

File Name: 2014/37  
24 October 2014

Mr Paul Tilley  
General Manager  
Personal & Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Cc Mr John Shepherd, Australian Taxation Office

E-mail: [paul.tilley@treasury.gov.au](mailto:paul.tilley@treasury.gov.au)

**Division 293 tax and defined benefit funds – ways of reducing compliance costs and cutting red tape**

Dear Paul,

We understand that the Actuaries Institute has written to the Government, copying you, concerning what are likely to be high levels of compliance costs associated with funds calculating the end benefit cap when defined benefit members take a benefit.

The need for a benefit cap and associated administrative measures has to be considered in context. Only a minority of those with superannuation are in defined benefit funds or plans, only a proportion of those will accrue a liability for Division 293 tax and an even smaller proportion will potentially benefit from the application of an end benefit cap. However, the end benefit cap provision as they now stand appear likely to require funds with defined benefit members to develop comprehensive administrative and actuarial arrangements in order to calculate end benefit caps for all defined benefit members who are to take a benefit.

While there is some uncertainty as to the exact amount of such costs, the calculations of the Actuaries Institute suggest that the amount in aggregate will be large and significantly greater than any likely reductions in Division 293 liabilities of individuals.

However, we understand that those who might benefit from the application of an end benefit cap might be more numerous than indicated by the Actuaries Institute. Rather than being limited to cases such as where a person dies without dependents or where a fund is insolvent, there also will be cases where cliff vesting arrangements, such as may apply to parliamentarians or judges, lead to end benefits not commensurate with the notional contributions that were assessed. A similar issue arose in regard to the operation of the superannuation contributions surcharge with a number of funds limiting surcharge debts.

ASFA accepts that there is a public policy justification for addressing the potential injustice of individuals being taxed on notional contributions which do not properly reflect the benefit which actually accrues. While we do not wish to compromise that public policy objective, we consider that there are more efficient mechanisms that could be used.

In particular, we suggest that the requirements on funds be changed so that the end benefit cap calculations are only required to be prepared by funds when a member or the Australian Taxation Office specifically requests such a calculation be made or when the fund has objective grounds for believing that the member is likely to benefit from such a calculation.

Typically parliamentarians, judges and other relatively high income individuals will be aware of both their Division 293 liabilities and the nature of their defined benefit and/or have access to professional advice.

It would be the preference of ASFA for such a change to be made by way of legislative amendment. However, we understand the pressures on the current parliamentary business program. In these circumstances it would be appropriate, if it is technically possible to do so, for the Australian Taxation office to use any administrative discretion it has to implement the reduced reporting requirements that we are suggesting.

If you have any queries or comments regarding the contents of this letter, please contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Glen McCrea', written in a cursive style.

Glen McCrea

Chief Policy Officer