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Mr Alan Raine,
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Raine,

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 and a related bill [Provisions]

CPA Australia represents the diverse interests of more than 170,000 members, working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

Our submission provides our views on the bills *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023* (the "Bill") and the *Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023* (the "Imposition Bill"). Our comments are restricted to schedules 1-3 of the Bill, and where appropriate, the Imposition Bill.

The proposed amendments contained in the Bill aim to restrict tax concessions for individuals with total superannuation balances (TSBs) of greater than $3 million. Starting from the 2025-26 income year, concessional tax rates on superannuation earnings will be capped at 15% for balances up to $3 million, while a scaled approach aims to apply a maximum 30% tax rate on earnings corresponding to the percentage of an individual's TSB which exceeds $3 million. This change is intended to directly target high-balance superannuation interests, implementing a separately calculated tax on earnings beyond the $3 million threshold, independent of the superannuation fund's internal tax structure.

CPA Australia endorses the idea that fairness and equity should underpin the level of any perceived government assistance for superannuation, and we note that tax concessions are a fundamental part of retirement savings in Australia. We concur that there should be sensible constraints on the extent of this assistance, ensuring adequacy is not compromised.

Nevertheless, it is important to emphasise that fiscal measures only focused on improving the budget should not be the sole impetus behind this measure. The Minister for Financial Services, the Hon. Stephen Jones MP (Hansard 8 March 2023), explicitly attributed the rationale to budget repair:

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> *The reason we are doing this is that this government has inherited a trillion dollars of debt from those opposite.*

We believe that the government has acted prematurely with this announcement (and the proposals) while the objective of superannuation legislation is yet to pass Parliament. Policy changes of this nature should only be made once the objective of superannuation, and retirement savings more generally, have been defined by the government.

This measure is not proposed to be indexed. Superannuation is a long-term investment, and the anomalous lack of indexation threatens to expose Australians in the future to inflation risk resulting in higher taxation of smaller real amounts of retirement savings. We recommend that the $3 million threshold be indexed to prevent this erosion of retirement savings.

At a more granular level, we have several additional objections to the proposal, which may be summarised as follows:

- The claim in the Explanatory Memorandum to the Bill that a “30 percent tax rate” will apply to TSBs of greater than $3 million in the EM should be retracted and clarified to acknowledge that the 15 percent additional tax rate applies to a proxy measure which is distinct from the existing 15 percent tax on fund earnings.
- Alternative methods must be considered to avoid taxation of unrealised capital gains to ensure synchronicity of this measure with the broader fund earnings tax regime.
- Negative investment earnings should give rise to an immediate tax refund, rather than a carried forward loss against future earnings.
- The calculation should be stopped for invalidity and terminal illness conditions of release, as well as death benefits.
- Funds such as SMSFs which can provide more accurate fund earnings figures for individual members should have the option of being able to do so in lieu of the proposed formula using changes in a member’s TSB.
- The option to pay Division 296 assessments via deferred tax debts should be available for funds which presently invest according to compliant investment strategies involving large illiquid assets with very little need for cash.

Our first objection relates to the framing of the new tax. Paragraph 1.1 of the explanatory memorandum (EM) suggests that individuals with a Total Superannuation Balance (TSB) of $3 million or more could face taxation of "up to an overall 30 per cent" on a portion of their earnings. However, the method used to calculate this tax liability involves considering fluctuations in account balances, potentially including unrealised capital gains. This introduces inconsistency into the tax system, as income-based taxes are typically levied on net realised capital gains, with provisions such as the capital gains tax discount applying for assets held over 12 months. Moreover, the proposed treatment of investment losses could negatively and permanently affect investors who are unable to recover investment losses or reduce their superannuation below the $3 million threshold.

We consider that the claim that this taxes investors at up to 30 per cent is misleading, especially when compared to taxation of other tax paid investments notionally taxed at 30 per cent. We recommend that that the claim of a 30 percent tax rate in the EM be retracted and clarified to acknowledge that the 15 percent additional tax rate applies to a proxy measure which is distinct from the existing 15 percent tax on fund earnings.

CPA Australia does not support taxation of unrealised capital gains and recommends that alternative methods be considered to ensure synchronicity of this measure with the broader fund earnings tax regime. We also recommend that in the event of negative investment growth, the calculation is reversed for an immediate tax benefit to remove the uncertainty of carrying forward investment losses.

We are also concerned about the application of the tax to benefits paid in the instance that one is ill or injured. We welcome the stopping of the calculation in the instance that one passes away during the year, as provided for in section 296-30. We similarly welcome the exceptions provided for in sections 296-20 and 296-25 to child recipients of superannuation income streams and structured settlement contributions respectively.

However, the tax will still apply to members who receive incapacity benefits due to illness or injury. We consider that these cases should similarly be exempted. Additionally, the absence of an exemption for terminal medical conditions appears to permanently sever that policy’s historical alignment with death benefits. In 2008, the then Minister for Superannuation and Financial Services, the Hon. Nick Sherry MP, made assurances that such benefits would remain tax-free. The failure to provide a similar exception to terminal medical conditions contradicts this policy and removes the link between the conditions of release for death and terminal medical conditions.

Our recommendation is that members who receive a lump sum benefit due to disability or terminal illness should also be exempt from paying the tax. For members receiving benefits in the form of an income stream due to illness or injury (such as income protection insurance benefits), we recommend that the tax not be assessed during the duration of the benefit’s payment period.

The Bill introduces a significant provision (section 307-230A) that addresses the valuation of defined benefit or income stream interests, specifically for Total Superannuation Balance (TSB) calculations. It is essential to acknowledge that any changes to TSB calculations will have broader implications for superannuation policy. These implications extend beyond the new tax and also impact other areas, including contribution restrictions. While we appreciate the holistic approach, we emphasise the need for a comprehensive review of existing limits and thresholds within the superannuation system. Such a review would create a more effective and balanced framework for all stakeholders.

Additionally, we note that Subdivision 296-E proposes that earnings from interests in constitutionally protected funds and funds for federal judges be excluded from taxation, even with inclusion in the TSB calculation. Whilst we recognise the administrative and constitutional challenges in consistent application, we question whether the chosen method aligns with the proposed objective of superannuation, particularly regarding *equitable* preservation of savings.

We commented earlier in this submission on the stated intent to tax interests over $3 million at a rate of “30 per cent”, despite the taxation method being substantially different from the ordinary taxation method for assessment of fund earnings. We believe that the flexibility of Self Managed Superannuation Funds (SMSFs) and Small APRA Funds (SAFSs) – and certain other types of large APRA funds – can provide the ability to ensure that the assessed amount of fund income attributable to individual members is able to be assessed in the same way as ordinary fund earnings. It may be possible for funds such as these to provide a more accurate account of fund income attributable to fund members individually, with various items able to reflect the realised capital gains and losses incurred.

Where funds are able to do so, they should be offered the option to provide individual earnings figures for members to the ATO for Division 296 assessment.

Additionally, we note that the assessment of earnings which includes unrealised capital gains stands to penalise funds which presently follow compliant investment strategies around large illiquid assets such as business real property, and which presently have very little need for holding cash. Such funds may be forced to dispose of these assets in order to cover assessments for the new tax, potentially crystallising pricing/valuation risk and reinvestment risk unnecessarily.

We recommend that deferred tax debts be available for funds currently utilising such compliant investment strategies in order to guard against forced asset disposals in funds such as these.

If you have any queries with respect to this submission, please do not hesitate to contact Richard Webb, Superannuation Lead on or

Yours sincerely

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