SUPERANNUATION PRACTICE COMMITTEE

Discussion Note: Division 293 Tax – End Benefit Cap

September 2014

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A. Purpose and status of Discussion Note

1. The Division 293 tax legislation introduced a number of new requirements for defined benefit superannuation funds, including requirements to determine and report the 'end benefit cap' of a member in certain circumstances. It is likely that actuaries will be called on by RSE licensees ("trustees" in this Discussion Note) to advise on (and/or carry out) calculations of the end benefit cap.

2. This Discussion Note was prepared by the Superannuation Practice Committee ("SPC") of the Actuaries Institute ("Institute") and is intended to stimulate discussion and assist actuaries in providing advice to trustees in relation to end benefit cap calculations and associated issues.

3. It is important to note that there are a number of aspects of the new concepts of both 'end benefit' and 'end benefit cap' that are either unclear or (in the SPC's view) unsatisfactory. The Institute's submission to the Australian Taxation Office ("ATO") and Treasury ("Submission"), which is included as an Annexure to this Discussion Note, sets out these issues in some detail and includes some relevant extracts from the legislation. The Submission should be read in conjunction with this Discussion Note.

4. This Discussion Note does not represent a Professional Standard or Practice Guideline of the Institute.

5. Feedback from Institute Members is encouraged and should be forwarded to Paul Shallue of the SPC (paul.shallue@mercer.com).

6. This is the first version of this Discussion Note.

B. End benefit cap

B.1 Introduction

7. Division 293 tax refers to the additional tax of up to 15% on the concessional contributions of 'high income earners', introduced with effect from 1 July 2012. A 'high income earner' is a person whose income for surcharge purposes plus their concessional contributions (excluding excess concessional contributions) is greater than $300,000.

8. The ATO is responsible for assessing liability for this tax, based on members' personal income tax returns and contribution information provided by superannuation funds. ATO assessments relating to this tax refer to it as 'Division 293 tax', as the main provisions relating to this tax are set out in Division 293 of the Income Tax Assessment Act 1997 (Cth) ("ITAA 1997"). (This terminology appears to have won out over the 'Sustaining the superannuation contribution concession measure' tax.)

9. For the purpose of Division 293 tax, concessional contributions include notional contributions relating to defined benefit accruals. With the exception of a small number of public sector funds, the notional defined benefit contributions applying for Division 293 tax purposes are equal to the member's 'notional taxed contributions' ("NTCs") that apply for concessional contribution limit purposes, except that no capping* applies to the contributions used for Division 293 tax from 1 July 2013. (Capped NTCs were used for 2012/13 only.) For the untaxed public sector funds and constitutionally protected funds where NTCs do not apply, or only cover part of the defined benefits, notional defined benefit contributions for Division 293 tax purposes are to be determined for the total defined benefit (including the unfunded as well as the funded component, where applicable) using a method based on the NTC methodology (the essential difference being a tax adjustment).

   **Refers to the 'grandfathering' arrangements whereby the NTCs for eligible defined benefit members are capped to their concessional contribution limit.*

10. The member is liable to pay the tax, not their superannuation fund. In certain circumstances, members can use a 'Release Authority' to instruct their fund to pay some or all of their Division 293 tax from their superannuation benefit in the fund. Otherwise, members must pay the tax from non-superannuation sources.

11. However, note that Division 293 tax relating to defined benefit 'contributions' is generally deferred until an 'end benefit' is paid (although it can be paid earlier voluntarily). The ATO will maintain a deferred Division 293 tax debt account (with interest added each 30 June) for relevant members (with a separate debt account kept for each defined benefit interest if the member has more than one).

12. When an 'end benefit' is paid for a superannuation interest with a related debt account, the accumulated deferred Division 293 tax debt becomes payable, but is subject to a maximum of the 'end benefit cap'. Both 'end benefit' and 'end benefit cap' are new concepts introduced by the Division 293 tax legislation. Refer to sections 1 and 2 of the Submission for comments on end benefit issues requiring clarification.

13. Further information on Division 293 tax can be obtained from the ATO website here.

B.2 Definition of end benefit cap

14. The end benefit cap is defined in section 133-120(2) of the Taxation Administration Act 1953 ("TAA 1953") as the amount that is "15% of the employer-financed component of any part of the "*value of the superannuation interest that accrued after 1 July 2012".

15. Section 133-120(3) of the TAA 1953 states that "the *value of the superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable".

16. A copy of section 133-120 of the TAA 1953 is set out in Appendix 1 of the Submission.

B.2.1 Meaning of "the *value of the superannuation interest"

17. The asterisk in front of "value of the superannuation interest" indicates that this is a defined term. "Value of the superannuation interest" is defined in section 307-205 of ITAA 1997 as follows:

    "307-205 *Value* of superannuation interest

    The ***value*** of a *superannuation interest at a particular time is:

    (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or

    (b) otherwise—the total amount of all the *superannuation lump sums that could be payable from the interest at that time."

18. Note that this definition is already used for the determination of the tax-free and taxable components of a superannuation benefit (the proportioning rule). Regulation 307-205.02 of the Income Tax Assessment Regulations 1997 (Cth) ("ITAR 1997") (see Appendix 1 of the Submission) specifies the valuation method for income stream benefits. For benefits being paid as lump sums, the meaning is clear – that is, the value is the amount of the lump sum. For pension benefits, funds will already have established a method of determining the value, given that it is needed for the determination of tax components. Note special provisions apply to public sector superannuation schemes – refer Regulation 307-205.02B. Also note Regulation 307-205.01 is not relevant for this purpose (it only relates to the determination of the crystallised pre-July 83 segment of the tax free component of a benefit).

19. Where the benefit is a pension benefit, generally the value is based on the pension valuation factors set out in Schedule 1B of ITAR 1997 (as were used for the determination of crystallised pre-83 components at 1 July 2007). In the context of the end benefit cap, it is worth noting that:

    - Schedule 1B only has sets of factors by age for 'indexed pensions' and 'non-indexed pensions', with no variation for the level of indexation or whether the pension is reversionary or non-reversionary, so it is designed with a focus on simplicity rather than strict accuracy; and

- the valuation basis used to develop the Schedule 1B factors is not specified but is clearly different from the valuation basis used for NTCs (and Division 293 defined benefit contributions).

B.2.2 Reference to "superannuation interest" rather than defined benefit component

20. The other issue that arises is that the deferred debt to which the end benefit cap applies relates only to Division 293 tax on the defined benefit component of the superannuation benefit – hence logically the cap should be calculated by reference only to the defined benefit component. Yet the definition of end benefit cap in the legislation refers to the value of the "superannuation interest", which would technically include any accumulation component of the benefit.

21. This issue is discussed in more detail in the Submission, which seeks confirmation that the end benefit cap should be calculated by reference only to the defined benefit interest and also seeks clarity on the meaning of 'end benefit', including confirmation that:

    (a) an end benefit should only be a payment from the member's defined benefit interest (that is, a payment from any accumulation component of a defined benefit member's benefits should not be an end benefit); and

    (b) crystallisation/cessation of a defined benefit interest is to be considered an end benefit.

22. At this stage the Institute has had a number of discussions with Treasury and ATO representatives regarding the matters raised in the Submission, but is yet to receive a formal response.

23. The remainder of this Discussion Note assumes that the end benefit cap calculation relates only to the defined benefit component of a member's benefit. Pending clarification by Treasury/ATO, the SPC considers that it would be reasonable for end benefit cap calculations to be prepared on this basis.

B.2.3 Calculation date and implications

24. The end benefit cap calculation date is "the end of the *financial year before the financial year in which the *end benefit becomes payable" (that is, effectively the prior 30 June).

25. Funds will need to determine at what date the benefit 'becomes payable' – note there is some commentary in the Submission regarding clarifying what this means and practical implications.

26. Also refer to the Submission for queries on what implications the required calculation date has for the type of benefit that is to apply for the end benefit cap calculation. In

particular, does the end benefit cap calculation depend on what 'end benefit' is to be paid (for example, death, early retirement, pension or lump sum) or does the calculation date being the prior 30 June mean the end benefit cap calculation is the same regardless of what type of end benefit is being paid? The Submission includes some examples with suggested conclusions. Pending clarification by Treasury/ATO, the SPC considers that it would be reasonable for the end benefit cap calculation to be prepared consistently with suggested conclusions.

27. Also note that, given the calculation date is the prior 30 June, there may be a significant impact on the end benefit cap if the benefit 'becomes payable' shortly after 30 June rather than shortly before.

B.3 Calculation of post-1 July 2012 component

28. Some possible methods of determining the total post-1 July 2012 component (including both the employer-financed component and the member-financed component, if any) of a defined benefit are set out in the table below:

Benefit applying at calculation date	Possible post-1 July 2012 calculation method
AM x FAS	AM2 x FAS
AM x FAS x F1	AM2 x FAS x F1
MCI x F2	MCI2 x F2
NECI	NECI2
Greater of	See note c

Where:

AM	=	Accrued Multiple as per PS 402 at calculation date
AM1	=	Accrued Multiple as per PS 402 at 30 June 2012
AM2	=	AM – AM1
FAS	=	Final Average Salary at calculation date
F1	=	Age or service factor at calculation date
F2	=	Age or service factor at calculation date
MCI	=	Member contributions with interest at calculation date
MCI2	=	Post-1 July 2012 Member contributions with interest at calculation date
NECI	=	Notional employer contributions (for example, SG) with interest at calculation date

NECI2 = Post-1 July 2012 notional employer contributions with interest at calculation date

Notes:

(a) Increases in vesting (for example, F1 or F2) of the pre-1 July 2012 component after 1 July 2012 should generally not fall into the post-1 July 2012 benefit.

(b) Extra record-keeping is required with the methods above for some designs (for example, MCI2 and NECI2).

(c) More complex methodology may be considered with some benefit designs, such as where a 'greater of' two or more benefits applies and there is the possibility that the higher benefit formula applicable at the calculation date may be different from the higher benefit formula applicable at 30 June 2012 – for example, a multiple of FAS benefit applied at 30 June 2012 and an accumulation-style benefit may apply at the calculation date. In these circumstances, a formula of the style outlined in paragraph 30(c) below (using the greater of (i) and (ii) for the pre-1 July 2012 accrued benefit) might be considered appropriate.

(d) Actual FAS may be needed at the relevant 30 June (and possibly at 30 June 2012 under some of the methods discussed below in paragraph 30).

(e) See comments at section B.2.1 above re pension benefits and at section B.2.3 above re the lack of clarity regarding the type of benefit calculation.

29. Adjustments may be required in special circumstances, such as:

(a) where there have been post-1 July 2012 benefit improvements (for example, a change in FAS or a change in how F1 or F2 is determined);

(b) where the defined benefit accruals have ceased (for example, if an employee terminates service and becomes entitled to a deferred benefit, there may be a need for a formula change); or

(c) where there has been a payment (such as a Family Law benefit payment) from the defined benefit since 30 June 2012.

Approximate methods

30. For some funds, calculations of the style discussed in paragraph 28 may involve considerable complexity, with variations required between benefit categories (and possibly within benefit categories according to individual member circumstances) and/or be impractical because of data limitations and/or be considered prohibitively expensive to mechanise (and the fund wishes to mechanise the calculations). This may lead to consideration of other methods which may entail various degrees of approximation. Such methods would include the following:

(a) DBC x post-1 July 2012 membership / total membership

Such an approach would simplify the calculation considerably, but:

- adjustments would need to be considered where there were different accrual rates in some periods and/or non-accruing or part-accruing periods; and

- for benefits based on an accumulation of contributions, this would generally tend to overstate the end benefit cap (although increasing SG may offset that to some extent over time for MRB-type accounts).

(b) DBC minus pre-1 July 2012 accrued benefit, where pre-1 July 2012 accrued benefit equals the DB leaving service benefit at 30 June 2012 plus interest or salary/FAS increases (as applicable) from 30 June 2012 to the date of calculation

This approach may also simplify the calculation considerably, but modifications might need to be considered to allow for some special circumstances such as:

- changes in vesting;

- greater of benefits; or

- members whose leaving service benefits at 30 June 2012 were account-related becoming eligible for salary-related benefits on reaching early retirement age.

(c) DBC minus pre-1 July 2012 accrued benefit, where pre-1 July 2012 accrued benefit equals one or a combination of (or the greater of) the following:

(i) accrued salary-related leaving service/early retirement benefit at 30 June 2012 x FV x FS, where FV is a factor to adjust for any increase in vesting from 30 June 2012 to the date of calculation and FS is a factor to adjust for any increase in Salary or FAS (as applicable) from 30 June 2012 to the date of calculation; and

(ii) the member/employer notional account at 30 June 2012 x FV x FI, where FV is a factor to adjust for any increase in vesting from 30 June 2012 to the date of calculation and FI is a factor to adjust for any interest or investment earnings from 30 June 2012 to the date of calculation

This approach is aimed at reducing or eliminating the approximations involved with approach (b), but may be considerably more complex, depending on the benefit design.

In (a)–(c) above, DBC = the value of the DB at the end benefit cap calculation date.

31. The issues raised in paragraph 29 would also need consideration with the methods discussed in paragraph 30.

32. It would be desirable for an actuary advising a trustee on end benefit cap calculation methods to consider including in that advice some comment on any circumstances in which a particular method under consideration for a group of members may give different results from a method that might be determined for a particular member of that group based on that particular member's individual circumstances. Consideration could be given to a 'filtering' system whereby members with certain characteristics might be referred for individual consideration, rather than the standard method being applied.

33. It is worth noting that, in many cases (for example, where the Division 293 tax applies intermittently to a member or only on part of their DB contributions), the end benefit cap will be very unlikely to apply. From this standpoint, it might be considered appropriate for trustees to try to minimise the cost of end benefit cap calculations by using approximate methods. Unfortunately, trustees will not have access to the amount of the member's debt account (unless it is provided voluntarily by the member) and will therefore have no way of knowing whether the debt is trivial compared to the approximate end benefit cap or 'in the ballpark'. In theory, if the fund knew the amount of the debt account and it was 'in the ballpark', the fund could then review whether the approximate method gave a reasonable result for that member and, if not, apply a more appropriate method. However, another practical difficulty with this approach is that it may be very difficult to determine the potential level of inaccuracy with the approximate approach (that is, the size of the 'ballpark'), as this may depend on factors such as how an individual's salary increases since 30 June 2012 compare with interest rates credited since 30 June 2012. This would make it difficult for the actuary to give reasonable guidance to the trustee about how much lower an accurate cap might be compared with the approximate method.

Data requirements

34. As noted earlier, extra record-keeping may be required in order to carry out end benefit cap calculations. Even where an approximate method is used, funds will need to consider keeping any additional records (for example, MCI2 and NECI2) which may be required to do 'accurate' calculations, in case of challenge by the member or where the fund decides to use a filtering process to identify members for whom the approximate method is not considered appropriate. (Note that the legislation specifically allows complaints about end benefit cap calculations to be made to the Superannuation Complaints Tribunal.)

35. Also note that, in many cases, the fund will not be able to identify in advance which members it may need this information for – it cannot decide this based on the member's current superannuation salary as they may have other income or their salary may grow significantly in future years. Note that the $300,000 threshold is not indexed so more people will be affected over time – although the cap will be much less likely to apply to those affected in future years as it is based on the benefit that accrued over all of the years since 1 July 2012, not just those years a person is subject to Division 293 tax.

36. Hence funds may be faced with the need to incur significant additional costs in order to keep the records necessary to accurately calculate end benefit caps for all DB members, just in case they are required, even though very few (or even none) may incur Division 293 tax.

37. In some cases it may be appropriate to obtain data extracts as at 30 June 2012 (for example, accrued benefit multiples, vesting factors, relevant account balances) for potential use in future end benefit cap calculations.

B.4 Calculation of employer-financed component

38. The employer-financed component will be the total (post-1 July 2012) benefit less any member-financed component.

39. The member-financed component is the component financed by post-tax member contributions.

40. In most cases, it is expected that the member-financed component will be nil for members subject to Division 293 tax, given the comparative tax inefficiency of post-tax member contributions compared with salary-sacrifice or packaged pre-tax member contributions for members on this level of income.

41. However, there will be some cases where there is a member-financed component – for example, where the governing rules do not permit salary sacrifice DB member contributions (this is now relatively rare) or where the fund wants to set up a calculation process to cater for all members, some of whom make (or may make) post-tax member DB contributions.

42. The following section discusses calculation of the member-financed component.

B.5 Calculation of member-financed component

43. If the fund maintains a (post-tax) member contributions with interest (MCI) account and is able to break this into pre- and post-1 July 2012 balances, then it would appear to be reasonable to use the post-1 July 2012 balance as the member-financed component.

44. Other potential methods would include:

    (a) MCR/NER times total post-1 July 2012 DB – this assumes the same level of post-tax member contribution rate (MCR) and the same level of new entrant rate (NER) throughout post-1 July 2012 membership; it is appropriate to use the NER rather than the NTC rate (= 1.2 x NER) because the benefit being apportioned is after contributions tax and expenses.

    (b) AMCR/ANER times total post-1 July 2012 DB – where AMCR is the average post-tax member contribution rate and ANER is the average new entrant rate (NER) applicable for post-1 July 2012 membership; this approximation becomes less reliable the more variation there is in the MCRs and the NERs for post-1 July 2012 membership.

    (c) AMCR x Current Salary x years of membership since 1 July 2012 – where Current Salary is determined at the calculation date and AMCR is the average post-tax member contribution rate for post-1 July 2012 membership.

45. The issues raised in paragraph 29 would also need consideration with the calculation of the member-financed component.

C. Other issues

C.1 The end benefit cap is a blunt equity measure

46. The purpose of the end benefit cap is to improve equity in cases where the notional DB contributions used for Division 293 tax turn out to be an 'over-estimate' based on the benefit actually received. However note that:

    (a) the end benefit cap is not adjusted for nil (or sub-15%) tax years – it effectively assumes Division 293 tax at the full rate of 15% for each accruing year from 1 July 2012 up to the calculation date;

    (b) the end benefit cap is not adjusted for any prior debt payments, so it may not be in a member's best interest to voluntarily pay any deferred DB tax;

    (c) there may be a timing misalignment between the Division 293 tax included in the debt account and the end benefit cap calculation date – for example, if the end benefit cap calculation date is 30 June 2014 and the Division 293 tax for 2013/14 is not included in balance of the debt account (for example, because the end benefit becomes payable early in 2014/15 and the member's 2013/14 Division 293 tax has not yet been assessed). This issue is raised at Section 4.3 of the Submission; and

(d) the end benefit cap may not be based on the benefit actually received – see Section B.2.3 above.

47. Note, also, that any Division 293 DB tax for the year in which the end benefit occurs will not be assessed until the following year, so will not be:

(a) included in the debt account discharge liability payable from the end benefit;

(b) subject to the cap; and

(c) able to be deferred (similarly, any future years' assessments).

C.2 Debt account discharge liability payment can only be paid from DB fund

48. A release authority for a debt account discharge liability payment is only valid for use with the DB fund to which the debt account relates:

(a) if the benefit has already been rolled over to another fund, the member will have to pay the debt from non-superannuation resources;

(b) this will generally be less tax effective than paying the debt from superannuation (as well as possibly inconvenient from a cash flow viewpoint);

(c) this creates something of a 'chicken and egg' situation for the member – payment of the debt will generally not be triggered until they request a benefit payment but they will not want to request payment until their debt has been paid from their benefit (refer to Section 5 of the Submission for further comments); and

(d) funds will be caught in the middle – do they hold up processing a rollover request to make sure the member is aware of the release authority restriction (and risk a member complaint and/or breaching portability regulations) or process anyway and risk a member complaint? Early member communication about this issue (prior to the payment arising) would be one way of reducing this risk.

C.3 Ad hoc calculations

49. Given that, for some funds, there may be very few members assessed for Division 293 DB tax, trustees may consider dealing with end benefit cap calculations as and when they are required, rather than mechanising calculations on the fund's administration system.

50. Considerations associated with this approach would include:

    (a) ensuring the necessary data is readily available when required (particularly for funds that did not have a member record update at 30 June 2012) – clearly the data required will depend on the calculation method;

    (b) obtaining appropriate support for the calculation methodology (for example, actuarial advice);

    (c) the ability to prepare the end benefit cap calculation within the 14 day ATO reporting timeframe; and

    (d) whether funds will need to periodically advise members with deferred Division 293 tax debt accounts of their end benefit cap (for example, as at 30 June each year).

C.4 When does an end benefit become payable?

51. For a member with a deferred debt account (as notified to the fund by the ATO), the fund must notify the ATO within 14 days after the earlier of:

    (a) receiving a request to pay the end benefit; and

    (b) the end benefit becoming payable.

52. Funds will therefore need to determine when an end benefit 'becomes payable'. This will depend to some extent on the Treasury/ATO response to the Submission in regard to matters such as whether cessation/crystallisation of a defined benefit interest gives rise to an end benefit. It may also depend on the fund's rules – for example, if those rules specify that a retirement pension automatically starts when a member retires on or after a certain age.

C.5 Pension benefits

53. Debt accounts will become payable when a pension commences/is about to commence. The following extracts from the explanatory material issued with Division 293 tax legislation may be relevant for funds providing defined benefit pensions:

    > "5.151 The Government intends to amend that [*sic*] the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Account Regulations 1997* so that where a release authority is given to a superannuation provider after it has commenced paying a superannuation income stream, the superannuation provider may to [*sic*] commute some or all of the income stream to a lump sum in order to comply with the release authority, subject to the rules of the superannuation plan."

> "5.164 If the fund rules that apply in relation to the defined benefit interest do not allow a lump sum superannuation benefit to be paid (for example where the only benefit payable from the interest is a non-commutable superannuation income stream benefit), then no amount can be paid by the superannuation provider."

54. Hence funds that offer a lump sum option will be required to release monies to pay the debt where the member lodges a valid release authority.

55. Funds that do not offer a lump sum option in lieu of a pension at commencement will need to consider changing their rules/legislation to enable a pension commutation to meet a Division 293 debt account discharge liability and will need to work out how to adjust the pension for any such commutations.

56. Funds providing non-commutable pensions will need to consider introducing provisions allowing commutation to pay any Division 293 DB tax assessments made after the pension has commenced, otherwise the member will have to pay the debt from non-superannuation sources. The ATO has indicated that, in certain circumstances, the member may be able to make a payment arrangement with the ATO to meet the debt.

C.6 Disability income benefits and pensions

57. The implications for disability pensions and disability income benefits may require special consideration. It appears that such payments to a member who is temporarily disabled would not be an end benefit (as they are not superannuation benefits under the ITAA 1997). However, if the member is assessed as TPD, then payments would become superannuation benefits, hence an end benefit would arise and trigger payment of any Deferred Division 293 debt account.

END OF DISCUSSION NOTE

ANNEXURE: Submission to Treasury and ATO dated 29 May 2014

Actuaries Institute

29 May 2014

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

email: Paul.tilley@treasury.gov.au

and

Mr John Shepherd
Assistant Commissioner
Australian Taxation Office Superannuation
PO Box 9977
CIVIC SQUARE ACT, 2608

email: John.shepherd@ato.gov.au

Dear Mr Tilley and Mr Shepherd

Division 293 Tax - Defined Benefit Issues

We write to raise a number of issues associated with defined benefit aspects of the Division 293 tax legislation, mainly relating to end benefits and end benefit caps.

The Actuaries Institute is the sole professional body for actuaries in Australia. It represents the interests of over 4,100 members, including more than 2,200 actuaries. Our members have had significant involvement in the superannuation industry and the development of superannuation regulation, reporting and disclosure, interpreting financial statistics, risk management and related practices in Australia for many years.

We have set out our comments, queries and recommendations in the Attachment to this letter. Although some of our recommended outcomes may be achieved by appropriate interpretation and administration of the current legislation by the ATO, we think it is likely that legislative change in some areas may also be required. Hence we have addressed this letter to both the Treasury and the ATO.

We note that some of the issues were raised in our submission of 8 May 2013 on the exposure draft legislation. We are unsure whether the points raised were considered and accommodated in the final legislation or whether they resulted in no change being made.

Costs to superannuation funds

We wish to place on record our concern that funds are likely to incur significant costs to enable them to meet their reporting obligations in respect of end benefit caps. These costs are likely to be quite disproportionate to any tax savings that accrue to members as a result of the caps.

As pointed out in our submission of 8 May 2013, DB funds may need to keep additional records, such as the member's accrued multiple at 1 July 2012 and/or separate account balances relating to pre- and post-1 July 2012, purely for the purpose of the end benefit cap. Where such information is required to calculate the end benefit cap (as it will be in many cases), funds will need to keep this extra data for all DB members (just in case they do incur Division 293 DB tax) even though very few (perhaps none) will

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 f +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

in practice be affected by Division 293 DB tax and even fewer (if any) by the end benefit cap.

Accurate calculations will potentially be very complex, with formulae needing to be developed to cater for variations in benefit design between different categories of memberships and, in some cases at least, individual member circumstances. For many funds, particularly those with many DB categories, or master funds with a large number of DB sub-funds, it will be a large and costly exercise which, as indicated above may benefit very few, if any, members.

Funds will also need to put in place processes to enable them to calculate and report the end benefit cap within 14 days of request by the ATO (rather than 30 days as requested by the Institute) – processes that will need to be durable until the last DB member leaves and may only be used a handful of times (or never) over the next 10, 20 or 30 years. As discussed in the Appendix, the timeframe is even longer - and the administrative processes will need to extend to ex-DB accumulation members as well as DB members - if crystallisation/cessation of the defined benefit can occur without giving rise to an end benefit. The additional costs associated with this latter situation could be avoided if our recommendations are accepted.

Costs for funds could be further reduced if the legislation specified a default formula for calculation of the end benefit cap, with funds permitted to adopt tailored formulae. Use of the default formula could not be challenged via the SCT. We would be pleased to discuss this option further should the Government be open to considering it.

Tax Agent Services Legislation

The Institute has been having discussions with Treasury for a number of years now about an exemption for actuaries from certain provisions of the Tax Agent Services (TAS) legislation (the most recent written correspondence being our letter of 27 September 2013 to the Treasurer).

The introduction of Division 293 end benefit caps provides a further example of actuarial advice potentially being inappropriately caught by the TAS legislation.

We note that trustees are not required by the legislation to seek advice from an actuary about the determination of end benefit caps. However we expect that trustees will almost invariably seek advice on this matter from their plan actuaries as it requires deep understanding of the defined benefit design and accrual process and how an accrued benefit can reasonably be apportioned between different accrual periods. Furthermore the calculation of the end benefit cap can be challenged by a member via the SCT.

Yet it appears that the TAS legislation may mean such advice can only be provided by a registered tax agent, since the trustee is likely to rely on the advice for the purpose of fulfilling an obligation under taxation legislation (i.e. reporting of end benefits caps).

We understand that it was not the intention of the TAS legislation to require actuaries to register as tax agents in order to advise on matters such as this and to prepare actuarial certificates as required under tax (including Superannuation Guarantee) legislation. We again request a legislative change to insert an appropriate exemption as soon as possible.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

Information to actuaries

The Institute's Superannuation Practice Committee is preparing a Discussion Note to assist actuaries in providing advice about the determination of end benefit caps and to stimulate discussion on this matter. The Discussion Note will provide information and raise issues for actuaries to consider in providing such advice. It will not set out mandatory guidance (which is provided via Institute Professional Standards) or set out generally accepted actuarial practice (which is provided via Institute Practice Guidelines).

We will provide a draft of the Discussion Note to the ATO for comment before it is issued to members.

Please do not hesitate to contact the Chief Executive Officer of the Actuaries Institute, David Bell (phone 02 9239 6106 or email david.bell@actuaries.asn.au) to discuss any aspect of this paper.

Yours sincerely

Daniel Smith
President

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

Attachment

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Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

1. End benefits should only be defined benefits

Section 133-130 of the Taxation Administration Act 1953 (TAA) provides that: "A *superannuation benefit is the ***end benefit*** for a *superannuation interest if it is the first superannuation benefit to become payable from the interest, disregarding a benefit that is any of the following…….". A copy of s133-130 is set out in Appendix 1.

The issue that concerns us is whether, for a member whose superannuation benefit includes both an accumulation component and a defined benefit component, a payment solely from the accumulation component of the benefit can be an end benefit.

There are many references in the Explanatory Memorandum (EM) to the Bills introducing Division 293 tax (the *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013* and the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Bill 2013)* which appear to indicate that, for a member with defined benefits, the terms 'superannuation interest' and 'defined benefit interest' should be read as having the same meaning. For example, paragraph 5.2 reads:

> *"5.2 The amount of Division 293 tax is, generally, either:*
>
> - *due and payable within 21 days after the notice of assessment is issued, to the extent the tax relates to a superannuation interest that is an accumulation interest;*
> - *deferred for later payment and included in a debt account maintained by the Commissioner of Taxation (Commissioner) to the extent the tax relates to a superannuation interest that is a defined benefit interest; or*
> - *due and payable within 21 days after a superannuation benefit is paid from the* ***defined benefit interest*** *for which a debt account is maintained by the Commissioner." (emphasis added)*

In respect of the third dot point we note it uses the term 'defined benefit interest' whereas s133-130 refers to the superannuation benefit becoming payable from the 'superannuation interest', not the 'defined benefit interest'.

Similarly paragraph 5.86 reads:

> *"5.86 There are limited circumstances in which a superannuation benefit can be paid from* ***a defined benefit interest*** *for which the Commissioner keeps a debt account without triggering liability to pay the debt account discharge liability for that interest. These include circumstances where …….. " (emphasis added)*

We strongly support the outcome that an end benefit should only be a payment from the member's defined benefit interest i.e. a payment from any accumulation component of a defined benefit member's benefits should not be an end benefit.

We note that the ATO's interpretation appears to support this outcome, judging by the information provided on the ATO website at QC 25355 e.g. the reference to an end benefit being paid "from the defined benefit interest".

However we are concerned that these interpretations are not assisted by the definition of defined benefit interest in s.291-175 of ITAA:

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

291-175 *Defined benefit interest*

(1) An individual's *superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to *superannuation benefits payable from the interest by reference to one or more of the following matters:

(a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;

(b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;

(c) a specified amount;

(d) specified conversion factors.

(2) However, an individual's *superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:

(a) *disability superannuation benefits;

(b) *superannuation death benefits;

(c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

Our understanding of the meaning of 'to the extent that' in part (1) of this definition is that, for a member whose superannuation interest includes both an accumulation component and a defined benefit component, the defined benefit interest is only the defined benefit component. Hence the terms 'superannuation interest' and 'defined benefit interest' are not interchangeable.

Hence we seek:

- confirmation that an end benefit should only be a payment from the member's defined benefit interest i.e. a payment from any accumulation component of a defined benefit member's benefits should not be an end benefit

and

- confirmation that an amendment is not considered necessary to achieve this outcome; or
- a clarifying amendment, if necessary.

Finally, we note that if payment of a superannuation benefit from the accumulation component of a defined benefit member's benefit would be an end benefit, the ludicrous situation would arise that if a defined benefit member used a release authority to pay Division 293 tax relating to their accumulation contributions (for example), this would be an end benefit which would trigger payment of their current Division 293 deferred tax debt - and require all future Division 293 tax on DB notional contributions to be paid immediately (on assessment) rather than deferred.

This situation could be addressed by adding payment of a superannuation benefit from the accumulation component of a defined benefit member's benefit to the list of end benefit exceptions. However this 'fix' would not address the administrative issues associated with allowing deferred debt accounts to continue after the associated defined benefit interest has ceased – refer section 2.1.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

2. When does the end benefit arise?

2.1 Does crystallisation of the DB interest constitute an end benefit?

Whether or not a payment from any accumulation component of a defined benefit member's benefits is an end benefit will have an impact on when an end benefit arises. If an end benefit is only a payment from a member's defined benefit interest, we seek clarity on the following situations:

(a) A member's defined benefit is converted to accumulation and the member remains in the fund as an accumulation member (with no defined benefit interest) – is the conversion of the defined benefit an end benefit?

If an end benefit is only a payment from the member's defined benefit interest, in our view the answer logically should be yes. However this would seem to require the internal transfer to meet the definition of a 'superannuation benefit', which appears questionable. If the answer is no, then it is difficult to see how an end benefit could arise subsequently, since there is no longer a defined benefit interest from which a superannuation benefit could be paid.

If, on the other hand, 'superannuation interest' in s133-130 is not intended to be read as 'defined benefit interest' and the transfer is not considered to meet the definition of a 'superannuation benefit', the answer logically would be no – an end benefit would not arise until a 'superannuation benefit' was paid i.e. there was a payment out of the fund.

(b) A defined benefit member leaves service and has the option to retain their leaving service benefit in the fund (the default) or roll it over to another fund; the defined benefit leaving service benefit is a lump sum; the member elects to retain their leaving service benefit in the fund where it will accumulate with investment earnings; the member no longer has a defined benefit interest in the fund. Is the leaving service benefit an end benefit?

Comments as for (a).

(c) A defined benefit member leaves service and has the option to retain a deferred defined benefit in the fund (the default) or to take a lump sum benefit and roll it over to another fund; the member elects to retain their benefit in the fund, thereby maintaining their entitlement to a future defined benefit. Is the leaving service benefit an end benefit?

On either interpretation, the answer should be no, as there has not been any crystallisation of the defined benefit interest. However we note that some such deferred benefit arrangements may follow similar process to examples (a) and (b) above, so that if an approach were to be adopted of deeming internal transfers to be superannuation benefits for end benefit purposes in order to cover cases (a) and (b), care would be needed to avoid inadvertently also catching cases of type (c). One way of achieving this would be to make the cessation of a defined benefit interest an end benefit.

(d) The deferred defined benefit member referred to in example (c) reaches age 65 at which time the defined benefit becomes payable as a lump sum (no pension option); the member has the option to retain their lump sum benefit in the fund (the default), to take it in cash or to roll it over to another fund; the member elects to retain their benefit in the fund where it will accumulate with investment earnings; the member no longer has a defined benefit interest in the fund. Is the age 65 defined benefit an end benefit?

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

Comments as for (a).

The point at which a defined benefit interest is crystallised to a lump sum (including the crediting of such lump sum to an accumulation interest) will generally be clear. For example:

- In case (a) it will be the effective date of conversion to an accumulation benefit
- In case (b) it will be the date the member ceased service
- In case (d) it will be the date the member reaches age 65 (or earlier voluntary withdrawal date)

Hence in our view the date of crystallisation/cessation of a defined benefit interest would be a suitable date to deem that an end benefit has become payable from the defined benefit interest.

If crystallisation/cessation of the defined benefit interest does not constitute an end benefit, it is less clear when an end benefit will 'become payable'. Given the retained benefit options that now apply in most funds, an end benefit may not 'become payable' until a payment is requested by the member. This could conceivably be up to 20 or more years after the member ceased to have a defined benefit interest. It this is the intended outcome of the legislation, the rationale behind this is not evident on our reading of the EM.

Furthermore, we consider that it would be highly undesirable from a fund administration viewpoint for accumulation members to have Division 293 deferred debt accounts. Imposing the substantial and complex additional administration requirements associated with debt accounts (such as: special fields to flag members with debt accounts and maintain records to calculate end benefit caps; dealing with ATO - and potentially member - reporting requirements; member communications around debt accounts and end benefit caps, particularly at the time of a benefit payment) for a very small number of defined benefit members is bad enough without also extending these to the accumulation categories of defined benefit funds – including the fund's MySuper product (assuming it has one).

Deeming that an end benefit has become payable from the defined benefit interest at the date of crystallization/cessation of a defined benefit interest would avoid this by requiring the deferred debt account to be dealt with at that time, as part of the transfer of the member from defined benefit to accumulation. The deferred debt account complexity would then not be carried over into the accumulation category.

Hence we seek:

- confirmation that crystallisation/cessation of a defined benefit interest is to be considered an end benefit

and

- confirmation that an amendment is not considered necessary to achieve this outcome; or
- a clarifying amendment, if necessary.

2.2 End benefit notification requirements

We note that s133-135 of the TAA requires an individual who 'requests a superannuation provider to pay the end benefit' to notify the ATO of the request. On our reading this requirement would not be triggered in any of examples (a) to (d) above. However, if the answer to questions (a), (b) and (d) is yes and that view is promulgated by the ATO,

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

we expect that funds would be required to report these types of cases to the ATO as end benefits.

We note there may be a practical problem with the time period for the fund's notification requirements in some circumstances. For example, in cases such as (b) above, it will often be some time after the member ceased service before the fund is notified of the cessation. Yet under s.133-140 of the TAA the fund must notify the ATO within 14 days after the earlier of:

(i) Receiving a request to pay the benefit; and
(ii) The benefit becoming payable.

As (i) is not applicable, (ii) will need to be the trigger for fund notification to the ATO. This results in a practical difficulty with the date the member ceased service being the date of the benefit 'becoming payable' as the fund will commonly not be advised of the termination until some weeks after the date the member ceased service.

Hence we believe the fund notification requirements may require amendment, for example to within 14 days of the earlier of:

(i) Receiving a request to pay the benefit; and
(ii) The benefit becoming payable or the superannuation provider becoming aware of the benefit becoming payable, whichever is the later.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

3. End benefit cap should be based on DB component only

The end benefit cap is defined in TAA s133-120(2) as the amount that is "15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012". A copy of s133-120 is set out in Appendix 1.

The use of the term 'superannuation interest' rather than 'defined benefit interest' in s133-120(2) raises similar concerns as are discussed in section 1 above in relation to end benefits where the member's superannuation benefit includes both an accumulation component and a defined benefit component.

The deferred debt to which the end benefit cap applies relates only to Division 293 tax on the defined benefit component of the superannuation benefit – hence for a member whose superannuation interest includes both an accumulation component and a defined benefit component, logically the cap should be calculated by reference only to the defined benefit component.

Paragraph 5.106 of the EM (refer below) provides some support for this interpretation by referring to the cap as applying to "protect individuals with defined benefit interests from paying amounts of Division 293 tax on estimated employer contributions for benefits that are ultimately not payable".

> *End benefit cap*
>
> *5.106 To protect individuals with defined benefit interests from paying amounts of Division 293 tax on estimated employer contributions for benefits that are ultimately not payable, the debt account discharge liability is limited to 15 per cent of the employer financed component of the value of the benefit payable to the member that accrues after 1 July 2012. An individual's debt account discharge liability is the lesser of the amount by which their debt account is in debit or 15 per cent of the employer-financed component of that part of the value of the superannuation interest that accrued since 1 July 2012. [Schedule 3, Part 1, item 2, section 133-120 of Schedule 1 to the TAA 1953]*

Hence we seek:

- confirmation that the end benefit cap should be calculated by reference only to the defined benefit interest;

and

- confirmation that an amendment is not considered necessary to achieve this outcome; or
- a clarifying amendment, if necessary.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

4. What benefit is the end benefit cap based on?

4.1 Value used and type of benefit

The end benefit cap is defined in s133-120(2) of the ITAA1953 as the amount that is "15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012".

Under s133-120(3), for the purpose of the end benefit cap calculation "the *value of the superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable".

We understand that the "value of the superannuation interest" is to be determined in accordance with s307-205 of ITAA1997, which also applies for determining the tax components of a superannuation benefit:

> **307-205 *Value* of superannuation interest**
>
> The ***value*** of a *superannuation interest at a particular time is:
>
>> (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or
>>
>> (b) otherwise—the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

Part (a) only applies in very limited circumstances, mainly where the benefit being paid, or commencing to be paid, is a defined benefit pension. (The relevant regulation is set out in Appendix 2.)

Secondly, we note that the calculation date for the end benefit cap is "the end of the *financial year before the financial year in which the *end benefit becomes payable" i.e. effectively the prior 30 June.

This specification of the timing along with the definition of the value of a *superannuation interest gives rise to a number of questions (in addition to the defined benefit component issue addressed at section 3 above) which are illustrated by the following examples:

> *Example 1 – Member has become eligible for early retirement benefit since prior 30 June*
>
> Ashleigh retires on 31 December 2014 after turning 55 on 1 December 2014. She is entitled to a lump sum (DB) early retirement benefit which is available to members retiring on or after age 55. Prior to age 55 the entitlement on leaving service is a resignation benefit which is generally significantly lower than the early retirement benefit.
>
> Ashleigh's end benefit cap is to be calculated at 30 June 2014. Under s.307-205, the value of the benefit to be used in the end benefit cap calculation is to be determined as the 'total amount of all the *superannuation lump sums that could be payable from the interest at that time'. This seems to be Ashleigh's resignation benefit at 30 June 2014, as she was not entitled to an early retirement benefit at 30 June 2014.
>
> Is this correct?

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

Example 2 – Member dies

Boris dies on 31 December 2014. His beneficiaries are entitled to a lump sum (DB) death benefit which is substantially greater than his leaving service benefit.

Boris's end benefit cap is to be calculated at 30 June 2014. Under s.307-205, the value of the benefit to be used in the end benefit cap calculation is to be determined as the 'total amount of all the *superannuation lump sums that could be payable from the interest at that time'. This seems to Boris's resignation benefit at 30 June 2014, as he was not entitled to a death benefit at 30 June 2014.

Is this correct?

Would the same apply if Boris became eligible for a lump sum TPD benefit on 31 December 2014?

Example 3 – Member elects a retirement pension

Carmen retires on 31 December 2014 and elects take a DB lifetime pension.

Carmen's end benefit cap is to be calculated at 30 June 2014. At 30 June 2014 a defined benefit pension was not currently being paid for Carmen nor was a pension being commenced. Hence it would appear that s307-205 (a) would not apply and so the value of the benefit to be used in the end benefit cap calculation is to be determined as the 'total amount of all the *superannuation lump sums that could be payable from the interest at that time'. This seems to be Carmen's lump sum retirement benefit at 30 June 2014.

Is this correct?

If our suggested conclusion in any of the above examples is not correct, practical complications will arise, for example:

- it will make it even more prohibitive for funds to automate annual calculations of the end benefit cap for reporting to the ATO (if required) or to relevant members, as the calculation will vary according to the mode of exit
- if Boris's death benefit was 6 times Salary at the date of death and was also 6 times Salary at 30 June 2012, would the end benefit cap be zero? If not, how would it be calculated?

On the other hand, if our suggested conclusions are correct, the end benefit cap may not have its intended effect where the benefit paid is significantly less than the lump sum voluntary leaving service benefit. This is extremely uncommon, but we understand it may occur in very unusual circumstances in some public sector plans e.g. where a member dies with no dependants.

4.2 Need for clarity about the date at which a benefit 'becomes payable'

Given the calculation date is the prior 30 June there may be a significant impact on the end benefit cap if the benefit ' becomes payable' shortly after 30 June rather than shortly before. This is because an extra year's accrual would generally be included in the former case compared with the latter. It is therefore important that there is clarity about the date at which a benefit 'becomes payable' – refer to the discussion in section 2 above.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

4.3 Timing of assessments vs end benefit cap

Division 293 tax assessments are issued after the end of the relevant income year. We understand that this is the reason that the end benefit cap is to be calculated at the prior 30 June.

This effectively provides consistency between the accrual period for the end benefit cap and the accrual period for the Division 293 deferred tax where the debt account discharge liability includes all assessments for DB Division 293 tax which relate to the period up to the prior 30 June.

Clearly this will not be the case where:

- the assessment for DB Division 293 tax for the prior year has not yet been made, as will often be the case given that assessments are generally expected to issue in the second half of the subsequent income year; or
- where amended assessments are made relating to the period up to the end benefit cap calculation date.

We recommend that amendments be made to require the Commissioner of Taxation to cap any DB Division 293 tax assessments:

- which are made after the debt account discharge liability is determined; and
- which relate to the period up to the end benefit cap calculation date to the extent necessary to ensure that the total of the *debt account discharge liability paid plus the relevant subsequent assessments* does not exceed the end benefit cap.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

5. Restriction on use of release authority

A release authority for a debt account discharge liability is only valid for use with the fund that 'holds the superannuation interest to which the debt account relates". (TAA s135-40(3))

This appears to mean that a member who has rolled their benefit over to another fund will have to meet the debt account discharge liability from non-superannuation monies. This may cause financial difficulties (particularly where the member does not meet a condition of release), as well as being tax-inefficient.

Is this correct? Why is this restriction considered necessary?

This restriction is likely to result in complaints from members if the benefit is rolled over before the debt account discharge liability is paid. However funds are required to process rollover requests within 3 business days – this allows little time for the fund to clarify with the member whether they have considered the debt account issue. We also note that the member is required to notify the ATO within 21 days after making a benefit payment request and that the general interest charge starts to accrue from 21 days after the benefit is paid.

So if the member wants to have their debt account discharge liability paid from their superannuation and not incur further interest charges, in effect the member has to request the benefit be paid, but also request the benefit NOT be paid until after the debt account discharge liability is paid?

We note if the member does this, the period until their benefit is paid may not be insignificant:

- the fund has 14 days to advise the ATO of the end benefit cap
- the ATO then has an unspecified period to prepare and send the debt account discharge liability notice to the member
- the member then needs to complete and send the release authority to their fund; and
- the fund then has 30 days to process this.

We recommend removal of the restriction that a release authority for a debt account discharge liability can only be used with the fund that "holds the superannuation interest to which the debt account relates".

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 f +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

6. General interest charge

We note that the general interest charge on the debt account discharge liability starts to accrue from 21 days after the benefit is paid.

As set in Section 1, in our view an end benefit should only be a payment from the member's defined benefit interest.

Where the first benefit paid from a defined benefit interest is a defined benefit pension, in our view the date the first benefit is paid would be the date the first pension payment is made. Hence the general interest charge on any outstanding debt account discharge liability would start to accrue from 21 days after this date.

However the situation for lump sum defined benefits is not so straightforward. In Section 2.2 we put the view that the date of crystallization/cessation would be a suitable date to deem that an end benefit has become payable from the defined benefit interest and provided a number of examples. For the general interest charge, a deemed date of payment would also be required.

We suggest this be the date that the debt account discharge liability notice is issued to the member. This would be consistent with the treatment of non-deferred Division 293 tax assessments.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

APPENDIX 1 – Legislated definitions of End Benefit Cap and End Benefit

End benefit cap is defined in section 133-120(2) of Schedule 1 to the Taxation Administration Act 1953 (TAA1953):

133-120 Meaning of *debt account discharge liability*

(1) The ***debt account discharge liability*** for a *superannuation interest for which the Commissioner keeps a debt account is the lesser of:

(a) the amount by which the debt account is in debit at the earlier of:

(i) the time the *end benefit for the superannuation interest becomes payable; and

(ii) the time a notice under section 133-125 is made; and

(b) the end benefit cap specified in a notice given to the Commissioner by the *superannuation provider under subsection (2) or section 133-140 (as the case requires).

(2) If requested by the Commissioner, the *superannuation provider in relation to a *superannuation interest must give the Commissioner notice of the amount (the end benefit cap) that is 15% of the employer-financed component of any part of the *value of the superannuation interest that accrued after 1 July 2012.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the Superannuation (Resolution of Complaints) Act 1993 if the person is dissatisfied with notice given to the Commissioner under this subsection.

(3) For the purposes of subsection (2), the *value of the *superannuation interest is to be worked out at the end of the *financial year before the financial year in which the *end benefit becomes payable.

(4) A notice under subsection (2) must be given:

(a) in the *approved form; and

(b) within 14 days of the Commissioner making the request.

End benefit is defined in section 133-130:

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

133-130 Meaning of *end benefit*

(1) A *superannuation benefit is the ***end benefit*** for a *superannuation interest if it is the first superannuation benefit to become payable from the interest, disregarding a benefit that is any of the following:

(a) a *roll-over superannuation benefit paid to a *complying superannuation plan that is a *successor fund;

(b) a benefit that becomes payable under the condition of release specified in item 105 of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (about severe financial hardship);

(c) a benefit that becomes payable under the condition of release specified in item 107 of that table (about compassionate ground);

(d) a benefit specified in an instrument under subsection (2).

(2) The Minister may, by legislative instrument, specify a *superannuation benefit for the purposes of paragraph (1)(d).

(3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a legislative instrument made under subsection (2) may be expressed to take effect from any time on or after 1 July 2012.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

APPENDIX 2 – Legislated definition of value of superannuation interest

The 'value of a superannuation interest' is defined for various tax legislation purposes (including the Div 293 tax end benefit cap) in s307-205 of ITAA1997 (refer section 4) and in the Income Tax Regulations 1997 (ITAR 1997) at:

Regulation 307-205.02 - Value of superannuation interest

(1) For paragraph 307-205(a) of the Act, this regulation:

(a) applies to a superannuation income stream or a superannuation annuity, other than:

(i) a superannuation income stream that is a pension mentioned in subparagraph 295-385.01(a)(i), (ii) or (iii); or

(ii) a superannuation income stream or a superannuation annuity for which the rules providing for the income stream or annuity are based on:

(A) an identifiable lump sum amount; or

(B) the amount available in the member's account; or

(iii) a superannuation income stream that is supported by a superannuation interest that can be valued under paragraph 307-205.02B (a); and

(b) specifies a method for determining the value of a superannuation interest at a particular time if the interest supports a superannuation income stream to which this regulation applies.

Note: The proportioning rule requires the tax-free and taxable components of superannuation to be paid out as benefits in the same proportion as they make up of the underlying interest. A value of a superannuation interest is required to ensure that the proportioning rule operates appropriately.

(2) The value of the interest at a particular time is the sum of:

(a) the product of:

(i) the annual amount of the superannuation income stream payable in respect of the superannuation interest at that time; and

(ii) the applicable factor set out in clause 1 of Schedule 1B; and

(b) the product of:

(i) the nominal value of the superannuation lump sum, if any, which is payable in respect of the interest at a time in the future, other than a future lump sum which is a commutation of the income stream included in

subparagraph (a)(i); and

(ii) the applicable factor set out in clause 2 of Schedule 1B.

Institute of Actuaries of Australia
ABN 69 000 423 656
Level 2, 50 Carrington Street, Sydney NSW 2000, Australia
t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
actuaries@actuaries.asn.au | www.actuaries.asn.au

307-205.02A Superannuation income streams or superannuation annuities based on identifiable amounts—value of an interest

For a superannuation income stream or a superannuation annuity mentioned in subparagraph 307-205.02(1)(a)(ii), the value of the superannuation interest that supports the income stream or annuity is:

(a) the identifiable lump sum amount; or

(b) the amount available in the member's account.

307-205.02B Public sector superannuation schemes—value of an interest

A superannuation interest in a public sector superannuation scheme is to be valued:

(a) by using the practice for valuing a superannuation interest (other than an interest that supports a superannuation income stream mentioned in subparagraph 307-205.02(1)(a)(i)) that was used by the scheme immediately before 28 June 2007; or

(b) if there was not a practice for valuing an interest at that time—by using the method in subregulation 307-205.02(2).

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t +61 (0) 2 9233 3466 **f** +61 (0) 2 9233 3446
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