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1. Super reforms – Actuarial issues
2. Payroll tax and DB contributions

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Super reforms – Actuarial issues

- DB pensions and the Transfer Balance Cap
- Value of DB for total super balance tests
- DB & zero non-concessional contribution limit
- DB & personal contribution deductions
- Pension tax certificate requirements
- Removal of tax exemption from earnings on TTR pensions
- Innovative retirement income streams

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Pensions Transfer Balance Cap (TBC)

- TBC of $1.6m applies from 1/7/17 to total of:
  - Existing pension 'balances' at 30/6/17; and
  - Transfers into 'retirement phase' from 1/7/17
  - Less debits from commutations
- Excess must be removed from retirement phase UNLESS the pension is a 'capped DB income stream' (CDBIS)

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Capped DB income streams (CDBIS)

- SIS r1.06(2) DB pensions (existing and new)
- Lifetime, life expectancy, market-linked and term annuities and pensions that commence/d before 1/7/17
- Other income streams specified in regulations:
  - *Draft regulations released 13 April specify that commutable lifetime pensions provided under pre-June 2007 rules are also CDBIS (existing and new)*
- Hence **all SIS DB lifetime pensions expected to be CDBISs**
  - *Advise SPC if you have concerns with definition*

CDBIS – Transfer Balance Cap treatment

- DB lifetime pensions valued as *annualised pension x 16*
  - Annualised pension based on first payment after 30/6/17
  - Hence allows for any indexation at 1 July 2017
- CDBIS valued > $1.6m to be permitted but excess of pension over $100k pa subject to tax/higher tax
- All amounts in ABPs excess and must be commuted if DB pension value > $1.6m
- Investment earnings on fund assets backing CDBISs > $100k pa still tax exempt

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Commutation authorities

- Issued to fund by ATO where excess balance is assessed
- Instructs fund to commute $Excess within 60 days of issue
- Issue for DB is $Excess assumes fund commutes at TBC value factor of 16
- Fund can decline commutation authority for CDBIS
- However may accept (if rules permit for non r1.06(2) pensions)
- Members may seek to voluntarily commute due to TBC issues
- Trustees need to consider how they will respond

  => likely to seek actuarial advice

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Actuarial advice re potential commutation issues

- Fund rules applying to commutations
- Determination of commutation factors
- Approach for new/recent pensions
- Same approach for pensions under and over $100k pa?
- Need for health evidence
- Funding/financial position implications
- Potential for complaints about level of commutation factors
- Tax impact on members
- Pensioner communications
- Content of commutation request forms
- Need for financial advice

CDBIS better for commutable pensions?

Many existing commutable better off (lower cap value) if not CDBIS but:

- Principle – unfair to force reduction in lifetime pension entitlements (current and future)
- Many ‘commutable’ DB pensions v. limited commutation rights
- Others have defined commutation basis that is ‘low’ value
- Variation in commutation approaches/factors between funds
- Difficulty of setting commutation factors
- Likelihood of member complaints – worse if forced commutation

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DB value for total super balance

- Total super balance used in balance limits for catch-up conts ($0.5m) and NCC ($1.4m to $1.6m)
- Value is as for TBC for current DB pensions (retirement phase)
- 'Accumulation phase value' (APV)is:
  - method in regulations if specified (none yet)
  - otherwise total amount payable on voluntary cessation of interest
- Treasury considering APV methods that will cater for funds where no lump sum option or very low lump sum
- Expect any new method would only apply from 2018/19

DB & zero NCC limit

- Zero NCC limit to apply if total super $1.6m or more
- Treasury has confirmed no special rules will apply to DB even if conts compulsory to maintain DB
- Fund must refund excess NCCs from accum accounts if any
- If no accum accounts and fund will not release from DB, member will have to pay 47% excess NCC tax
- Excess NCC can also arise from excess DB CC where DB member not eligible for grandfathering

=> Allow release from DB with offset account?

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DB & personal contribution deductions

- Deductibility of personal contributions opened up from 1/7/17
- Claiming deductions on post-tax DB member contributions may affect funding
- Legislation allows three options for DB funds:
  - (i) allow deductions on any personal contributions (default)
  - (ii) do not allow deductions on any personal contributions
  - (iii) do not allow deductions on any personal contributions to DB interests
- Election for (ii) or (iii) must be made in approved form by 30 June 2017
- ATO developing election form

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Pensions tax certificates

- Govt proposed to remove the requirement for an actuarial certificate where unsegregated assets relate only to account-based pensions
  - SMSF industry opposed this and Govt withdrew proposal
  - Actuarial certificates seen to add integrity
- From 1/7/17 SMSFs cannot use segregated assets where:
  - A member has a total super balance of $1.6m or more; and
  - That member has a retirement phase pension (in any fund)
- From 1/7/17 can only include retirement phase pensions in current pension liabilities

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Tax on TTR earnings

- From 1/7/17 transition to retirement (TTR) pension assets will be subject to earnings tax UNTIL age 65 or earlier retirement
- Exclude from tax exempt pension liabilities in certificates
- Funding issue for DB TTR pensions
- New sets of unit prices/crediting rates may be required
- CGT relief may be hard for large funds to access
  - May impact tax provisions at 1/7/17
- ATO will allow interim approach where TTR assets may not be split out of segregated pension assets until after 1/7/17

  => take care with data for certificates

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Innovative retirement income streams

- Draft regulations released for comment, to commence 1/7/17
- Will extend earnings tax exemption to a broader range of income streams, including deferred income streams and variable annuities/GSAs
- For deferred products, earnings tax exempt from SIS ‘retirement’
- Aim to encourage more products that help manage longevity risk
- Must meet a number of conditions, including:
  - Payments cannot commence until on or after retirement
  - At least annual payments over remaining lifetime
  - Maximum access to capital declining over life expectancy at retirement
  - Maximum death benefits
- Includes definition of ‘collective defined contribution scheme income stream’
- Means test rules for these products expected second half of 2017

Payroll Tax & DB Contributions

Update

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Purpose

- To update Members on recent Payroll Tax Ruling
- To seek Member feedback prior to updating Discussion Note

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Background

- Payroll tax legislation in various States and Territories includes superannuation contributions in the definition of wages
- Wages exclude superannuation contributions paid in respect of service performed by an employee before a specified date (eg. 1 July 1997 in Victoria, 1 July 1996 in NSW)
- That the contributions relate to the relevant service period must be evidenced to the satisfaction of the Commissioner
- An actuarial certificate is justified as evidence and, in absence to the contrary, proof of that fact (or similar)

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Background

- CSR Ltd v The Chief Commissioner of State Revenue [2006] NSWSC 1380 apportioned "top up" contributions based on defined benefit liabilities
- SPC produced Discussion Note October 2009
- SPC believed it was reasonable to assume top-up contributions are those in excess of "normal" contributions determined by the actuary to be appropriate
- The Discussion Notes states one method of apportioning "top up" contributions is in proportion to accrued defined benefit liabilities
- Amounts are small unless large employer or material top-up contributions

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NSW Revenue Ruling No. PTA 040

- Follows on from Qantas Airways Limited v Chief Commissioner of State Revenue NSWSC 826
- While actuaries may have different opinions, the ruling sets out an approach based on Court decisions that can reasonably be used
- Does not have the force of law. Explicitly allows the NSW Chief Commissioner not to accept actuary’s certificate prepared in accordance with the Ruling, potentially on the advice of another actuary.
- An actuary can still use an alternative method. If rejected by the Chief Commissioner, employers may still progress in courts

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NSW Revenue Ruling No. PTA 040

Definitions

- **Normal cost contribution**,

  at the start of a payroll tax year is the contribution determined by an actuary that is expected to be sufficient to fund the benefits estimated to accrue to members over the following year less the contributions payable by members over the year. One method that will be accepted by the Chief Commissioner is the ***Projected Unit Credit*** *method…*

- PUC can be used irrespective of funding method. It may become default because it will often result in lower normal cost contribution, and higher payroll tax exemption, than other funding methods. Indeed, may be obliged to use it.
- Calculation does not need to be by the same actuary as prepares funding valuations

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NSW Revenue Ruling No. PTA 040

Definitions

- **Surplus/Deficit** calculated relative to accrued benefits at start of year
- ***Adjusted normal cost contribution*** *is the normal cost that has been adjusted to take into account any available surplus or deficit required to fund the scheme or plan. The actuary may advise the period of time over which it is appropriate to either utilise any surplus or to fund any deficit. A surplus can be applied to reduce the employer contribution that would otherwise be required. If there is a deficit, additional employer contributions will be required.* ***If there is no recommendation by an actuary, the Chief Commissioner will accept three or more years as an appropriate period over which to utilise any surplus or to fund any deficit without the need for justification of the period chosen****…*

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NSW Revenue Ruling No. PTA 040

- Amortisation Period
  - *There is no link to the period used for funding in the Ruling*
  - *Employers may put pressure to use a three year amortization period for funding if there was a link to minimize their payroll tax*
  - *Actuary can use three years. If actuary is concerned about using three years, should they simply be instructed by employer?*
- *Three years can be used even if contributions greater than the adjusted normal contributions expected to be required to keep VBI over 100%.*
- *Materiality*
  - *Should the results, data from last triennial be used?*

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NSW Revenue Ruling No. PTA 040

- If Deficit, any contributions in excess of normal cost contributions can be apportioned between exempt and liable contributions.
- If Surplus, any contributions in excess of adjusted normal contributions can be apportioned between exempt and liable contributions.
- Method of apportioning contributions to pre 1 July 1996 is based on apportionment of accrued defined benefit liabilities at start of year. Assumptions from PS400 valuation, updated if appropriate.
- Less clarity about other states, but expectation is that a consistent approach can be used.