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General Manager
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Dear Sir

Submission on Proposed Changes to Superannuation

I refer to the proposed changes recently announced in the Budget by the Treasurer. In particular I refer to the changes as outlined in the paper titled Plan to Simplify and Streamline Superannuation ("the Plan").

I request that the following matters be taken into account by your Department in finalizing the proposed changes.

A. Self-Employed

1. The Plan refers to a category of persons described as "the self-employed". I can only assume that the 10% rule (see below) is proposed to continue into the future. The 10% rule should be abolished as part of these reforms.
2. Broadly the taxation legislation currently provides that if 10% or more of a taxpayer's gross income is from an employer who provides superannuation support the taxpayer is not entitled to any deduction for contributions to superannuation: section 82AAS(3) of the Income Tax Assessment Act 1936.
3. By way of example I will refer to how this operates in my circumstances although for the purposes of privacy the numbers I have used are not the actual amounts that I earn at the university or from my legal practice.

4. I am currently employed by a university and teach on a part time basis and earn about \$30,000 per year. Broadly, the superannuation contribution made by the university on my behalf is about \$2,400 per year ie., 8% of \$30,000.
5. I also am self-employed as a barrister. However if I earn gross fees (before expenses) of about \$200,000 per year the 10% rule currently precludes me from claiming *any* deduction as a self-employed person for contributions to superannuation.
6. I am approaching 50 years of age. If I was fully self employed (ie., no university job) then under the current rules I could make a contribution of \$132,449 and obtain a tax deduction of \$100,587. The tax saving to me would be about \$48,500 ie., 48.5% of \$100,587.
7. In summary the resulting situation each year (from age 50 onwards) may be summarized as follows:
 - the total superannuation contributed on my behalf by the university is \$2,400;
 - I am precluded from claiming a deduction for any amount that I pay into superannuation, and assuming I contribute the maximum amount to obtain a deduction of \$100,000, would give rise to a tax saving of \$48,500; and
 - in return for giving up a tax saving of \$48,500 I receive \$30,000 *before* tax from the university (and, say, \$15,450 after tax).

In other words I am financially worse off by \$33,050 each year by continuing my employment with the university. This would continue to be the result under the proposed Plan if I am entitled under the transitional provisions to \$100,000 deductions – see later Age Based Limits.

8. The above is an entirely unsatisfactory and unfair result. The absurdity of the situation is demonstrated by the fact that if I was to earn \$400,000 gross income from my practice as a barrister, I would be entitled *both* to the maximum deduction for contributions to superannuation as a self employed person *and* the contributions made on my behalf by the university. In other words if I was richer I could “double dip”.
9. The tax consequences of the above mean that I am virtually compelled to resign my position as a lecturer at the university once I turn 50 years of age. I am aware that taxpayers in other professions such as medicine and engineering are similarly affected. The consequence is that self employed professionals who have significant experience in their field are precluded from taking on part-time teaching positions. Accordingly the experience that those professionals obtained in their respective fields is not passed on to the students.
10. The situation described above will continue to pertain into the future (based on the proposed Plan) although the tax disadvantage will be reduced to the extent

that a taxpayer is only entitled to a maximum deduction of \$50,000. Based on a maximum deduction of \$50,000, and using the same scenario as above, the tax implications would be as follows:

- the total superannuation contributed on my behalf by the university continues to be \$2,400;
- I would still be precluded from claiming a deduction for any amount that I pay into superannuation which, assuming a contribution of \$50,000, would give rise to a tax saving of \$24,250; and
- in return for giving up a tax saving of \$24,250, I receive \$30,000 from the university *before* tax (and, say, \$15,450 after tax).

In other words I would be about \$10,000 worse off by teaching for the university.

11. Obviously the intention of the proposed changes is to ensure that all taxpayers are entitled, in effect, to a deduction of \$50,000. It would also not be fair to allow a person taxpayer to “double dip” ie., obtain employer support and also be allowed tax deductions up to the maximum amount allowable.
12. In my view, the sensible solution to the problem would be to reduce deductions that a taxpayer would otherwise be entitled to claim for contributions made to superannuation on a pro rata basis taking into account the contributions made on their behalf by an employer. Accordingly using the above example, if the university contributes \$2,400 on my behalf to superannuation, my maximum deduction allowable should be reduced to \$47,600.

B. Age Based Limits

1. Many taxpayers, including myself, have deferred making significant contributions to superannuation in earlier years with a view to catching up in later years. It is unfair for the Government to suddenly half the maximum deduction for persons aged 50 years and over, from \$100,587 to \$50,000.
2. There are transitional provisions proposed by the Government to reduce the unfairness. However I do not fully understand these proposed transitional provisions. My current reading of the proposals appear to suggest that if a person is 50 years of age or over on 1 July 2007 they will be entitled to 5 years deductions at a maximum rate of \$100,000 a year.
3. If my current understanding is correct, the transitional provision would operate in an exceedingly unfair manner to persons who are approaching but not yet 50 years of age as at 1 July 2007. In my circumstances I turn 50 years of age on 18 January 2008. By virtue of a difference of only 6 months, does this mean that I am limited to \$250,000 of deductions over 5 years whilst another taxpayer born 6 months earlier becomes entitled to \$500,000 of deductions over the next 5 years.

4. I would expect that the transitional provisions, at a minimum, should operate such that a person who is 50 years of age as at 1 July 2007 is entitled to 5 years of deductions at \$100,000 per year, a person who is 50 years of age as at 1 July 2008 is entitled to 4 years of deductions at \$100,000 per year, etc. In other words the \$50,000 limit would only fully apply to taxpayers who are 50 years of age as at 1 July 2012.
5. If the transitional provisions operate in the manner set out in the preceding paragraph, this would go some way to addressing the unfairness. However, I still believe that the transitional provisions need to be more generous than currently proposed, even assuming the more favorable interpretation of those provisions.

C. General Comment - Contributions

1. As a general comment I believe that the Government has a real opportunity to greatly simplify the manner in which contributions that are made to superannuation are subject to concessional tax treatment.
2. It has always been my view that the concept of “salary sacrifice” is a non-sense. The concept is merely designed to disadvantage those taxpayers who are not savvy enough to address their tax situation at the commencement of an income year or are not in a position to know if they will have sufficient funds at the end of the income year to make a contribution.
3. If the Government’s strategy is to allow all taxpayers a tax benefit in respect of contributions up to a maximum of \$50,000 per year to superannuation, it should not matter how those contributions are made by the taxpayer. In other words taxpayers should be able to contribute up to \$50,000 to superannuation under any or all of the following methods, provided that the total contribution the subject of the concessional tax benefits does not exceed \$50,000 ie., taxpayers should be able to contribute by way of
 - salary sacrifice;
 - compulsory superannuation levy; and/or
 - deductible contributions (whether employed or self-employed).

I hope that you find the above of assistance in formulating the superannuation rules for the future. Although a number of the matters referred to above affect me personally, I also believe those same matters are also of great concern to other taxpayers. I also believe that the last proposal concerning contributions has great merit.

If you should have any queries or require any further elaboration please do not hesitate to contact me.

Yours faithfully

A J O’Brien