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

Dear Sir/Madam,

A Plan to Simplify and Streamline Superannuation - Submission

We welcome the opportunity to provide comments on the Government's proposed changes to the taxation of superannuation and eligible termination payments.

We support the Government's retirement income policy. In particular, we note the following objectives outlined in Part 1.1 of the Plan to Simplify and Streamline Superannuation:

- "*The policy objective is to assist and <u>encourage people to achieve a higher standard of living in retirement</u> than would be possible from the age pension alone.*"
- "*The Government recognises that individual needs and circumstances vary. As such, the <u>superannuation system should be flexible, adaptable and give individuals choice</u>.*"

(Emphasis added).

While we support the Government's retirement income policy, we consider the proposed changes to company termination payments ("CTP") are inconsistent with these stated objectives. In particular, it has significant implications for senior succession planning involving talent at Director and Senior Executive levels of Public Companies who may now be considering bringing forward retirement to 30 June 2007. In addition, it taxes CTP more heavily than before and is incongruous with the longer term nature of employment contracts.

It should be noted this issue is not limited to a Public Company context and is equally relevant to employees in Private Companies.

In broad terms, to address this we recommend:

- The introduction of transitional arrangements to allow affected individual taxpayers the option of rolling over a CTP tax free to a superannuation fund prior to 1 July 2012 (being the date the transitional deductible contributions limit of $100,000 for those over the age of 50 reduces to $50,000), subject to certain requirements being met.

- Alternatively, the status quo for affected individual taxpayers could be preserved, allowing tax free rollover and having tax paid (on a deferred basis) only on the lump sum rollover component upon payout from the superannuation fund prior to 1 July 2012. (This is not preferred given the objective of simplicity in future dealings with retirement payments generally).

Our concerns and recommendations in this regard are set out more fully below.

Concerns

Of particular concern to BHP Billiton Limited are the proposed limitations to concessions on large CTP. It is proposed that after 30 June 2007, a lump sum CTP:

- Will no longer be able to be rolled over tax free into a superannuation fund; and
- Will be taxed more heavily than ever before. A limit of $140,000 is proposed in respect of the portion of the post-30 June 1983 component eligible for the present tax treatment (i.e. 15% for recipients aged 55 and over). The balance of the component will be taxed at the top marginal tax rate, representing an increase of 15% above the current 31.5% tax rate.

We understand these changes are driven by the tax free treatment of superannuation benefits paid to those over age 60 after 30 June 2007 and the removal of the reasonable benefit limits system.

The Government is clearly trying to discourage lump sum payouts other than from superannuation funds. While we acknowledge the Government is entitled to determine the tax incentives provided in any given area, we consider the Government must ensure fairness and equity for all taxpayers. Our concern is that the proposed limitations referred to above will not result in a fair and equitable outcome for all.

Rather, by taxing CTP more heavily in many cases and denying the recipient the ability to rollover such benefits into a superannuation fund, the proposals penalise those individuals with existing contractual rights to a CTP on termination of employment. Moreover, the more significant the CTP, the greater the penalty (i.e. tax liability) imposed.

Taxing CTP more heavily than ever before contradicts the Government's objective to "*encourage people to achieve a higher standard of living in retirement.*"

We are also concerned the proposals will likely cause many Australian Directors and Executives, over the age of 60, contractually entitled to a lump sum CTP at retirement, to bring forward the date of retirement to pre-1 July 2007.

This has enormous implications for senior succession planning and may result in a significant loss of talent and experience at Director and Senior Executive levels. In turn, it impacts the company's ability to provide stable management and meet corporate governance requirements.

From the perspective of the individual, it may not be possible, in the limited time available before the new rules take effect, to renegotiate termination arrangements with a view to restoring the value of termination payments which the individual has already worked to earn. As a consequence, the individual is faced with the unenviable choice of terminating their employment to retain the value of their remuneration or instead, staying loyal to their employer to the detriment of their remuneration value.

These circumstances are in direct contrast to the Government's objective of developing a superannuation system that is "*flexible, adaptable and give*(s) *individuals choice.*"

Finally, we note employment contracts that incorporate CTP encourage the longevity of an employee's tenure with the employer. When compared to the long term nature of the agreements they impact, it seems incongruous that the Government's proposed changes become effective within such a short time frame.

Recommendations

We suggest transitional arrangements could be introduced to allow affected individual taxpayers the option of rolling over tax free any lump sum on termination to a superannuation fund prior to 1 July 2012 (being the date the transitional contributions limit of $100,000 for those over the age of 50 reduces to $50,000). This would be subject to:

- The contract under which the lump sum is paid being entered into prior to 9 May 2006; and
- The person being aged 60 or over at the time of payment.

Alternatively, the status quo for affected individual taxpayers could be preserved, allowing tax free rollover and having tax paid (on a deferred basis) only on the lump sum rollover component upon payout from the superannuation fund prior to 1 July 2012. (This is not preferred given the objective of simplicity in future dealings with retirement payments generally).

It is likely the number of people affected by these transitional arrangements would be comparatively small and would not be a substantial long term threat to Government revenue.

Please contact me on 03 9609 3997 if you wish to discuss any of the above matters, or require further information.

Yours faithfully,

Ian C. Edney

Ian C. Edney
Vice President Group Tax