

BOYCE
SUPERANNUATION STRATEGY



LONSDALE

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General Manager
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The Treasury
Langton Crescent
PARKES ACT 2630

By email to: simplersuper@treasury.gov.au

Dear Sir,

Submission on a Plan to Simplify and Streamline Superannuation

Background

This submission is written by an Australian Financial Services licenced superannuation advisor, with 12 years experience who works in a firm of Chartered Accountants servicing 6 offices in regional NSW. The clients mainly run small businesses (in rural, retail, and service industries) or are professionals, but there are also employees. The firm has a close involvement with 350 self managed superannuation funds; providing advice, administration, audit and /or tax agent services.

Accolades

The following parts of the plan will be particularly welcome to our business and our clients and consequently we will be very pleased if they are retained in the final plan

1) The simplicity of benefit payments because:

- it has been difficult to explain the intricacies of the options to clients
- it has often been hard to ascertain the preferred option for a client because of the number of options and variables
- the suggested reporting by funds will significantly reduce fund administration in the benefit payment stage. Particularly welcome is the end of RBL reporting as it was very difficult to establish and report an accurate balance for purchased pensions with the whole member account in the time frame.
- fixing the pre 83 component at a point in time will also be welcome as it was a moving amount between planning benefit payments and implementation.
- it will make preparation of tax returns for those drawing superannuation benefits simpler

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2) The reduction in benefit taxes because

- it will encourage saving and self funding in retirement
- it will increase the choice available in the way benefits are drawn, but since most choices will have similar tax effects and rules they will be easier to understand and choose between.

3) Putting the self employed on the same basis as employees, with regards to deductibility of contributions and the co-contribution is welcome because

- it is long overdue, was never fair and there was no known reason for it.
- it makes the system simpler.

Comments about other areas

The \$150,000 per year per person undeducted contribution limit

Since the budget paper said "if the proposals in this paper are adopted, this restriction would apply from Budget night 9 May 2006"; and also "the government will consider whether the cap should be averaged over three years" it has been very difficult to advise people who were in the process of making large undeducted contributions.

This was partially address by the later announcement in June , which has allowed the 3 year averaging and cleared up the status of pre 10 May, 2006 financial year contributions.

However it has not addressed the issue of people who had advanced plans to contribute to superannuation under the current system.

For example Client A – a 72 year old woman married to a 76 year old man has just sold their rural property. It was pre CGT land and they have no superannuation. Settlement was on 25th May, and they had intended to contribute most of the proceeds to superannuation in her name and commence an allocated pension.

Client B – a 68 year old man had planned with 2 years of tax deductible contributions left to move a personal share portfolio over to superannuation, using the deductible contributions to offset capital gains in his own name. Up until 65 he had never been comfortable to have his investments in superannuation because his business was very volatile (largely farm machinery supplies) and he always felt he might need access to the capital. The new limit will require he take several more years to transfer the portfolio.

The limit is understandable and a limit is necessary, but we would suggest

- 1) that the date be extended in the final plan to either 30 June 2006 or the date of the release of the report on submissions to the plan or a similar date. This will allow people who had plans in place not to be much worse off than they would have been; but it will still not allow people to artificially rush in before a deadline because they will have thought the deadline would be 9 May.

- 2) That the \$450,000 3 year averaging be adopted permanently. Because it is common for people, particularly in their own business to invest in their business rather than in investment markets (and often the return is better, as it is on effort as well as capital and they are building more for their retirement that way), often they prefer to contribute significantly to superannuation in a short period close to or at retirement. The exception to the cap of small business CGT exempt amounts will help here – but what if it is pre CGT amounts, or capital amounts which do not represent a gain, but the return of the original cost? There is no real point in making people drip feed \$150,000 for 3 years. The limit will need to be adjusted with time in relation to inflation.

The \$50,000 concessional deductible contribution per person

This is simple, but

- 1) Is it to be indexed or increased on a regular basis – it should be.
- 2) It is a noble idea to encourage younger people to contribute more to superannuation and earlier, from my experience only the very high taxable income earners under 50 come close to regularly reaching their age base deductible limits at the moment. Generally they believe their money is better used to fund other costs, for example; business expansion, children's secondary and tertiary education, repayment of debt.
- 3) It is better late than never to contribute to super, and the higher limit for 50 and over has been well used by many people. It does not add much complication and encourages people to fund their superannuation at a time when they can afford to.

Transitional deductible limit for over 50's

This is necessary as stated for those approaching retirement.

The general interpretation of the Transitional arrangements in Section 4.2.2 has been that the person needed to be 50 at 1 July 2007; however I believe it reads that if you turn 50 during the transitional period you would have access to the higher amount for a year or two at least. This would be a much fairer way to do it.

Eg Client C turns 50 on 3 July 2007, he should be able to access the \$100,000 deductible limit for 2009 to 2012(4 years). Client D who turns 50 on 5 July 2010 would have it for 1 year. If the age rule was 50 on 1 July 2007, Client C would have no access to the higher limit, whereas if he had been 3 days older he could have 5 years of \$100,000 limit.

Claiming the deduction

We interpret the personal deduction eligibility in 4.2.2 and 5.2.2 to mean that only people who earn 10% of income from business will be able to claim a deduction for superannuation contributions. It would be good if this could be clarified; can anyone under 75 claim a tax deduction for contributions into super, or only people who work? If it is only people who work, the definition of work needs to be clearer (and more easily measured) than the current gainful employment rule.

One of the areas we service includes snow fields, Client E has 30% (average) of his income from employment over 4 months, and 70% (average) from his trade business over the other 8 months. The business income is very irregular. He has employer support for 4

months, but cannot salary sacrifice his employment income to allow him to make a self employed contribution because the employment is the first 4 months of the financial year, and if he conservatively estimates his business income he requires the employment income in hand. Also 4 months is a long time with reduced cashflow, just so he can lower his employment income enough to claim a personal deduction. He needs to be able to decide towards the end of the financial year whether he has the cash and tax position to allow him to make a deductible contribution.

Our suggestion would be that there be no rules about who can or cannot claim a personal deduction. That just as long as the per person limit of \$50,000 is not exceeded for an individual it can come from employer(s) or individuals. Since the proposed plan already requires detailed reporting of deducted and undeducted contributions by funds, we cannot see that this would add any administration.

Life insurance

Currently the level of life insurance held in a superannuation fund by people who do not have any children under 18, is generally kept at the pension RBL less their account balance for tax reasons. Having no RBL gives scope to have unlimited insurance held in a superannuation fund with deductible premiums and no tax on payment. We have no objection to this, but think it should be made clear that the new rules accept this.

Recontribution strategies

Because payments from superannuation are to be tax free, with no maximum pension, but a deductible contribution of \$50,000 per year is allowed, we can see no reason why anyone over 60 would not commence a pension from superannuation.

At the extreme for example a person would take \$200,000 from their pension fund each year, and put it back claiming \$50,000 as a deduction and make an undeducted contribution of the rest. Anyone earning \$50,000 or less would salary sacrifice their salary and take their living expenses from their superannuation fund. Those earning more would salary sacrifice to \$50,000. This is artificially recycling money solely to save tax, but would be indistinguishable from true transition to retirement arrangements.

It has been suggested that the new system will make recontribution strategies obsolete, but all they will do is change them from a single recontribution prior to retirement to an annual one.

There is no obvious solution to this, and maybe it is a price which will need to be paid for the overall benefits of the proposals.

Death Benefits

The proposal to pay superannuation benefits to members over 60 tax free, death benefits to tax dependants tax free, and death benefits at 15% (for the taxed portion) to non tax dependents will lead to unfair results and artificial arrangements.

If Client F died suddenly of a heart attack after his spouse had previously died, any taxable component of the superannuation would pay 15%. However if he was diagnosed with terminal cancer and given 4 weeks to live he could take it out tax free.

If a couple have \$1 million and \$100,000 respectively of superannuation (all taxable component) if the lower balanced member dies first the children would have \$150,000 tax to pay, while if the higher balanced member died first it would only be \$15,000. This will mean that trying to even up balances between couples will still be important, when it has been suggested that this complexity was no longer necessary.

The current generation reaching retirement and dying often have the man with significantly more superannuation than the woman. This leads to a situation where the tax for a family is less if the man in a couple dies first – luckily this is more common than not, but it is unfair to families where it doesn't happen.

The immediate plan that will be adopted by anyone under 75 (depending on the work test if it is to be retained) will be to take \$150,000 out of their taxed portion per year, and put it back in as an undeducted contribution.

Currently we evaluate many options for drawing benefits from superannuation and often the advice to the client is "if you die soon option 1 will give your family the better result, but if you live a long time option 2 will suit you and your family better". It is a terrible position to be put in as an advisor, to try and predict the death of clients; and it feels rotten when clients choose one way and then would have been better off the other. The current situation has nothing on the proposals, where everyone will want to make sure they have taken their superannuation out as close to their date of death as possible to get the maximum benefit from the rules.

It will also mean the definition of financial dependant will be critical, and there are already so many disputes and different interpretations about the level of support which is required to make someone a financial dependant. People will be encouraged to make payments to their children in order to have them classified as tax dependants.

The solution to all of the death benefit problems is to make all death benefits paid from superannuation tax free; after all people do not die at a certain time or in a certain order to avoid tax. If they have managed not to live long enough to use their superannuation tax free themselves, then why shouldn't the children have the capital tax free? The capital will end up in the children's hands where tax will be paid on the income.

If there is an aversion to this suggestion, then we believe insisting on commencing to draw a pension at a certain age is a better way of ensuring superannuation is not left in the concessional environment too long, rather than taxing death benefit payments especially since it is such an easy tax to avoid (either by taking money from the fund prior to death or recycling it to undeducted contributions). The current arrangements reward families for having

- a parent with superannuation die before their spouse without it,
- a parent die forewarned rather than suddenly
- a parent die under 75 rather than over it

all situations over which families have no control and should not be a basis for differing tax treatments.

Contribution reporting

The previous system of contribution reporting (for surcharge) was cumbersome and extremely costly. It seems that the new contribution reporting system will need to be similar. However one advantage of the new proposal is that the taxable income of members will not need to be checked. It was this collection of information which was often hard to obtain on time by the superannuation fund administrators which led to a lot of problems for SMSF under the old system. (Because personal tax returns were often due later than the superannuation fund reporting, this meant that the taxable income for individuals had not been determined at the time of the superannuation report being due).

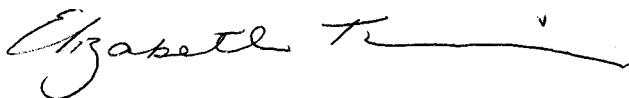
It will be a long time after the contributions are made that any amounts over \$50,000 for the deductible contributions or \$150,000 for the undeducted ones are picked up and it will be difficult to determine the income earned on the excess as it will be a moving target and depend on which part of the balance the excess is determined to be. Perhaps a statutory return (conservative – 5%?) should be considered.

Compulsory benefit payments

It was good that the recent announcement allowed benefits to be retained from 9 May – previously we had written in this submission; “If payments are not going to be required from the fund from 1 July 2007 for people over 65 and no longer working, or turning 75; it should apply straight away and be announced as soon as possible. It is frustrating to be compelled to plan and pay out benefits now, when in 12 months time it won’t be necessary.”

Please contact this office if you have any questions about this submission.

Yours faithfully



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