of the value and amount of their benefit until they reach their retirement phase and begin receiving an income stream. As a result, we consider that an alternate valuation method is needed for defined benefit schemes.

11. Are there any alternative valuation methods that should be considered for either pre-pension or pension phase defined benefit interests?

As an alternative to the earnings calculation, it may be possible to use either the currently reported vested benefit figure or an annual actuarial assessment. We note that if a deeming approach is utilised instead of the proposed earnings calculation, further adjustments would not be needed to the calculation for defined benefit interests.

The use of an annual actuarial assessment would result in a more accurate figure that can be used in the earnings calculation. However, this would require taxpayers or their fund to incur additional costs for each assessment. On the other hand, while the currently reported vested benefit amount may not allow for the most accurate figure, it would not increase the compliance costs.

The Tax Institute supports an equitable approach that appropriately considers the use of existing metrics and does not unreasonably increase compliance costs for taxpayers. Individuals should not be required to meet expensive and burdensome compliance requirements that eat into savings they will draw upon to support themselves during their retirement.

12. Are there any preferred options in providing commensurate treatment for defined benefit interests?

Please refer to our comments in question 4 above concerning a deeming approach.

13. What are the benefits and disadvantages to any alternatives?

Please refer to our comments in question 4 above concerning a deeming approach.