

CORPORATE SUPER ASSOCIATION

24 July 2006

Mr Trevor Thomas
Principal Adviser
Superannuation and Retirement Savings Division
The Treasury
Langton Crescent
Canberra ACT 2600

By e-mail to simplersuper@treasury.gov.au

Dear Mr Thomas

FEDERAL BUDGET SUPERANNUATION REFORM

The Corporate Superannuation Association welcomes the opportunity to comment on the proposals outlined in "A Plan to Simplify and Streamline Superannuation".

In general terms we support the proposed changes. Our major concerns are with the impact on defined benefit plans and their members. We have also raised some other issues below, mainly in connection with the administration of the proposals.

Chapter 4 – Simplified contribution rules

We support simplification of contribution rules and the moves to limit abuse. Our major concerns have been with:

- a) method of valuing defined benefit support; and
- b) administration of the proposed contribution limits, for deducted and undeducted contributions.

In relation to (a) above, we have been concerned about the potential technical and administrative complexity involved in applying similar valuation methods for employer support to those applied for superannuation surcharge purposes, and about the potential impact on long serving members of defined benefit funds. In relation to (b), we have had concerns regarding the administration of the 45% tax within the funds, including the information flow between employers, funds and members, and the collection of tax where the member has moved funds or where the member is with several different funds. These concerns have all been raised by a number of bodies and we shall not discuss them in depth.

We have read the two submissions from the Institute of Actuaries of Australia ("IAA"), the first dated 5 July 2006 on Administering Contribution Limits, and the second dated 7 July 2006 on Contribution Limits and Defined Benefit Funds. We are broadly in support of these proposals which address most of our concerns. We have set out below some further suggestions which build on the proposals of the IAA.

Administering Contribution Limits

We support the proposals for the reasons provided. As we understand it, the proposal would be that employers report all employer support including salary sacrifice to employees via payslip and on the end of year payment summary, in a similar way to the way reportable fringe benefits are reported. The employee would report post tax contributions on the tax return, as well as personal deductible contributions. The process would be facilitated by the proposals on valuing defined benefits which are outlined in the IAA's second submission dated 7 July 2006. The ATO would collate the data provided in individual income tax returns and would levy 45% (or individual marginal rate) tax on the employee for the deductible support valued over \$50,000 or \$100,000, as applicable. The individual would receive a 15% rebate for the tax on excessive contributions already paid in the fund. The contribution over the limit would be treated by the ATO as undeducted contributions, for the purposes of determining whether the individual has exceeded the undeducted contributions limit of \$150,000. We support this latter proposal as a necessary approach to preventing additional undeducted contributions outside the limits, but we would prefer if it were unnecessary for the fund to re-classify such contributions from deducted to undeducted status. We recognise that for these contributions to be treated as deducted in the fund will result in additional tax being paid if withdrawal occurs between ages 55 and 60, but we believe that simplicity for funds and their administrators is essential and that this will provide further incentive for members to leave their benefit intact until age 60.

We are particularly concerned to avoid potential burdens on funds in collecting the additional tax. Further, without specific statutory power conferred on trustees, some funds will not be able to recover this tax from members. We believe that the collection should be from individuals, and that if it is considered a hardship for the individual to raise tax on income that has not been received, we would suggest a collection system analogous to the HECS system. The approach would be to defer collection of the debt until superannuation benefits commence.

Undeducted contributions

Given the proposed 3 year averaging, as well as the possibility of contributions made to several funds, the task of identifying contributions over the limit becomes complex. We do not believe that it should be the role of the fund trustee to identify the excessive amounts or to initiate refunds to the member. We believe that the role of the trustee should be limited to reporting the amounts of undeducted contributions.

Contribution Limits and Defined Benefit Funds

We support the IAA preferred method for valuing defined benefit support. We believe that this approach has the advantages of simplicity in calculation and administration, and that it provides much greater certainty for individuals who wish to maximise tax effective contributions through salary sacrifice. We understand that the approach would involve some averaging of support rates between individuals but we believe that this approach is acceptable in the context. We are keen to ensure that individuals in closed funds or funds where the member base is diminishing should not be penalised (as a result of high levels of required support at higher ages and longer periods of service without the balancing effect of shorter serving and younger members) but, as we understand it, the method could be designed in such circumstances to use a deemed "new entrant rate" which would provide a fair valuation of long term support.

If the above approach is not accepted, a practical method will be required to provide individuals with an indication of the value of employer defined benefit support for each year in advance. This will be required in order for individuals to plan for additional salary sacrifice or other deductible contributions. Hence, it will be essential that some form of smoothing or approximation be provided in relation to each member, such as by way of a three year rolling average or otherwise by indication of long term support rates.

Treatment of members of defined benefit plans as at 9 May 2006

We believe that considerable administrative complexity would be removed if a single universal treatment were to be applied to those members of defined benefit funds at 9 May 2006 whose benefit structure remains unchanged. At present, under a widespread interpretation of section 82AAC of the ITAA 1936, such members are able to salary sacrifice amounts up to their full age based limits, aside from their defined benefit support. We are aware that the ATO adopts an interpretation of the legislation based on the explanatory memorandum, but we point out that where the EM and the legislation are in conflict and the meaning of the legislation is clear, the legislation should prevail. The situation of these individuals would remain unchanged if contributions made for these members continued to be ignored for the purposes of the application of contribution limit rules. If this approach is not acceptable, a universal deemed support rate could be adopted. This rate could be the SG rate of 9% of salary or some other standard rate or amount. Although there remain a few schemes which are still admitting new members, many defined benefit schemes are closed to new entrants. The standard approach suggested would therefore eliminate complexity for a large section of the defined benefit plan membership without opening the doors to any obvious abuse.

Indexation of limits

We note that there is no provision for indexation of the proposed contribution limits and other proposed thresholds and limits. We would support AWOTE indexation of proposed contribution thresholds, the tax free threshold for ETP and other proposed limits.

Chapter 2 – Taxation of benefit payments

We welcome the removal of RBLs and of taxation of benefit payments for those aged 60 and over. We would support the removal of tax on payments to those who are totally and permanently disabled.

Chapter 3 – Payment rules

We are aware that the proposals as outlined do not specify whether or how income streams currently in payment may be affected by the proposals regarding new income streams. We would support commutation of existing income streams, on the basis that the fund or other provider and the pensioner or annuitant would need to agree to basis of the commutation.

Chapter 7 – Other measures

We are aware that employer ETPs have been used over recent years to replace conventional superannuation arrangements by unfunded retirement benefits. Typically these arrangements are negotiated with employees in management positions, and documented in employment contracts. Commercially these arrangements appeal to employers because the additional retirement benefits can be linked to performance. It is proposed in the Plan to treat concessionally the first \$140,000 of a termination payment. We note that this treatment operates fairly for individuals suffering involuntary termination, an event which may occur more than once. However, we would support the extension of a once only tax free limit of \$700,000 (on a par with arrangements for members of untaxed schemes) where there is contractual support indicating that the payment is effectively an untaxed retirement funding arrangement.

Chapter 9 – Making it easier to find and transfer superannuation

We note the proposal to reduce the time limit for transfer of balances on request from 90 days to 30 days. We would support this, but we are concerned by the accompanying proposal to remove the “re-triggering” arrangements, whereby if the fund seeks further information from the member the 30 day time limit re-commences from the time when the information is received.

Given the existing difficulties in obtaining satisfactory proof of identity for the beneficiary and the need to ensure that the transferee fund is bona fide, and that forms are often incomplete on first presentation to the trustee, we would support the reduction of the required transfer period to 30 days but would require the 30 days to run from the date of provision of all required information to the trustee. The provision of the required information would be greatly facilitated by the use of a standard form for transfer requests. We understand that such a form is being designed under close consultation with industry.

Please contact me on 03 9613 8869, Bruce McBain on 03 9620 5155 or Liz Goddard on 03 9504 8399 if you wish to discuss any aspects of the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark N Cerché', with a stylized flourish at the end.

Mark N Cerché

Chairman