Finalist of the 2005 Australian Capital Territory Panasonic Australia Business Award

FINANCIAL PLANNING PTY LTD
ABN 16 082 012 488
advice for life

1ST FLOOR PHARMACY GUILD HOUSE
15 NATIONAL CCT BARTON ACT 2600

LOCKED BAG 3 KINGSTON ACT 2604

Ph: (02) 6273 7888
Fax: (02) 6273 7899

Website: www.civic-fp.com.au
Email: advisers@civic-fp.com.au

26 July 2006

The General Manager
Superannuation, Retirement and Savings Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir,

A PLAN TO SIMPLIFY AND STREAMLINE SUPERANNUATION - COMMENTS BY CIVIC FINANCIAL PLANNING

Thankyou for your invitation to provide comments on the Government's plan to simplify and streamline superannuation. Civic Financial Planning would like to offer comments on the Government's proposals.

Civic Financial Planing is a financial planning firm that specialises in providing financial planning services and advice to current and former employees of the Australian Public Service including those former employees who are now receiving superannuation benefits from the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS).

We have 1,200 active clients, mainly living in the ACT and we advise on about $600m of their investable assets. Nearly all of these clients have access, or will have access to a CSS or PSS benefit.

We are broadly in agreement with the Government's proposals and congratulate the Government on this far-reaching initiative. However, we have comments on the following matters.

Taxation of superannuation benefits

We recognise the need to simplify the taxation applied to the payments of superannuation benefits.

We understand that the existing tax arrangements for superannuation benefits stem from the changes to the taxing of superannuation that were introduced in 1988. The main thrust of those changes was to bring forward some of the tax levied on superannuation benefits and instead apply those taxes to contributions made to superannuation funds. In exchange for introducing a 15% tax to be applied to

deductible superannuation contributions paid to superannuation funds, a 15% tax offset was allowed for superannuation pensions paid out of those superannuation funds. There was also a reduction of 15% of the tax levied against lump sum payments. As tax was levied against deductible superannuation contributions and on earnings of superannuation funds, the benefits paid out of those superannuation funds are therefore regarded as being paid from a taxed source. The Government is now proposing to abolish tax on all superannuation benefits paid from a taxed source to recipients aged 60 and over.

For equity reasons we are of the view that there should be a corresponding reduction in tax where superannuation benefits are paid from an untaxed source. The Government has addressed this equity situation by providing a tax offset of 10% on pension benefits and a reduction of 15% of the tax levied on lump sums payments above the low rate threshold and below $700,000. However, there are a number of areas where we believe there remain inequities between the taxing of superannuation benefits paid from a taxed source and the taxing of superannuation benefits paid from an untaxed source. These inequities are addressed below.

Superannuation surcharge tax

We accept that those in receipt of higher income should receive a greater tax saving and therefore higher net income. The increased savings are due partly to the fact that higher income earners were required to pay a surcharge tax on the superannuation contributions paid by their employer or on deductible superannuation contributions, if self employed, in addition to the 15% contributions tax. However, it appears that the Government proposals may have overlooked the fact that members of unfunded superannuation schemes such as the CSS and the PSS were also required to pay the surcharge tax on their notional employer superannuation contributions (a deductible superannuation contribution deemed to have been paid to the unfunded superannuation scheme by the member's employer). Therefore, there needs to be recognition of the payment of this tax when reducing the tax payable on superannuation benefits received from an untaxed source. This is further addressed under the next heading.

Recommendation: Recognition of the surcharge tax paid by members of unfunded superannuation schemes on notional employer superannuation contributions needs to be taken into account when assessing the reduction in tax to be applied to superannuation benefits paid from an untaxed source.

Superannuation pensions paid to those aged 60 and over from an untaxed source

As many of our clients are recipients of superannuation pensions paid from the CSS and PSS we are particularly interested in the taxing of superannuation pensions paid from an untaxed source. CSS indexed pensions and a considerable proportion of PSS pensions are paid from an untaxed source. We have compared the proposed tax savings to be received by recipients of superannuation pensions paid from a taxed source with the tax savings to be received by recipients of superannuation pensions paid from an untaxed source. We believe that the 10% tax offset to be allowed against superannuation pensions paid from an untaxed source will provide tax savings to the majority of recipients of these pensions that broadly equate to the tax savings

received by the recipients of superannuation pensions paid from a taxed source. However, those that also receive non-superannuation assessable income and those with higher superannuation pensions from an untaxed source do not benefit to the same extent to those receiving similar superannuation pensions paid from a taxed source.

For example, a recipient of a superannuation pension from a taxed source will not pay any tax in respect of their superannuation pension irrespective of the amount of the superannuation pension being received. In addition, the income from the superannuation pension will be exempt income and not counted with any other non-superannuation income to determine the marginal tax rate to be levied against other non-superannuation income. In contrast, the amount of superannuation pension paid from an untaxed source will continue to be assessable income and therefore will be added to the recipient's non-superannuation income to determine the marginal tax rate to be applied to that non-superannuation income. As a result, a higher marginal tax rate would then be levied against any additional non-superannuation income.

This is can best be illustrated in the following table. While not reflective of a large number of former Australian Public Servants there will be a considerable number of retired Commonwealth Parliamentarians and retired Federal and High Court Judges receiving or about to receive pension payments from an untaxed source that will be affected, as illustrated in the following table.

Type of income	**Superannuation pension from a taxed source**		**Superannuation pension from an untaxed source**	
	Before 1 July 2007	From 1 July 2007	Before 1 July 2007	From 1 July 2007
Superannuation pension	$150,000	$150,000	$150,000	$150,000
Additional income	$ 20,000	$ 20,000	$ 20,000	$ 20,000
Total income	$170,000	$170,000	$170,000	$170,000
Tax	$ 48,150[1]	$ 1,800	$ 59,400	$ 44,400
Net income	$ 121,850	$168,200	$110,600	$ 25,600
Increase in net income resulting from tax savings from 1 July 2007		**$ 46,350**		**$15,000**

1. The full 15% rebate would not have applied as this person would have been excessive to the reasonable benefit Limits (RBL).

The additional income received by the recipient with a superannuation pension from a taxed source, as illustrated in the above table, is taxed at the marginal tax rate of 15% plus Medicare and is also entitled to a low income tax offset of $600.

The additional income received by the person receiving the superannuation pension from an untaxed source, as illustrated in the above table, is taxed at the top marginal tax rate of 45% and does not receive the low income tax offset. Also the example

illustrates that the person receiving a pension from a taxed source receives a tax saving of $31,350 per annum greater than the tax saving received by the person receiving a pension from an untaxed source.

We believe this does not produce an equitable result between the recipients of the two pensions, especially in regard to the marginal tax rate applied to additional non-superannuation income.

We have difficulty understanding why additional non-superannuation income for a recipient in receipt of a pension from an untaxed source will have a marginal tax rate of 45% whereas the person receiving the same rate of superannuation pension but from a taxed source will only pay tax at a marginal tax rate of 15% on additional non-superannuation income. To rub salt into the wound, this recipient will also be entitled to the maximum low income tax offset of $600.

It should also be noted that those in receipt of higher incomes from superannuation pensions from an untaxed source would have also paid the superannuation surcharge on the untaxed notional employer superannuation contribution. Therefore, along with those receiving greater tax savings from high superannuation pensions paid from a taxed source those receiving superannuation pensions from an untaxed source should also benefit from similar tax savings.

The higher marginal tax rate that applies to additional non-superannuation income to recipients of superannuation pensions from an untaxed source does not encourage continuing in the work force on a part-time basis.

A possible and simple solution would be to increase the tax offset to 20% on superannuation pensions from an untaxed source where taxable income exceeds the marginal tax rate threshold of $75,000 and to 25% where taxable income exceeds the marginal tax rate threshold of $150,000. Therefore, it is suggested that the tax offset to apply to superannuation pensions paid from an untaxed source be, as illustrated in the following table.

Marginal tax rate thresholds	**Marginal Tax Rate**	**Tax offset to apply to superannuation pensions from an untaxed source**
$0 to $6000	0%	10%
$6,001 to $25,000	15%	10%
$25,001 to $75,000	30%	10%
$75,001 to $150,000	40%	20%
$150,001 +	45%	25%

An increase in the tax offset for those in receipt of superannuation pensions from an untaxed source would provide a more equitable reduction in the tax on their superannuation pensions with those receiving superannuation pensions from a taxed source. To avoid a large reduction in tax at the $75,000 threshold some phasing in of the 20% rebate between $75,000 and $150,000 may be appropriate as well as phasing the 25% rebate past the $150,000 threshold.

In addition to increasing the tax offset for those with higher pension from an untaxed source the pension should be treated as special income and taxed separately from other assessable income and therefore be excluded from the definition of "ordinary taxable income" in the *Income Tax Rates Act 1986* so that it is disregarded for the purposes of determining the marginal tax rate applying to non-superannuation income. This would mean that any non-superannuation income received by a person receiving a superannuation pension from an untaxed source will have tax applied to that non-superannuation income on the same basis that tax is applied to non-superannuation income received by a person in receipt of a pension from a taxed source.

This is illustrated in the following table. The taxing of the untaxed superannuation pension is in accordance of the Government's proposals.

	Untaxed superannuation pension	**Non-superannuation income**	**Total**
Taxable income	$150,000	$20,000	$170,000
Tax	$ 47,850	$ 2,100	$ 49,950
Medicare levy	$ 0	$ 300	$ 2,550
Less untaxed pension rebate	$ 15,000	$ 0	$ 15,000
Low income tax offset	$ 0	$ 600	$ 600
Net tax and Medicare levy	$ 35,100	$ 1,800	$ 36,900
Net income	$114,900	$18,200	$133,100

As you will note from the above example the non-superannuation income is taxed exactly the same way the non-superannuation income received by a recipient of superannuation pension payments from a taxed source. By not including superannuation payments from an untaxed source with non-superannuation assessable income achieves equity with recipients of superannuation payments from a taxed source.

Recommendation:

1. Consideration be given to increasing the 10% tax offset on superannuation pensions paid from an untaxed source greater than $75,000 per annum, and

2. Treat superannuation pensions from an untaxed source as special income and taxed separately from other assessable income and exclude from the definition of "ordinary taxable income" in the *Income Tax Rates Act 1986* so that it is not included with non-superannuation assessable income to determine the marginal tax rate to be applied to non-superannuation assessable income. This would allow exempt income (pension payments from a taxed source) and special income (pension payments from an untaxed source) to be treated in the same way when determining tax to be applied to non-superannuation assessable income.

Superannuation pensions that commenced before 1 July 1988 paid to those aged 60 and over from an untaxed source

Our understanding is that prior to 1 July 1988 superannuation funds did not pay tax on earnings or on superannuation contributions. We also understand that superannuation pensions that are paid out of a complying superannuation fund and commenced before 1 July 1988 and continue to be paid are regarded as being paid from a taxed source even though the earnings on the asset in the superannuation fund from which the pension liability arises is segregated from other assets and exempt from tax. Accordingly, superannuation pensions paid from a taxed source that commenced before 1 July 1988 has never paid tax on contributions or earnings and currently there is no tax paid on the earnings of the assets funding the pension as they are exempt from tax in accordance with section 282B of the *Income Tax Assessment Act 1936*. Even though no contribution or earnings tax was paid these pensions are regarded as being paid from a taxed source and those aged 55 and over were entitled to a tax rebate from 1 July 1988. The rebate for the 1988-89 financial year was at the rate of 3% of the rebateable pension and was phased in to 15% of the rebateable pension from and including the 1992-93 financial year. Our understanding is that rebateable pensions that commenced before 1 July 1988 were entitled to this rebate even though no contributions or fund earnings tax was paid in respect of these pensions.

Similarly, as we understand the proposals, pensions that commenced before 1 July 1988 and paid from a taxed source, even though no contributions or earnings tax has been paid, will be tax free for those aged 60 and over.

Superannuation pensions that commenced before 1 July 1988 and paid from an untaxed source (that is, not out of a complying superannuation fund) are in exactly the same tax situation as superannuation pensions paid from a taxed source that also commenced before 1 July 1988. Superannuation pensions paid from an untaxed source and superannuation pensions paid from a taxed source that commenced before 1 July 1988 did not pay contributions or earnings tax. Accordingly there should be no difference in the way a pension paid from an untaxed or taxed source that commenced before 1 July 1988 should be treated from 1 July 2007. It would be unfair to tax a superannuation pension paid from an untaxed source that commenced before 1 July 1988 and not tax a superannuation pension paid from a taxed source that commenced before 1 July 1988 when in both situations no contributions or earnings tax has been paid.

Recommendation: Superannuation pensions paid from an untaxed source that commenced before 1 July 1988 and being paid to those aged 60 and over be exempt income and tax free

Allocated pensions that commenced before 1 July 2007

We note Treasury's comment in a fact sheet on pension payments that there would be no restrictions placed on a person who wished to move from an allocated pension to the proposed new pension.

We are concerned that if current recipients of allocated pensions wish to reduce their allocated pension payments to below the current minimum payment rate or increase their allocated pension payments to above the maximum payment rate they may need to commute their allocated pension and purchase a new income stream product based on the proposed new pension rules. Requiring those currently in receipt of allocated pensions to purchase a new pension product seems to us to be unduly complicated from an administrative point of view and costly to the recipient as it may involve selling down assets and repurchasing assets to support the new pension product.

We believe the simplest approach is merely to change the rules under which current allocated pensions are paid. That is, amend the *Superannuation Industry (Supervision) Regulations* 1994 so that the tables in schedule 1A and 1AAB only apply to the payment of allocated pensions up to 30 June 2007 and that from 1 July 2007 existing and new allocated pension have only to meet the minimum payment standards as outlined at paragraph 3.2.3 in the detailed out line of A Plan to Simplify and Streamline Superannuation.

Recommendation: Allow existing allocated pensions to be paid on the same basis and under the same rules as new pensions from 1 July 2007

Invalidity superannuation pensions

The proposals to simplify and streamline superannuation do not appear to include any reference to invalidity or disablement pensions. A number of our clients are in receipt of invalidity pensions from an untaxed source, that is, from the CSS or PSS. These pensions were not purchased and as a result are taxed at the recipient's marginal tax rate. If the invalidity pension includes the member's own contributions there may be a deductible amount arising from the undeducted purchase price. We believe that recipients of invalidity superannuation pensions should receive a tax offset similar to the tax offset applying to recipients aged 60 and over.

For example, a person receiving a lump sum superannuation payment as a result of being retired due to a disability is entitled to a concession in the form of the post 1994 invalidity component. The post 1994 invalidity component is based on the period of service forgone to normal retirement age, generally age 65, and is tax free irrespective of whether it is paid from a taxed or untaxed source. If the lump sum is rolled over to purchase a pension the concession from the post 1994 invalidity component is transferred to the pension payments and is treated as part of the undeducted purchase price resulting in a tax deduction being applied to the income from the pension. There is no such concession applied to recipients of non-purchased pensions paid from an untaxed source.

It seems inequitable that the recipients of lump sums can receive a tax concession on the tax applying to the payment of lump sum benefits, and any resulting pension purchased with that lump sum by rolling the lump sum over to a pension fund. However, recipients of invalidity superannuation pensions paid from an untaxed source, especially where there is no option to take a lump sum to a purchase a concessionally taxed superannuation pension, cannot receive a similar tax concession. To provide a similar tax concession to the recipients of invalidity pensions under age

60, we suggest that those in receipt of an invalidity pension from an untaxed source should also be entitled to the 10% tax offset.

A more complicated solution would be to calculate a notional post 1994 component of the amount to determine an undeducted purchase price and apply a tax deduction against the invalidity superannuation pension. However, as suggested a simpler solution would be to allow a 10% tax offset against invalidity superannuation pensions paid from an untaxed source for recipients under age 60.

Recommendation: That a 10% tax offset be applied to invalidity pensions paid from an untaxed source for those under age 60.

Pensions paid to spouse on the death of member or pensioner

We note that where a pension is paid on the death of a member or pensioner the taxation of the pension depends on the age of the primary beneficiary. If the primary beneficiary was aged 60 and over, the pension paid to the spouse and or dependants would be tax-free or, if the pension was paid from an untaxed source a tax offset of 10% of the pension would apply. If the primary beneficiary were under age 60 the pension would be taxed at the recipient's marginal tax rate. If the pension were paid from a taxed source a 15% rebate would apply. If the recipient was aged 60 and over the tax arrangements applying to all pension recipients aged 60 and over would apply.

Currently, a lump sum paid on death to a dependant is tax free up to the primary beneficiary's pension RBL. In many cases there is also a refund of contribution tax paid in respect of the primary beneficiary added to the lump sum in accordance with section 279D of the *Income Tax Assessment Act 1936.*

Under the proposals, all death benefit lump sums will be tax free when paid to a dependant irrespective of the dependant's age, the amount the lump sum, and whether the payment is from a taxed or untaxed source. We support this initiative.

However, we believe the taxing of reversionary superannuation pensions paid to recipients under age 60 is inequitable when compared to the tax treatment applying to death benefit lump sums. The spouse of a primary beneficiary under age 60 and who is also under age 60 will pay marginal tax rates on the reversionary pension. In many public sector unfunded superannuation schemes there is no alternative to take the death benefit other than as a reversionary pension. If there were an option to take a lump sum the lump sum payment would be tax-free. However, when taken as a pension marginal tax rates apply.

There is no incentive to take a death benefit as a pension if marginal tax rates are to be applied against the pension. The spouse of a CSS member or pensioner or a PSS pensioner does not have the option to take a lump sum and if they are under age 60 are forced to take a pension taxed at marginal tax rates.

We suggest that to be equitable with death benefit lump sums paid to dependants, reversionary pensions paid to dependants under age 60, where the primary beneficiary was also under age 60, should be subject to the same rules applying to superannuation pensions paid to those aged 60 and over. With regard to reversionary pensions paid from an untaxed source this would mean that the pension would be subject to at least a 10% tax offset.

Recommendation: That a 10% tax offset be paid to all reversionary pensions paid from an untaxed source.

Lump sum payments from an untaxed source

Basically, there is no change to the taxing of the post 83 components of lump sums for those under age 60. The other components of lump sum payments will be tax free irrespective of whether they are paid from a taxed or untaxed source. For those aged 60 and over the total amount of a lump sum payment from a taxed superannuation fund will be tax-free. The post 83 component of a superannuation lump sum paid from an untaxed source will be taxed at 15% up to $700,000 and then at the top marginal tax rate for any amounts above $700,000.

While we are concerned that there is no tax saving for those aged 60 and over receiving a lump sum from an untaxed source up to the low rate threshold, it is noted that there is also no savings for a similar benefit paid from a taxed source. This is because there was already no tax payable on a lump sum payment from a taxed superannuation up to the low threshold. Nonetheless we believe that the tax on superannuation lump sums paid from an untaxed source to those aged 60 and over should be tax-free up to the low rate threshold. As those aged 55 to 59 are also paying tax at 15% on the post 83 component up to the low rate threshold reducing the rate of tax for those aged 60 and over to 0% would an incentive for those people to continue working past age 55. As with other benefit entitlements there needs to be an incentive to encourage people to not cash their superannuation lump sum until after they have attained age 60.

We are also concerned that by taxing the post 83 component of superannuation lump sums above $700,000 at the top marginal tax rate the Government is continuing to apply an artificial RBL to these lump sum payments when it proposes that no such restriction is to be placed on superannuation lump sums paid from a taxed source. Many recipients of superannuation lump sums paid from an untaxed source have paid surcharge on notional employer superannuation contributions over the 9 years before the surcharge was abolished. By taxing the post 83 component of superannuation lump sums paid from an untaxed source at the top marginal tax rate of 45% it is effectively taxing the post 83 component in excess of $700,000 at 60% (45% MTR plus 15% surcharge). This is inequitable when compared to superannuation lump sums paid from a taxed source, which are tax-free.

We suggest that the $700,000 threshold applying to the post 83 component of superannuation lump sums paid from an untaxed source be abolished for those aged 55 to 59 and aged 60 and over. Our suggestion is that the tax rates for the new superannuation arrangements should be as follows:

Taxpayer	Current tax on post 83 untaxed component	Recommendation for tax on post 83 untaxed component
Under age 55	30% Excessive 47%	30% on total post 83 component
Age 55 to 59	15% up to low rate threshold ($135,590) 30% on amount above low rate threshold Excessive 47%	15% up to low rate threshold ($135,590) 30% on amount excess to the low rate threshold
Age 60 and over	15% up to low rate threshold 30% on amount excessive to low rate threshold Excessive 47%	0% up to low rate threshold ($135,590) 15% on amount excess to the low rate threshold

We also note that under the current tax arrangements only 85% of the untaxed element of the post 83 component is counted towards the RBLs. Therefore, if it is proposed to tax an amount that is excess to the current RBLs at the top marginal tax rate, the amount should be grossed up to include the 15% of the part of the post 83 component that is not subject to the RBLs. Therefore, to retain equity, the amount that should be subject to the top marginal tax rate should be the excess over $825,000.

Recommendation: The tax on the taxed element of the post 83 component be reduced to 0% up to the low rate threshold. Tax at the top marginal tax rate should not apply to amounts excess of $700,000.

Lump sum payments (ETPs) from untaxed source regarded as assessable income

We note that superannuation lump sum payments from a taxed source will no longer be regarded as assessable income. However, it appears from the information, so far provided, that superannuation lump sum payments from an untaxed source will continue to be assessable income. It is assumed that concessional tax to be applied to superannuation lump sum payments from an untaxed source will be provided by applying a tax offset to reduce the tax payable on the lump sum to the appropriate tax rate.

The inclusion of superannuation lump sums from an untaxed source as assessable income means that the post 83 component of the lump sum plus any superannuation pension payments from an untaxed source plus any non-superannuation income is used to determine eligibility for tax offsets such as the low income tax offset and the Australian Senior Tax offset.

It seems inequitable that superannuation lump sums from a taxed source will not be included as assessable while superannuation lump sums from an untaxed source will be treated as assessable income.

Recommendation: That lump sum ETPs paid from an untaxed source not be included as assessable income.

Contributions

We are in general agreement with the Government's initiatives to simplify the superannuation contribution arrangements. Especially in relation to superannuation contributions made by the self employed and extending the eligibility to make deductible superannuation contribution from age 70 to age 75.

The following are our comments on the proposed superannuation contribution arrangements.

Removing the age based limits

We note the proposal to remove the age based limits and replace them with a limit on concessional deductible contributions of $50,000 per person. We are concerned that the reduction of the aged based limit from $105,133 (2006-07) to $50,000 will affect the ability of people to adequately save for their retirement.

We believe that the universal limit of $50,000 will encourage a more even contribution rate over a persons working life. However, younger people will have difficulty paying superannuation contributions of $50,000 as raising a family and paying high mortgage repayments limits their ability to make superannuation contributions of $50,000 per annum in the early years of their working life. It is only when children have grown up and left home and the mortgage is paid off that consideration can be given to increasing contributions to superannuation. We believe that the existing age based limits were structured the way they are to reflect the superannuation contribution profile of most people.

By limiting the concessional tax treatment of superannuation contributions to $50,000 (notwithstanding the transitional arrangements) may reduce the capacity of certain people to adequately fund their retirement, especially towards the end of their working life when they may have more disposable income that can be directed to superannuation.

Accordingly, we suggest that for those aged 50 and over the limit on concessional deductible superannuation contributions be increased to the current age based limit of $105,113. We also suggest that the limit on concessional deductible superannuation contributions be indexed to Average Weekly Ordinary Times Earnings (AWOTE).

Recommendation:

1. That for those aged 50 and over the limit on concessional deductible superannuation contributions be retained at the present aged based limits.

2. That the limits on concessional deductible superannuation contributions be indexed to AWOTE.

Limit of concessional deductible contributions on unfunded superannuation schemes

We are unclear if the proposals intend to include the notional unfunded employer contributions (the unfunded employer contribution notionally contributed to unfunded superannuation schemes such as the CSS and PSS) in the limit on concessional deductible contributions. A notional unfunded employer superannuation contribution for each member of an unfunded superannuation scheme was determined in order to assess the amount of surcharge tax to be levied against the member in respect of notional unfunded superannuation contributions deemed to have been paid to unfunded superannuation schemes.

Many CSS and PSS members salary sacrifice to other superannuation funds. We would be concerned if notional unfunded employer contributions were taken into account when assessing the limit for salary sacrifice superannuation contributions made to other superannuation funds that would be subject to the 15% superannuation contribution tax.

Benefits arising from notional unfunded employer contributions are intended to continue to be taxed and at a higher rate than superannuation benefits paid from a taxed source. Therefore, because of the additional tax applied to superannuation benefits payments paid from an untaxed source unfunded employer superannuation contributions should not be added to deductible contributions when assessing the application of the limit on concessional deductible contributions of $50,000.

Recommendation: That notional unfunded employer superannuation contributions not be included when assessing the limit to be applied to concessionally taxed deductible superannuation contributions

Cap on undeducted superannuation contributions

We are concerned that the cap of $150,000 per year or $450,000 averaged over three financial years is restrictive to transferring assets held outside of superannuation to superannuation.

Over the years many people have invested outside of the superannuation system to provide for their retirement. The reasons for not using the superannuation system are varied and include a lack of trust in superannuation providers and wishing to retain control of personal investments. For example, many people invested in property as a way of building up assets for their retirement. Property is often considered as a safe long-term investment. However, investment in direct property, in many cases, cannot

be achieved within the superannuation system because of superannuation funds not being permitted to borrow in order to purchase investment assets.

The income from investments outside the superannuation system has been taxed at marginal rates.

It is also noted that those with a capital gain of up to $500,000 from selling a business will be able to roll over the capital gain into superannuation and this payment will not count against the undeducted superannuation contribution cap.

We consider that the sale of passive investments, such as property should be treated in the same manner as a capital gain from the sale of a business and that the proceeds from the sale of the investment or the transfer of the investment in specie be allowed to be rolled over into superannuation and be exempt from the cap on undeducted superannuation contributions.

Recommendation: That the cap on undeducted contributions not apply to passive investments rolled over to superannuation

Deductible superannuation contribution for those between 70 and 75

We note the announcement of the Treasurer on 13 June 2006 that allowed those aged 65 and over and not working, and those aged 75 and over on 10 May 2006, being no longer compulsorily required to cash their superannuation. We welcome this initiative to bring forward this proposal from 1 July 2007 to 10 May 2006.

However, we believe that the proposal to allow deductible superannuation contributions to be extended to persons aged 70 to 75 should also be brought forward to 10 May 2006. Those currently over age 70 and working can only make undeducted contributions to superannuation. In light of the proposal to allow deductible superannuation contributions from 1 July 2007 it would seem fair to bring forward this initiative so that these people can take advantage of the Government's proposal before they retire.

Recommendation: That the ability to make deductible superannuation contributions for those aged between 70 and 75 be brought forward from 1 July 2007 to 10 May 2006.

Election to cease superannuation guarantee contributions

Many people who exceeded their pension RBLs made elections under subsection 19(4) of the *Superannuation Guarantee (Administration) Act 1992* to enable their employer to cease paying superannuation guarantee superannuation contributions on their behalf into a superannuation fund. Sub-section 19(5) of the *Superannuation Guarantee (Administration) Act 1992* provides that an election by the employee to allow the employer to cease making superannuation guarantee contributions is irrevocable. Accordingly, as a result of the abolition of the RBLs many employees may wish their employer to resume making superannuation guarantee contributions to their superannuation fund.

We suggest that subsections 19(4) and 19(5) of the *Superannuation Guarantee (Administration) Act 1992* be amended to require employers to again pay superannuation guarantee contributions on behalf of their employees where an election was made under subsection 19(4) of the *Superannuation Guarantee (Administration) Act 1992* allowing employers to cease making superannuation guarantee contributions in respect of an employee.

As a consequence, subsection 82AAT(1F) of the *Income Tax Assessment Act 1936* should be repealed to allow those making deductible superannuation contributions, who previously made an election under subsection 19(4) of the *Superannuation Guarantee (Administration) Act 1992,* to be able to claim a tax deduction for those contributions.

Recommendation:

1. That those who elected to cease superannuation guarantee contributions be allowed to recommence superannuation guarantee contributions.

2. That those who elected to cease superannuation guarantee contributions be entitled to a tax deduction when making further deductible superannuation contributions.

Abolition of asset test exemption

We are concerned about the proposal to abolish the asset test exemption. By abolishing the asset test exemption there will no longer be an incentive for retirees to take a complying pension. In fact, the proposals coupled with abolishing the asset test exemption, means that there will no longer be any incentive to take a complying non-commutable pension. This in turn will encourage a greater emphasis to be placed on taking lump sums rather than income streams.

Accordingly, we suggest that an asset test exemption of 100% be provided where the recipient takes a non-commutable lifetime complying pension.

Recommendation: That an asset test exemption of 100% be reintroduced for recipients of lifetime non-commutable complying pensions.

General

We are available to meet with Treasury officials should you wish to discuss any matters we have raised in our submission. Our contact person is Trevor Nock on telephone number 62737888 or by email at tnock@civic-fp.com.au.

Yours faithfully,

Bill Waller
Chairman