Australian Council of Social Service

Superannuation (Better Targeted Superannuation Concessions) Imposition Bill

Briefing note

May 2025

Summary

We recommend that this Bill be passed, without altering these key features:

- the 15% tax rate and a threshold of $3m or less;
- the method of assessment using the annual change in the value of superannuation assets (including capital gains) as the tax base, since this is the most practicable way to apply a higher tax rate on fund earnings from large accounts.

The Bill is an important first step to improve equity in the tax treatment of superannuation, which overwhelmingly benefits people with high incomes and wealth, and to ensure superannuation is used for retirement rather than wealth creation and transfer of the proceeds to adult children through bequests. If passed the Bill would:

- Reduce tax concessions for large accounts by $2.3 billion per year once fully implemented (and much more than this in future years);
- Establish a mechanism for progressive taxation of superannuation fund income in lieu of the flat tax rate of 15% in accumulation accounts;
- Ensure that the income of large superannuation accounts is at least taxed at 15% in accounts in retirement phase (when fund income is generally tax free).

Further reforms proposed by ACOSS

The present Bill is a welcome but modest change that would currently impact only 0.5% of superannuation fund members or 80,000 individuals. ACOSS proposes more far-reaching reform of inequitable and wasteful tax breaks for superannuation:

- End the tax-free status of superannuation fund investment incomes in 'retirement phase' (when the fund pays a retirement benefit) by introducing a 15% levy – the same as the tax rate currently applied to investment income in 'accumulation phase' – progressively over the next three years.

  If this was done in addition to the Bill discussed in this brief, investment income of superannuation accounts up to $3 million would be consistently taxed at 15%

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ISSN: 1326 7124

while any portion of superannuation accounts valued at over $3 million would be taxed at 30%.

- Replace the complex and inequitable system of tax concessions for superannuation contributions with a two-tier refundable rebate (100% and 20%) paid into the fund, capped at much lower annual level than at present.

[For details see: ACOSS Budget Priorities Statement]

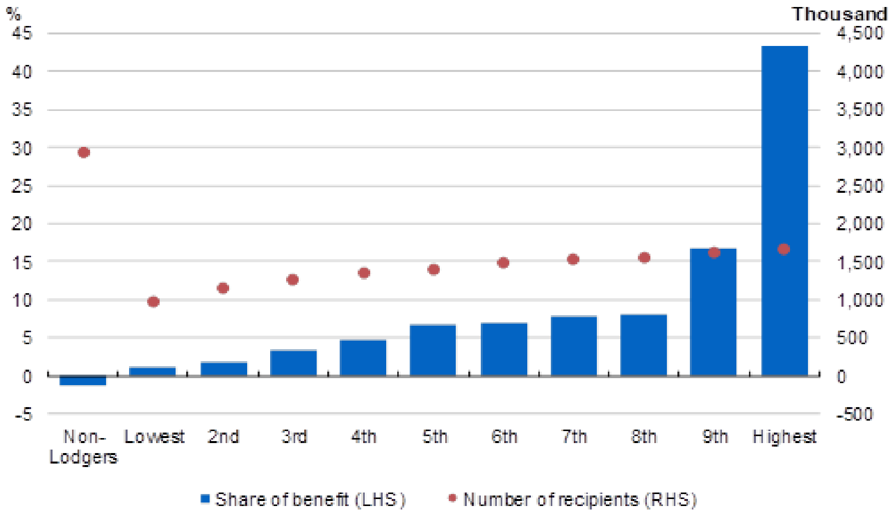
The case for reform

The tax treatment of super is unfair and wasteful:

- Tax breaks for super cost $50 billion a year, almost as much as the Age Pension.
- Of this, $21 billion is foregone due to the lower tax rates on the funds' investment income, such as interest, dividends and capital gains (15% before retirement and 0% once the fund pays a pension to a member after retirement).
- This is well below tax rates paid on other investments and mainly benefits wealthy men.
- Of the $21 billion annual cost of tax breaks for super fund investment income, 40% goes to the 1.5 million individuals in the top 10% of taxpayers (who benefit by $14,000 each on average) and 61% goes to men.
- Superannuation is supposed to be for retirement but has become a tax haven and inheritance scheme for wealthy people.
- Nobody needs $3 million in super to fund a decent retirement.

The Bill is a modest first step to reduce excessive tax breaks for very wealthy individuals.

Proportion of tax concessions for superannuation fund income going to each 10% of taxpayers, ranked by income (% in 2021–22).



Source: Treasury, *Tax expenditures and insights statement* (2024)

Outline of the Bill

The Bill imposes a 15% tax on the investment income of the portion of a superannuation account that exceeds $3 million in value. From the 2025-26, the headline tax rates for super fund investment income ('earnings') will be as follows:

Before retirement (accumulation phase):

- \- 15% on fund income from superannuation balances below $3 million; and
- \- 30% (currently 15%) on fund income from balances above $3 million

After retirement (pension or draw down phase):

- \- 0% on fund income from superannuation balances below $3 million; and
- \- 15% (currently 0%) on the earnings from balances above $3 million.

Each year, individuals (or their super fund) will have 84 days to pay the tax by deducting it from their super or directly from other savings.

The tax applies to both Self Managed Super Funds or SMSFs (which hold most of these high value accounts) and public offer funds (such as industry super funds).

It is estimated to raise $2.3 billion a year once fully implemented (and $900 million over the next 5 years from 2022-23).

Approximately 80,000 individuals are affected or 0.5% of all people with super accounts.

The explanatory memorandum for the Bill is here:

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7120_ems_2d7466e4-4cb5-4ac2-8eb3-442bf6394a43%22

The Senate Committee report is here:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABBetterSuper2024

Main objections to the Bill:

Most lobbyists opposing the Bill accept that wealthy people should pay more tax on their super but raise 'unintended consequences'. Many of these concerns are exaggerated. Others raise significant issues but fail to tip the balance against this important reform.

The $3m threshold is not indexed

Arguments against the Bill:

- This means that over time, more super fund members would have to pay the tax.
- Opponents argue that young people will be adversely impacted by the time they grow older and retire in 40 or so years.

Our response:

- Only 0.5% of members are affected in 2025.
- Even by 2040, the $3 million is still likely to be worth about $2 million in current dollars, which is well above the funds needed for a decent retirement.
- Super Consumers Australia estimates that most people would need up to around $300,000 (Single) or $400,000 (couple) for a decent retirement (together with the Age Pension).
- $3 million is well over ten times the median super account balance on retirement. In 2021 the median account balance for men around retirement age was $211,996 and for women it was just $158,806.
- Tax thresholds are usually not indexed (but can be changed by a future Parliament)

Taxing unrealised capital gains

- Capital gains is income that accrues to people as the value of their investments (such as property or shares) increases year by year. Capital Gains Tax is normally levied at half an individual's marginal tax rate on the increase in value of these assets between the date of purchase and date of sale (realisation).
- Capital gains on assets held in super funds is taxed at two-thirds of the normal tax rate for investment income of the fund – which is 15% before retirement and zero once the member retires and the fund pays them a pension.
- To apply a two-tier tax rate to the investment income of individual accounts in large public offer super funds is challenging, since fund income is pooled, not individualised.
- To contain administrative costs for funds, the Bill proposes to apply the 15% tax rate to the annual increase in value of each account (which funds calculate regularly) minus any contributions going in and benefits paid out.

Arguments against the Bill:

- This includes annual capital gains on assets such as shares and property, which are normally only taxed when they are sold.
- Objectors argue this is a major departure from normal tax practice, that capital gains many assets are volatile, and that this will create cash flow problems for funds and their members.
- They argue that capital gains will be taxed twice (each year as they accrue and again when the asset is sold).

Our response:

- The bigger concern from an equity perspective is the fact that wealthy people can use superannuation to *avoid paying Capital Gains Tax altogether*. They do so by placing investment assets into an SMSF and leaving them there until after they retire. When they sell the asset the tax rate on the capital gains that have accrued within the fund (often over many years) is zero.

- We already tax capital gains before an asset is sold outside super (e.g. Land Tax on property investments, Taxation of Financial Arrangements).

- Capital gains within the super accounts of public offer funds *are already effectively taxed* each year as they accrue. This occurs every year when the funds allocate their investment income to member accounts, which they must do to advise members of their account balance – the amount that a member may be able to withdraw if they retire at that time. Accrued capital gains, and the tax that will eventually have to be paid on them, are allocated to each member.

- Taxing capital gains as they accrue each year (rather than waiting until the asset is sold) is a principled approach to taxing income. If gains are only taxed when the asset is sold, investors effectively benefit from an interest free loan from the Tax Office. Waiting until an asset is sold before taxing the capital gain also gives rise to 'lock' effects, where investors hold assets for longer than they would otherwise to benefit from deferral of tax.

- The main reasons capital gains are not taxed as they accrue each year are practical ones - it requires annual valuations (already done in super accounts) and may create cash flow problems for people (but unlikely for individuals with over $3 million in super).

- People with over $3 million in super are also likely to have substantial assets outside super and are unlikely to lack the liquid assets to pay the tax annually. They can pay the tax from their fund, or directly.

- If the value of an investment asset (such as shares) falls, this capital loss can be carried forward to offset future capital gains.

- Super funds are required to hold enough liquid assets to pay out benefits, so they are prudentially required to diversify their investments and not to hold a high proportion of their assets in a form that isn't readily sold (e.g. rental property or farms). People who hold investment property or farms in an SMSF have probably been (badly) advised to do so to avoid tax.

Impact on farmers

Arguments against the Bill:

- If farms are the main asset in an SMSF, the owners may lack the cash to pay the tax as farm incomes are variable and it's not an easy asset to sell quickly.

Our response:

- Very few super funds own farms (probably under 10,000 SMSFs nationally).

- Super funds are required to hold liquid assets for prudential reasons (so holding farms in SMSFs is probably a bad idea, unless it is done to avoid capital gains tax when the farm is sold).

Impact on venture capital

Arguments against the Bill:

- New ventures rely on investments from SMSFs.
- These typically take years to turn a profit, aside from capital gains.
- SMSFs could face cashflow problems if they lean heavily towards investments in new ventures and may be forced to divest of those assets.

Our response:

- SMSFs aren't the only source of venture capital (eg private equity, superannuation funds, and direct investment by individuals)
- In 2023-24 only 5% of the $35 billion invested in venture capital came from SMSFs.
- There are substantial tax incentives to support venture capital investment directly including concessions for venture capital limited partnerships.
- See prudential requirements above – funds should not hold too high a proportion of their investments in risky assets or assets not readily disposed.

Impact on former public servants with defined benefit superannuation funds

Arguments against the Bill:

- The new tax would apply to funds that guarantee a fixed benefit, which are untaxed as they accumulate and taxed when the lump sum or pension entitlement is paid out (mainly older public sector funds, now closed).
- The government argues that the new tax should apply to them, on equity grounds.
- But defined benefit funds are taxed very differently (e.g. many pensions paid by defined benefit funds are taxed at marginal tax rates minus a 15% tax offset) so this may be anomalous.
- There are challenges in estimating the current value of entitlements to defined benefits.

Our response:

- Unequal treatment of accumulation and defined benefit funds is an entrenched feature of our superannuation system. Avoiding unequal treatment is raised as an argument against *any* major change to the taxation of superannuation.
- The previous government found a way to estimate the annual value of defined benefit accounts to apply its 'Transfer Balance Cap' (to limit additional contributions to accounts valued above $1.9 million). The Bill applies a similar approach.

- The tax treatment of defined benefits is on the whole very generous since no tax is paid until retirement.
- Few former public servants (and others relying on the older defined benefit schemes) would be impacted given the $3 million threshold.
- The tax treatment of accumulation and defined benefit schemes will never be identical since they are structured differently.