



THE TAX INSTITUTE

THE MARK OF EXPERTISE

6 April 2016

Ms Jenny Wilkinson
Division Head
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuationobjective@treasury.gov.au

Dear Ms Wilkinson,

Objectives of Superannuation

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the Objectives of Superannuation Discussion Paper dated 9 March 2016 (**Discussion Paper**).

Summary

Our submission below addresses our main concerns and suggestions in relation to the Discussion Paper. In particular:

- The Tax Institute broadly agrees with a primary objective for superannuation as recommended by the Financial System Inquiry (**FSI**).
- The proposed objectives could be interpreted as aligning adequacy of superannuation to the Age Pension, which is undesirable.
- The proposed objectives do not clearly contemplate many of the kinds of benefits that are currently available to superannuants.
- It is unclear how the statement in the Discussion Paper that “superannuation is meant to help fund a person’s retirement, it is not for unlimited wealth accumulation or bequests” interacts with the ‘sole purpose test’.
- The objectives should consider a five year cycle for a formal review and implementation of any recommended changes, if necessary.
- It may be preferable that the objectives be contained in a separate standalone Act.

Discussion

Primary objective

The Tax Institute agrees with the notion of a 'primary objective' for superannuation that relates to the provision or drawing of income in a person's retirement years as a measure against which future policy might be designed and legislative reform tested. We submit that the primary objective currently proposed is too narrow by reason of its overreliance, by inference, on the Age Pension.

The primary objective recommended by the FSI was in the following terms:

"to provide income in retirement to substitute or supplement the Age Pension"

The Discussion Paper states that the purpose of legislating the primary objective is to ensure that it then operates as a guide to policy-makers, regulators, industry and the community about the fundamental purpose of superannuation.

It should also be made clear that the statutory objective is primarily aimed at governments and policy makers and not at taxpayers. This is consistent with the statement in the Discussion Paper that "[t]he objective will provide a way in which competing superannuation proposals can be measured and a framework for evaluating the fairness, adequacy and sustainability of the superannuation system".

Whilst The Tax Institute is reassured by the Government recognising that a single primary objective cannot possibly encompass all aspects of the purpose and attributes of the superannuation system, we are nevertheless concerned that the subsidiary objectives set out would not be adequate in their current form.

Connection to Age Pension

The Tax Institute submits that an objective that aligns adequacy to the Age Pension would be inappropriate and would operate as a general disincentive to superannuants to save for their retirement. In those circumstances taxpayers would be likely to look to savings outside of the superannuation industry to support them in their retirement and over time there would be a risk that one of the key pillars upon which the system was established, voluntary superannuation saving, would be left to fail. The objective should be aligned to an optimal income stream for Australians and not to a minimum income stream such as the Age Pension.

Limits on the kinds of benefits that could be available

The Tax Institute is concerned to ensure that the enshrining of the primary objective (together with subsidiary objectives) does not have any unintended consequences for how superannuation might be permitted to be applied. For instance, the primary objective (even when taken with the stated subsidiary objectives) would not clearly contemplate many of the kinds of benefits that are currently available to superannuants (and in certain circumstances,

their dependants) such as lump sum payments on death and permanent disability, reversionary pension arrangements for a spouse and/or dependent child, terminal illness benefits, salary continuance benefits, transition to retirement pensions, financial hardship and compassionate grounds payments. There are also various grandfathered benefits still available through some superannuation funds, including certain sickness or ill health benefits and trauma event benefits.

If it is proposed that enshrining the primary objective of superannuation into legislation would affect the availability of these benefits going forward then The Tax Institute considers that a further review into which currently available benefits might be cut-back or excluded is required.

Interaction with sole purpose test

The Government would also need to give consideration to the operation of the existing 'sole purpose test' under section 62 of the *Superannuation (Industry) Supervision Act 1993 (Cth)* and the payment and cashing standards under Parts 5 and 6 of the *Superannuation Industry (Supervision) Regulations 1994*.

One of the key planks of the sole purpose test has been the provision of a tax-free or lesser taxed benefit to a dependent on a superannuant's death. From the inception of superannuation in Australia, a death benefit has been recognised in favour of the deceased superannuant's dependants and legal personal representatives.

The Discussion Paper seems to infer that the provision of a tax-free or lesser taxed benefit to a deceased member's dependants is not allowed. In relation to this issue The Tax Institute is concerned by what is meant by the comments in the Discussion Paper to the effect that "superannuation is meant to help fund a person's retirement, it is not for unlimited wealth accumulation or bequests".

It would be an enormous shift in policy to no longer recognise superannuation as a mechanism for the provision of tax-free or lesser taxed death benefits, particularly to a spouse and dependent children (or other genuine dependants).

It is only genuine dependants of a deceased member who receive death benefits on a tax-free basis. Adult children are typically taxed at 15% (plus Medicare levy) in respect of the taxable component of any death benefit from a deceased parent. This operates to return superannuation monies to consolidated revenue upon the death of a member. This is similarly the case where death benefits are paid to a deceased estate (and where no tax dependant will benefit).

Life expectancy for Australians is increasing and the medical needs and living expenses for elderly Australians, which may not be government funded will also increase. Many superannuants have considerable superannuation savings to therefore address longevity risk and aim to ensure that they can fund or supplement their income from their superannuation to ensure a reasonable standard of living until their death. For a typical account-based pension there will be one of two outcomes for superannuants: (i) they will exhaust their superannuation savings prior to their death and be forced to rely upon the old

age pension; or (ii) they will die prior to exhausting their superannuation savings and there will be an amount available for payment to their dependants and/or legal personal representative. The Tax Institute submits that it would be incorrect to assume that in the latter case the superannuant has designed their superannuation to achieve “unlimited wealth accumulation or bequests” for the benefit of the next generation.

Volume of change

Consideration might also be given to whether there should be a subsidiary objective or further guidance included in the legislative statement regarding a proposed cycle for changes to superannuation legislation such that it might be generally limited to not changing more frequently than once in every five years, and only after a comprehensive review that recommends such changes. Such an objective would act as a deterrent in limiting the extent to which the legislature is able to constantly tinker with reform measures on an ad-hoc basis which causes uncertainty and a lack of confidence in the system.

Implementation

The Tax Institute considers that given the reasonably broad scope of various pieces of superannuation legislation, including the *Superannuation (Industry) Supervision Act 1993 (Cth)*, *Corporations Act 2001 (Cth)*, *Income Tax Assessment Act 1997 (Cth)* and various other Acts including those governing the Superannuation Complaints Tribunal, Superannuation Guarantee, family law matters and unclaimed money it may be preferable that a separate stand-alone Act govern the objective of superannuation.

Consideration would also need to be given to the proposed operation of the relevant objective and whether any constraints under the Commonwealth Constitution would need to be considered. Currently most of the Commonwealth legislation governing superannuation relies on one or more of the following heads of power: s51(xx) trading and financial corporations, s51(xxii) invalid and old age pensions and s51(ii) taxation.

Further, The Tax Institute notes that there are superannuation funds known as exempt public-sector superannuation schemes that largely operate under State regulation. It is unclear to what extent these funds would be affected by the statement of a legislative objective.

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If you would like to discuss any of the above, please contact either me or Tax Counsel, Thilini Wickramasuriya, on 02 8223 0044.

Yours sincerely,



Arthur Athanasiou
President