The Tax Institute

26 February 2024

Alan Raine
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
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**

The Tax Institute welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (**Committee**) in respect of its inquiry and report on the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 (**the Bill**) and accompanying explanatory memorandum (**EM**).

The Bill contains several measures that impact Australia's taxation and superannuation systems. These include:

- Schedules 1 to 3 – better targeted superannuation concessions;
- Schedule 4 – disclosures about recognised investment activities;
- Schedule 5 – frequency of periodic reviews;
- Schedule 6 – miscellaneous and technical amendments;
- Schedule 7 – licensing exemptions for foreign financial service providers; and
- Schedule 8 – amendment to the *Payment Systems (Regulation) Act 1998* (Cth).

Our comments in this submission are limited to Schedules 1 to 3 to the Bill.

Schedules 1 to 3 to the Bill propose to insert new Division 296 into the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) to give effect to the Government's announcement to introduce an additional 15% tax on earnings on superannuation balances above $3 million. We acknowledge the Government's decision to impose a higher rate of tax on a subset of taxpayers. Our comments in this submission are aimed at ensuring that Schedules 1 to 3 to the Bill are appropriately designed and implemented to achieve the intended policy objective, within the principles of good law design.

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If implemented as drafted, proposed Division 296 will tax unrealised capital gains, an approach that is inconsistent with Australia's current approach of taxing realised capital gains under the capital gains tax (**CGT**) regime. The Tax Institute has concerns that Division 296 will set an undesirable and inappropriate precedent for future tax proposals in this regard. We note that the taxation of unrealised gains has historically been used only in the context of anti-avoidance provisions and should not be a feature in the design of this, or future, general taxation measures.

The taxation of unrealised gains is rife with issues, such as cash flow misalignment and increased compliance costs for taxpayers. The Tax Institute is of the view that if this aspect of the measure is to proceed, it should not be treated as an acceptable precedent for future tax reform proposals of any kind. In our view, there are other preferable alternatives to the proposed approach. For example, in the case of self-managed superannuation funds (**SMSFs**), it may be possible to introduce an alternative calculation based on an SMSF's actual taxable income for some members, to minimise the mechanism of taxing unrealised gains. Alternatively, the Government should undertake consultation with superannuation funds, industry bodies and key stakeholders to determine whether a deeming approach could achieve the policy outcome without taxing unrealised gains.

We also recommend the Government should consider making key changes to the draft Bill to better ensure equitable outcomes, including:

- indexing the proposed threshold of $3 million;
- introducing a loss carry-back mechanism to allow individuals to recognise unrealised losses, as the proposed approach may result in some instances where taxpayers will never have the opportunity to use losses carried forward, or could be placed under significant hardship;
- amending the adjusted total superannuation balance (**ATSB**) to account for the disproportionate impact on SMSFs;
- allowing for payment of the Division 296 tax on unrealised gains to be deferred until the gain on the relevant asset(s) is realised by the superannuation fund — this would better align the operation of Division 296 with Australia's current approach to CGT;
- excluding amounts withdrawn to pay a superannuation tax liability being added back into the ATSB and therefore being subject to Division 296 tax;
- aligning the treatment of certain disability and injury payments with the proposed treatment of structured settlements; and
- undertaking further consultation on the appropriate treatment of proceeds and payments relating to family law splits.

We consider that taxpayers and their advisers should be readily able to access the data used by the Commissioner of Taxation (**Commissioner**) in determining the amount of the tax. This would allow advisers to easily verify the Commissioner's calculations and rely on the data when creating financial plans for clients. The administration of Division 296 would benefit from taxpayers being able to access a streamlined Australian Taxation Office (**ATO**) internal review mechanism that does not require taxpayers to object or seek a judicial review in the first instance where disputes regarding the Commissioner's calculations arise.

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 Counsel – Tax & Legal, Julie Abdalla, on

Yours faithfully,

**Scott Treatt**

Chief Executive Officer

**Paul Banister**

National Council Member

# APPENDIX A

We have set out below our detailed comments and observations regarding Schedules 1 to 3 to the Bill for your consideration. All legislative references are to the Bill unless otherwise indicated.

## Taxation of unrealised gains

Schedules 1 to 3 to the Bill propose to levy a tax on unrealised capital gains. We consider that the practical and financial burden of taxing a gain that is yet to be realised outweighs any perceived macroeconomic benefits and sets a dangerous precedent for our taxation and superannuation systems more broadly. The taxation of unrealised gains can place taxpayers under significant pressure due to the mismatch between the tax liability and the cash flow associated with the underlying asset.

Significant concerns arise when the individual does not have available funds to pay the Division 296 tax personally, and has no real choice but to elect to release funds from superannuation to pay the tax. Liquidity issues are a concern, particularly if the predominant investment is business real property or other illiquid assets. One example is needing to liquidate substantial farmland that is vital to farmers to operate their farming businesses in order to satisfy a potential Division 296 liability. Many other similar scenarios are equally problematic. Depending on timing and other external factors, a taxpayer may need to cause their fund to dispose of a superannuation asset at a lower price than they may otherwise achieve due to the forced nature of the sale. Impacted taxpayers may be required to significantly reduce their assets held in superannuation to fund the payment of the Division 296 tax. If the full or partial realisation of the asset(s) cannot occur, funds may not be available to pay the Division 296 tax liability. As a general principle, we consider that a policy that puts individuals in the position of needing to move assets out of superannuation to fund a tax liability imposed by virtue of holding such assets is contrary to the fundamental goal of superannuation, being to self-fund retirement.

Where a fund realises assets to meet a Division 296 liability, substantial transaction costs such as CGT and transfer duty are likely to be incurred. These transaction costs and the resultant impact on the fund's investment strategy are likely to be disproportionate to the tax liability and undesirable if they arise solely to fund this liability. Given these potentially significant transaction costs, it is, in our view, unreasonable to cause taxpayers to restructure their business and asset-holding arrangements that were set up based on the law that applied at the time, in order to fund the payment of a new tax liability.

The majority of SMSFs have two members. In instances where one member has a balance of more than $3 million, and the other member has a balance of less than that threshold, both members will be impacted by the sale of a major asset to pay the relevant member's Division 296 liability. The impact is exacerbated when this is done at a 'fire sale' price. This is an inequitable outcome, especially for the member whose balance is less than the $3 million threshold.

The introduction of the proposed measure will make the accuracy of valuations of fund assets even more important, as these form the basis of the amount of an individual's total superannuation balance (**TSB**). Asset valuations can be costly and imprecise, especially for assets that are difficult to value or the values of which are volatile. A valuation that values an asset at more than its eventual sale price can result in a Division 296 tax assessment arising in respect of a value that may never eventuate or be realised. This may result in inequitable or unreasonable outcomes. In contrast, a valuation that values an asset at less than its eventual sale price could result in the Division 296 liability attributable to the actual gain realised on the sale of the asset being spread over multiple income years. This uncertainty will make it difficult for taxpayers to calculate their expected Division 296 liabilities and factor in the potential need to sell assets to meet future Division 296 liabilities.

For these reasons, we consider that the concept of taxing unrealised gains should not form part of this measure. However, if the Government is committed to pursuing this approach, then it should 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 can be achieved by clearly articulating this proposition in the objects provision in proposed section 296-5. This will provide assurance to taxpayers and greater overall confidence in the future of our tax system.

## Alternate calculation methodologies for self-managed superannuation funds

We understand that one of the reasons for the approach proposed in the draft Bill is to ensure a Division 296 tax liability is accurately calculated for individuals with multiple superannuation accounts.

We note that:

- as of June 2022, approximately 76% of people with superannuation accounts had only one account;[1] and
- although SMSFs may have up to six members, approximately 68% of SMSFs are two-member funds and 25% are single-member funds.[2] This means that only approximately 7% of SMSFs have more than two members. We would expect that most SMSF members do not have additional, separate superannuation funds.

Feedback from our members suggests the proposed taxation of unrealised gains under Division 296 is expected to have a disproportionately greater impact on SMSFs. The feedback also suggests that the concentration of members in single-member or two-member fund results in higher portfolio volatility at the member level, including the attribution of unrealised capital gains. Further, as most SMSFs are not required to prepare general purpose financial statements, member balances are generally not stated at 'net realisable value', unlike large APRA-regulated funds.

We consider that the capital adjustments detailed in proposed section 296-55 should include unrealised capital gains in SMSF accounts in the definition of contributions or as some other reduction of an individual's taxable superannuation earnings (**TSE**).

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1 ATO, 'Trend towards single accounts', available here.

2 ATO, 'SMSF quarterly statistical report, September 2023', available here.

Section 307-230A proposes to provide for a power to make a regulation that could specify a value or method for determining the value of a superannuation interest. Given this, if an SMSF's unrealised gains cannot be prescribed as a capital adjustment in proposed section 296-55, we are of the view that — as an alternative to excluding unrealised gains from the TSE calculation in the legislation — a legislative instrument in respect of SMSFs should be made to adjust the ATSB to ensure that unrealised capital gains are not captured in the formula. This would ensure the legislation better achieves its stated goal of sector neutrality.

Alternatively, we consider that the Bill should include an optional calculation for superannuants who have only one superannuation account, held in an SMSF. Under this alternative approach, these superannuants would be allowed to calculate their Division 296 tax liability based on their share of the SMSF's actual taxable income for the income year, which is readily calculable. Although this would result in a two-tiered approach whereby different calculations would apply across sectors of the superannuation industry, we consider that this approach would reduce the potentially precedential impact of the taxation of unrealised gains under Division 296. As noted above, we consider that the majority of impacted funds will be SMSFs. As most superannuants have only one superannuation account, it is likely that a large portion of the taxpayers impacted by proposed Division 296 would be able to use our proposed alternate methodology. This would limit the proposed approach of taxing unrealised gains to a significantly smaller population of taxpayers.

### Alternative approach – deeming

Another potential alternative to the proposed earnings calculation is the use of a deeming approach to determine the additional tax levied. Under this approach, the proposed movements in the closing TSB would be adopted, with the existing adjustments for net contributions and withdrawals included. The TSB calculation would be used to determine whether an individual's superannuation balance exceeds the $3 million threshold; however, under this alternative approach, 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. The amount subject to Division 296 tax could also be calculated by applying the deemed earnings rate to the opening TSB. Division 296 tax could then be levied on the amount of the deemed earnings.

A deeming approach would arguably achieve more commensurate treatment for defined benefit interests and non-defined benefit interests, and be considerably simpler to understand and administer. The design of the deeming rate could factor in any year-on-year variances or loss years. A deeming approach based on historical performance would likely result in a more accurate calculation of the Division 296 tax liability. 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.

Feedback from our members suggests that this approach would not require significant system changes to implement. Given the complexity of Schedules 1 to 3, and the significant and undesirable impacts of taxing unrealised gains, we consider that targeted consultation should be undertaken with the superannuation industry, industry experts and key stakeholders to work through the merits of a deeming approach and how it would simplify the operation of Division 296 while reducing the impacts of taxing unrealised gains. This would better inform the most appropriate design of Division 296.

## Indexation of the threshold

The Tax Institute is of the view that the proposed $3 million threshold for the application of Division 296 should be subject to indexation. Indexing the threshold would ensure that the threshold truly reflects market conditions and does not inappropriately expose more than 0.5% of all Australians to Division 296 tax (to which the Government's announcement on 28 February 2023 clearly indicates the measure is targeted).

We suggest that the indexation of the large superannuation balance threshold could be invoked in line with the indexation that applies to the TBC, once the TBC reaches $3 million. Aligning the TBC and the Division 296 threshold (once the general TBC is indexed to $3 million) would be consistent with the underlying policy of taxing earnings on balances above a prescribed threshold at a higher rate. It would also ensure there is greater consistency across superannuation caps, limits and thresholds – an area of significant and undue complexity in our current system.

As highlighted in our Case for Change (July 2021), we have concerns around the complexity and cost of the current approach to indexing the TBC. The high number of caps, limits and thresholds are a central feature of Australia's superannuation system, and we consider that opportunities to reduce the number of thresholds should be capitalised on, where available.

## Loss carry-back

Proposed Subdivision 296-C allows negative superannuation earnings (i.e. losses) to be carried forward. However, as these are quarantined to Division 296 tax, situations will arise where the carried forward losses are never utilised. It may be perceived the proposed approach lacks tax symmetry, given that it proposes taxing unrealised gains but does not allow taxpayers to recognise unrealised losses.

Preventing taxpayers from recognising their losses would result in particularly inequitable outcomes where:

- an individual is assessed for Division 296 tax but does not have the cash flow to make the payment personally, nor does the superannuation fund have the cash flow to action a release authority (this would occur where the fund holds illiquid assets and is not able to release equity through an asset disposal);
- assets of a superannuation fund are overvalued due to a sudden change in market conditions following the end of an income year (such as a share portfolio losing value during an unexpected market crash or recession) — this would result in a large unrealised loss for Division 296 purposes that may not be utilised if subsequent cumulative gains do not exceed the amount of the loss[3]; or
- an individual with a balance of more than $3 million becomes liable for a Division 296 tax liability, then the fund makes a loss that results in the individual having negative superannuation earnings in a later income year, then they die without having had the opportunity to utilise the loss — not allowing a loss carry-back in these circumstances effectively means that these taxpayers can never utilise their losses.

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[3] An example of where this is likely to occur is where a superannuant is in retirement phase and is not in a position to contribute capital into the fund by way of contributions. In such a case, the subsequent earnings of the fund may be insufficient to apply the carry-forward loss.

The Tax Institute is of the view that the Government should consider allowing refunds of Division 296 tax paid in prior income years to the extent the taxpayer has 'unapplied transferrable negative earnings' for the relevant income year. Allowing a refund of previous Division 296 tax paid would promote a fairer, more efficient and effective tax. Under our suggested approach, taxpayers would be able to utilise their current year's losses only to the extent they have paid Division 296 tax in a prior income year. This running account approach would ensure that taxpayers can realise their losses in a timely manner, and reduce the impact of 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 an income year. Alternatively, superannuants should be provided with a refundable credit that recognises the unrealised loss made by the member for the year in which the loss arose.

We also consider that there is an inherent inequity when a member who has previously been subject to Division 296 tax in an income year, subsequently has unapplied transferrable negative earnings in the income year before they die. If an annual refundable credit mechanism (for a year in which an unrealised loss arises) is not adopted as part of the policy design, a refundable credit should be made available to a member upon their death, so any unapplied transferrable negative earnings are not permanently lost. We note that this is a complex issue and requires time for a thorough consideration.

## Deferral mechanism

As noted above, feedback from our members raises concerns about the liquidity and cash flow management implications placed on individuals who will be subject to Division 296 tax. Although individuals will have some flexibility in how they will fund the payment of the tax liability, for some taxpayers, the annual liability will be potentially tens of thousands of dollars. This will impose a significant financial burden on impacted individuals to source the funds to pay the tax.

The taxation of unrealised gains means that an individual's TSE will generally be higher than would be expected if the tax was applied only to the portion of earnings represented by the fund's actual taxable income. Further, funds with a low number of high-value assets (such as real property) may struggle from an economic perspective to sell a major asset so the fund can release cash to enable the individual to pay their Division 296 liability, and re-invest the proceeds in an asset that aligns with the trustee's existing investment strategy.

We consider that taxpayers should be provided with an option to defer the payment of the Division 296 liability up to a maximum period, of say, five years. A deferral mechanism would ensure that those individuals without sufficient liquid assets in their superannuation fund would largely be able to maintain their current investment plans while also meeting their new legislative tax obligations. It would also result in a fairer, more efficient and more effective tax.

We note that proposed new section 296-215 and new subsection 8AAD(1A) (which proposes to amend the *Superannuation Act 1990* (Cth)) provide for a reduced general interest charge (**GIC**) rate applicable to Division 296 amendments that remain unpaid. This may be perceived as effectively allowing taxpayers more time to pay their Division 296 tax liability (with an appropriate rate of GIC to reflect the late payment). We would expect taxpayers to be exposed to the GIC where they face liquidity issues that prevent them from paying their liability on time. However, the Bill does not provide a formal deferral mechanism or limit the Australian Taxation Office's (**ATO's**) debt recovery action in respect of an unpaid Division 296 tax liability. Further, the Bill does not set out the criteria for when the reduced GIC rate applies. We consider that the proposed framework could easily be adjusted to incorporate a deferral mechanism and limit the ATO's debt recovery powers in this regard. This would ensure equitable outcomes for affected taxpayers, particularly those who encounter financial hardship due to the imposition of a Division 296 tax liability.

## Exclusions from withdrawals total

Subsection 296-50(4) lists amounts that are proposed to be excluded from the 'withdrawals total' as required in the calculation of section 296-45. We consider that subsection 296-50(4) should also include amounts that are withdrawn from the TSB through a release request 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 operation of Division 296.

Individuals who are subject to these tax liabilities can 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.

The calculation of 'Your withdrawals total for the year' in subsection 296-50(4) requires the add-back of amounts withdrawn via a release authority. A withdrawal under a release authority is made possible by specific legislative provisions that apply additional tax at an individual level. We consider that treating a released amount as a capital adjustment to the ATSB when the purpose of the withdrawal is to pay a tax liability misaligns the conventional definitions of income and capital.

Further, The Tax Institute is of the view that taxpayers should not be penalised if they elect to pay any of these tax liabilities from the fund. Including the above amounts in subsection 296-50(4) would result in a fairer outcome as the released funds are not being withdrawn by members to reduce their TSB or to fund their retirement in those cases.

## Reflecting capital gains tax discount, concessions and exemptions

Capital gains may be subject to a range of discounts, concessions or exemptions when realised by a superannuation fund. For example, when a CGT asset that is held for at least 12 months is realised by the superannuation fund, the resulting capital gain is eligible for a one-third CGT discount. The Tax Institute is of the view that the proposed tax rate in Division 296 should recognise the availability of the CGT discount, concessions and exemptions at the superannuation fund level. It is an inequitable outcome for unrealised gains to not reflect reductions that are otherwise available to superannuation funds for realised gains, resulting in an inconsistent erosion of the CGT concessions.

## Treatment of disability, medical and related insurance payments

Proposed paragraph 296-55(1)(e) will exclude from the 'contributions total' contained in proposed section 295-45, payments received in a year:

- relating to a superannuant's total and permanent disability (**TPD**); and
- from insurance proceeds relating to a superannuant's permanent disability and terminal medical condition (**TMC**).

As a result, TPD and TMC payments are proposed to be excluded from the calculation of the ATSB and proposed Division 296 tax only in the year in which they are made. TPD and TMC payments will be subject to Division 296 tax in subsequent years, including any unrealised gains made on from those payments. On the other hand, structured settlement payments are excluded at all times and will not be subject to Division 296 tax at any stage.[4]

We consider that TPD and TMC payments should receive the same treatment as structured settlements. Broadly, individuals who receive qualifying structured settlements under section 292-95 of the ITAA 1997 receive compensation for personal injury where it is unlikely that they can ever be gainfully employed in a capacity for which they are reasonably qualified, given their education, experience or training. The compensation for a structured settlement must be paid as a result of a settlement deed or court order for personal injury, rather than under an insurance policy.

Similarly, individuals who receive a TPD payment need to deal with an insurer and qualify under the strict terms and conditions of the policy, and prove that they are totally and permanently disabled. It is generally unlikely that these individuals can ever be gainfully employed in a capacity for which they are reasonably qualified given their education, experience or training.

Individuals who receive TMC payments generally have been assessed by two medical professionals, one of whom is a specialist in the relevant medical field, who have determined the individual is likely to live for less than 24 months and relevant evidence is required to be obtained. Recipients of TMC payments will often also not be able to, or reasonably be expected to, work for the remainder of their lives.

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[4] Section 295-25.

Individuals who receive TMC and TPD payments will likely use the payments to support their lives and as compensation for the harm they have suffered. In principle, recipients of structured settlements use their payments for similar reasons.

We therefore consider that there should be no difference in treatment between TPD and TMC payments and structured settlements. It would be consistent from a policy perspective to also exclude TPD and TMC payments from the operation of Division 296.

## Family law adjustments

Proposed paragraph 296-55(1)(c) excludes proceeds from family law splits being included in the recipient's 'contributions total' for the purposes of calculating the ATSB in proposed section 296-45. This will have the effect of excluding proceeds from family law splits from being subject to Division 296 tax in the year they are received. Conversely, proposed paragraph 296-50-(1)(c) will add payments made under family law splits back into the calculation of the ATSB by including them in the 'withdrawal total'. This is irrespective of the fact that individuals who make payments under a family law split are not able to use the proceeds to support their retirement.

The Tax Institute is of the view that further consideration is needed regarding whether this is an appropriate policy outcome. The law concerning family law splits is complex. Family law splits can be made for various reasons and this outcome may be suitable for some, but not all, of the different categories of payments. This area is also undergoing change due to developments in the TBC, SuperStream and the *Family Law Act 1971* (Cth). We recommend that further consultation is undertaken regarding this aspect.

## Death of taxpayer on 30 June

Proposed section 296-30 states that taxpayers are not liable to pay Division 296 tax if they die before the last day of the income year. This means that taxpayers who die on 30 June will be liable to Division 296 tax, if the other requirements are met. The Tax Institute is of the view that it is an anomalous outcome for taxpayers who happen to die on one particular day of the year, an outcome that is beyond their control, to be liable for Division 296 tax when a person who dies on any of the other 364 days (or 365 days in a leap year) of that year would be exempt. Accordingly, to ensure consistency for all affected taxpayers, we consider that this section should be amended to instead say that if a taxpayer dies at any time during an income year, they will not be subject to Division 296 in that year. This will be a more equitable outcome that would have a negligible budgetary impact.

## Availability of information

Paragraph 1.12 of the EM states that the Commissioner will calculate the Division 296 tax liability and notify impacted taxpayers each year. The Tax Institute is of the view that the data used by the Commissioner in this assessment should be made available to taxpayers and their advisers. This includes data that is used:

- in the inputs as required in proposed sections 296-35, 296-40, 296-45, and 296-50; and
- to determine the components of the inputs in the same subsections noted above, such as the components of a withdrawal in proposed section 296-45.

Transparency of this data is needed so that taxpayers and their advisers have a means to verify the Commissioner's calculations. Without this information, a significant and unnecessary cost and time burden will be imposed on taxpayers to verify their Division 296 tax liability. The information would also be useful to advisers who are engaged to provide taxpayers with accurate and timely investment and planning advice.

## Review of decision

Taxpayers who disagree with the Commissioner's assessment of a Division 296 liability will need to seek a review of the decision under Part IVC of the *Taxation Administration Act 1953* (Cth) (**TAA**). This will require taxpayers to seek to resolve disputes regarding calculations through the objections process, and in some cases, seek a review of the Commissioner's decision by the tribunal or appeal the Commissioner's decision to the Federal Court, where the matter cannot be resolved with the ATO directly. Feedback from our members suggests that taxpayers are generally unwilling or unable to go through the objections and review/appeal processes for numerous reasons, including:

- the significant costs associated with objections and judicial reviews;
- a perception that the Commissioner's decision is unlikely to be changed during the objections process, even if the taxpayer is of the view that they have a strong case;
- the time taken and potential delays associated with objections and reviews/appeals; and
- a lack of awareness of the objection and review/appeal process.

We consider that taxpayers and their advisers should be able to resolve potential disputes regarding a Division 296 tax assessment in a cost- and resource-efficient manner. Taxpayers should not be required to undergo a formal process in the first instance, especially since, in making a Division 296 tax assessment, the Commissioner will undertake the initial assessment with information readily available to only the Commissioner. Taxpayers should be able to raise their concerns in the first instance with a specialised ATO team. Similar processes currently exist within the ATO for large taxpayers seeking an internal review,[5] or disputing a debt in the first instance.[6] The ATO should be provided with extra funding if necessary to ensure that it has sufficient resources to assist taxpayers in a timely manner. Further, making the information available to taxpayers and their advisers is likely to reduce potential disputes from arising, and streamline the dispute resolution process by allowing the parties to identify the cause of the disagreement more easily.

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5 See www.ato.gov.au/business/privately-owned-and-wealthy-groups/what-you-should-know/tailored-engagement/resolving-disputes/#Independentreview.

6 See www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Disputes-policy/Debt-disputes/#Whatyoucandoifyouoweusmoney.