ERNST & YOUNG

Ernst & Young Building
8 Exhibition Street
Melbourne VIC 3000
Australia

GPO Box 67
Melbourne VIC 3001

Tel 61 3 9288 8000
Fax 61 3 8650 7777

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

Dear Mr Lonsdale

May 2006 Budget Announcements
A Plan to Simplify and Streamline Superannuation

Ernst & Young is pleased to make this submission to Treasury in relation to the Federal Budget initiatives announced on 9 May 2006 regarding the simplification and streamlining of superannuation.

This submission follows on from our discussions with Treasury officials after 9 May 2006 regarding the release of the proposed changes.

Ernst & Young supports the rationale behind the proposed changes and would like to emphasise that any amendments to the proposed changes should be to ensure that:

- the simplicity of the proposed changes are not compromised and, where possible, the proposed changes should be simplified as much as possible;
- the administrative burden of the proposed changes should be kept to a bare minimum and should not be borne by superannuation providers wherever possible;
- equity between Australians should be maintained and acknowledgement of the diversity of personal circumstances should be given; and
- a "straight-line" approach to savings (eg. contribution caps) is not achievable by most Australians throughout their lifetimes due to their changing personal circumstances.

Our comments in relation to the proposed changes are in the attachment which highlights further issues that need to be considered as part of the implementation/modification of the proposals. Please note that these comments are not in order of importance but rather follow the layout in the detailed outline of the proposed changes. We are aware that Treasury has received input from a number of sources since Budget Night and therefore have not provided detailed solutions. However, we would be more than happy to discuss possible options with you.

We note that the Government's policy objectives are to assist and encourage people to achieve a higher standard of living in retirement than would be possible from the age pension alone and that the Government recognises that individual needs and circumstances vary. However, to assist Australians in achieving the Government's objectives, we believe that it would be appropriate for the Government to assist Australians in identifying a goal for an adequate level of retirement income regarding a retirement savings target. Such a "rule of thumb" would recognise that individual needs and circumstance vary but would also give Australians some idea of what their retirement savings (both superannuation and non-superannuation) should be to achieve an adequate retirement income. Providing Australians with an indication of what such a goal should be would also assist and encourage people to achieve the Government's objective of a higher standard of living in retirement than would be possible from the age pension alone.

If you have any queries or require any assistance, please call me on 9288 8756.

Yours sincerely

Noelle Kelleher

Noelle Kelleher
National Director – Superannuation
Consulting & Taxation

Issue	Reference	Background	Action Required
Taxation of Benefit Payments – taxed sources			
Freezing of the pre-July 1983 component	2.3.1	Currently, a member's pre-July 1983 component can be determined based the earliest pre-July 1983 service period start date where multiple super benefits are rolled together and the commencement date with the employer.	Clarification of whether members will be able to notify their funds of the earliest eligible service period start date.
Simplification of the number of taxation components	2.3.1	Currently, members are able to withdraw the various tax components of their benefits as requested except the pre/post June 1983 components which must be taken on a proportional basis. For example, once a benefit payment is triggered, a member can nominate the value of their undeducted contributions to be withdrawn at any time. In the event that the member wishes to take some/all of their pre-July 1983 component, the member must take their post-June 1983 component in proportion to the pre-July 1983 component.	Clarification regarding whether members will still be able to withdraw the exempt component without a corresponding withdrawal of the taxable component. Alternatively, members should be able to withdraw the various sub-components of the exempt component (apart from the pre June 1983 component) without a corresponding withdrawal of the taxable component. If so, the various subcomponents of the exempt component will need to be maintained by superannuation providers.
Death Benefits	2.5	Many current pensions may revert to a non-dependant on death. In addition, many members may have binding death benefit nominations forms with non-dependants being nominated as a pension recipient. Under the proposals, a pension would not be able to revert to a non-dependant on death.	Confirmation that current pension contracts with non-dependant reversionary pensioners will still be able to revert to the nominated non-dependant(s) on death of the current pensioner. The manner in which the nominated dependants are taxed would need to be determined.

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			Otherwise, current pension contracts may be detrimentally impacted in the event that the current pension provider is not prepared to alter the pension contract to reflect the new rules or pay a fair lump sum on death. Clarification of whether trustees will be required to seek new death benefit nomination notices from members where valid binding death benefit nomination notices are being held by the fund based on the current rules. Clarification regarding whether it is the tax definition of "dependant" or the Superannuation Industry (Supervision) (SIS) definition that will be used to determine whether an individual is an eligible dependant for a reversionary pension.
Reporting of benefit payments	2.3.2	Benefit payments will generally no longer be reported to the ATO by superannuation funds for and individuals over 60 years will not be required to report details of their ETPs and pensions in their tax returns. However, superannuation will still be included as part of the income and assets tests in determining a person's eligibility for the age pension.	Clarification of the superannuation fund reporting requirements for age pension purposes.

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Benefit Payment Rules			
Replacement of the multiple pension types with a simple set of rules	3.2.2	Currently, the SIS legislation sets out the various rules for multiple pension types.	Clarification of whether the current pension rules which apply prior 30 June 2007 will continue to apply to those pensions which commenced prior to that date.
Inclusion of minimum pension rules in the legislation	3.2.2	The SIS legislation will set out minimum standards for pensions commencing on or after 1 July 2007. This is to provide maximum flexibility in relation to the types of pensions that can be developed to meet the needs of members in their retirement.	Clarification of what standards will be imposed to ensure that there is no misleading marketing by pension providers and that members are able to clearly distinguish between the various pensions that are available from pension providers.
Simplified Deductible Contribution Rules			
Deductibility of compulsory contributions for individuals 75 years and over	4.4.2	Currently employer contributions are only deductible up to age 70 years unless the employer contributions are required by an industrial award or determination.	Contributions made on or after age 75 years in accordance with an industrial agreement or determination should continue to be deductible.
Indexation of the deductible contribution cap	4.2 & 4.4.2	A cap will be introduced to limit the amount of concessionally taxed contributions that can be made to superannuation.	The cap(s) should be indexed each year in the same manner as the indexation which applies to the current age-based deduction limits.
Transitional rules for Australians aged 50 years	4.4.2	A transitional arrangement is to be put in place for individuals aged 50 and over during the period 1 July	Make the $100,000 a permanent cap (subject to indexation) for those

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and over		2007 and 30 June 2012. Instead of the cap of $50,000 applying, a transitional $100,000 cap will apply. The proposed capping rule assumes that individuals will be able to contribute evenly throughout their working life. However, the cap does not recognise that an individual's ability to make contributions is limited based on family and other commitments such as mortgage repayments, schooling of children and so on.	individuals who are 50 years or over.
Contributions in excess of $50,000/$100,000 where benefits have been rolled over or paid out		Where a member's total deductible contributions exceed $50,000/$100,000 caps, additional tax will be imposed on the excess contributions as notified by the ATO. However, a member may have rolled the excess contributions into another fund or been paid those benefits prior to a fund receiving the additional tax notice from the ATO.	Clarification of who will be responsible for the payment of the additional tax including the mechanism for tracing the excess contributions from fund to fund to member. (Also refer to comments regarding contribution splitting)
Self-employed individuals/ certain employees	4.4.2 & 5.1	Self-employed individuals will no longer be discriminated against in terms of how much of their contributions will be deductible (ie. the $5,000 + 75% rule will no longer apply). However, for an individual to be "self-employed" a 10% rule must be satisfied. While this rule is a simple concept, application of this rule can be very difficult. While the Plan highlights that the rules relating to eligibility to claim a personal deduction will be simplified, it still requires individuals to determine	Remove the 10% rule relating to whether an individual is entitled to a deduction for their personal superannuation contributions.

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		whether they are self-employed. The Plan also highlights that the proposed removal of the age-based limits will provide scope for employees under 35 to make contributions to super through salary sacrifice arrangements. This assumes that all employers offer salary sacrifice arrangements to their employees and employers are not required to pay a minimum cash amount to their employees under any relevant awards/agreements. Given the $50,000 cap is to be introduced to limit the concessional tax treatment applying to deductible contributions, there does not appear to be any reason why an individual should not be able to claim a deduction for their personal contributions regardless of whether they are an employee or not. This is because the deductible contribution cap will tax an excess contributions received by funds for that individual at the top marginal rate. This higher tax rate will effectively be a disincentive for individual's contributing more than the relevant caps. If the 10% rule was removed, this would enable employees whose employers do not permit superannuation sacrifice or whose awards/enterprise agreements do not permit salary sacrifice below a certain level to also make deductible contributions up to the relevant cap. Superannuation funds would be able to identify individual deductible contributions using the existing section 82AAT notification process and the deductible contribution cap	

Issue	Reference	Background	Action Required
		would result in any excess contributions being taxed at the top marginal rate. Therefore, there is no need for individuals to determine if they are self-employed or not.	
Notional deductible contributions for defined benefit funds	4.2	For the purposes of determining whether the $50,000/$100,000 deductible contribution cap has been exceeded, the defined benefit notional taxable contributions will be added to any other deductible contributions in accumulation funds for the relevant members.	Confirmation that it is the member (via their superannuation account(s)/ entitlements) that should bear the cost of any additional tax rather than the employer via additional defined benefit contributions even where that additional tax relates to the defined benefit notional contributions.
Employers with substituted accounting periods (SAPs)		Currently, the level of deductible contributions made into superannuation is managed via the employer age-based deduction limits which is driven by the employer's year of income. While most employers have a year of income ending on 30 June, there are a number of employers that have substituted accounting periods (ie. their tax year ends on some date other than 30 June). Under the proposed rules, the $50,000/$100,000 cap will be based on a year of income ended on 30 June.	Clarification of how the age-based deduction limits for employers with SAPs will work with the $50,000/$100,000 deductible contribution limit during the first year.
Tax exempt employers		The $50,000/$100,000 deductible contribution cap will be applied to "deductible contributions". However, there are a number of employers that are tax exempt and therefore any contributions paid by them into superannuation are not "deductible".	Clarification of the definition of "deductible contributions" to ensure that it is only employer contributions (including salary sacrifice contributions) and personal deductible contributions which are included in the

Issue	Reference	Background	Action Required
			$50,000/$100,000 cap.
Restrictions on Undeducted Contributions			
Capping of undeducted contributions	4.5 & Government Press Release 058	Effective from 9 May 2006, undeducted contributions are capped at $150,000 per annum or $450,000 averaged over 3 years on a roll-forward basis. The thrust of the proposed superannuation changes is simplification of the superannuation rules. However, the proposed changes relating to undeducted contributions and the averaging methodology are complicated and the averaging rules are unlikely to be readily understood by many Australians. The proposed capping rule assumes that individuals will be able to contribute evenly throughout their working life. However, the cap does not recognise that an individual's ability to make contributions is limited based on family and other commitments (such as mortgage repaying, schooling of children and so on). Where an individual does make undeducted contributions, the individuals may not have control over the timing of when those contributions are paid to the fund. For example, where an employer is withholding the undeducted contributions from the employee's salary and paying the contribution directly to the fund. There may also be circumstances where an employee is required to make compulsory undeducted contributions (for example, where a defined benefit is being provided to	Consider whether the $150,000/$450,000 are appropriate caps or whether higher caps should be introduced. Consider whether a lifetime cap could be introduced as the ATO will have details of the undeducted contributions reported to it each year. Consider the use of a simpler averaging method which can be easily understood. An extensive series of worked examples of how the averaging applies to be provided. These examples should cover the "grey" examples and not the obvious ones. Clarification where a third party causes a delay in the payment of undeducted contributions for an employee which result in the undeducted contribution cap being breached. Compulsory undeducted contributions should be excluded from the undeducted contribution caps.

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		the employee).	
Undeducted contribution cap	4.5	A transitional arrangement is to be put in place for individuals aged 50 and over during the period 1 July 2007 to 30 June 2012. Instead of the deductible contribution cap of $50,000 applying to their deductible contributions, a transitional $100,000 cap will apply. However, a comparable undeducted contribution transitional arrangement has not been introduced. In addition, the proposed undeducted contribution capping rule assumes that individuals will be able to contribute undeducted contributions evenly throughout their working life. However, the undeducted contribution cap does not recognise that an individual's ability to make contributions is limited based on family and other commitments.	Introduce a permanent higher undeducted contribution cap for individuals who are over age 50 years.
Indexation of the undeducted contribution cap	4.5	A cap will be introduced to limit the amount of undeducted contributions that can be made to superannuation.	The cap should be indexed each year in the same manner as indexation applying to current age-based deduction limits.
Capping of undeducted contributions for individuals currently 73 years and over	4.5	It is proposed that the $450,000 cap would be averaged over a 3 year roll-forward basis (ie. use it or loose it). However, an individual who is currently 73 years or over would not be able to average their undeducted contributions on a 3 period as they only have a 2 year contribution period remaining (assuming that they still satisfy the work test requirements).	Ensure that older Australians are not disadvantaged from the proposed averaging method given that funds are unable to accept contributions from those individuals once they have reached 75 years. Particular attention needs to be given to those individuals who were 73 and over

Issue	Reference	Background	Action Required
		Given that the undeducted contribution cap is to be introduced from 9 May 2006, this is a particular issue for those individuals who were 73 years on that date.	on 9 May 2006.
Clarification of amounts included in the undeducted contribution cap	4.5 & Government Press Release 058	Currently, there are a number of types of contributions to superannuation that are effectively treated in the same manner as undeducted contributions from a taxation perspective. These contributions include: • spouse contributions; • CGT-exempt component; • Government co-contribution; and • Non-taxable transfers from overseas superannuation funds. The Government has clarified that the CGT-exempt component will be excluded from the undeducted contribution cap. However, there has been no clarification regarding other "undeducted contribution look-a-likes". In particular, bona-fide overseas superannuation benefits need to be specifically addressed given the mobility of the Australian workforce whereby it is increasingly likely that Australians will have some overseas superannuation benefits arising from employment outside Australia. When the overseas benefits are transferred to Australia, they must frequently be transferred to an Australian fund under the "preservation rules" of the source country. These benefits are recognised in Australian funds as	Clarification of the specific types of contributions that will be included in undeducted contribution cap. Undeducted contributions arising from the transfer of bona fide overseas superannuation benefits should be excluded from the undeducted contribution cap.

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		comprising of “taxable contributions” (being certain earnings relating to those benefits) and “undeducted contributions” (being the amount of the transfer which is not taxable to the Australian fund and which may/may not be taxable to the individual). If undeducted contributions arising from an overseas benefit transfer must be returned to an individual, this is likely to lead to the Australian fund breaching various undertakings given to the overseas funds in relation to the preservation of those undeducted contributions or overseas funds not permitting an Australian to consolidate their worldwide superannuation accounts in Australia.	
Return of excess undeducted contributions	4.5	Any undeducted contributions in excess of the relevant uneducated contribution caps are to be returned to the member together with interest. No details have been provided regarding how the interest amount is to be determined and how such things as member investment choice, etc are to be factored into determining the interest to be paid out. Funds are required under trust law and the SIS legislation to act in the best interest of the members and without specific legislation relating to the calculation of the interest amount would need to take into account member investment choice, etc which would make implementation of both the return of undeducted contributions and earnings extremely complicated.	Consider whether it is really necessary to return earnings to the member. Identify simple rules regarding the calculation of the earnings which are not onerous on the funds to administer. Consider whether a flat interest rate could be used. However, this needs to take into account the variable earnings rates between funds/investment strategy choices, the possibility of negative earnings, etc. It would also need to ensure that other members could not be detrimentally impacted if a flat rate was used and the member’s account had insufficient benefits to cover the interest

Issue	Reference	Background	Action Required
			to be returned. (Also refer comments regarding contribution splitting)
Taxation of earnings on excess undeducted contributions		It is proposed that the earnings on excess undeducted contributions will be returned to members and taxed at the top marginal rate (currently 45%). Prior to funds receiving the return of contribution notices, the fund's earnings will have been taxed at a maximum of 15% pa. If the earnings returned to the member are to be taxed at a further 45%, this means that those earnings have effectively been subject to tax well in excess of the top marginal rate. Contributions previously subject to the surcharge were also subject to lump sum tax when withdrawn from superannuation and the rules were modified to ensure that the maximum tax rate (being both income tax and the surcharge tax) that could apply to "surchargeable contribution" was no greater than the top marginal rate. Similar rules should be introduced to ensure that the maximum tax payable (being the fund's income tax and the individual's income tax) on returned earnings is no greater than the top marginal rate.	Question whether it is appropriate for returned earnings to be taxed at a rate other than the individual's marginal tax rate. Take into consideration the fund's income tax on the earnings of up to 15% that would have already been applied to the earnings prior to being returned to the individual.
Contribution splitting			
Interrelationship with the contribution splitting rules		From 1 January 2006, contributions can be split with the member's spouse on an annual basis. This includes both	Clarification regarding how the capping rules will be applied where the excess

Issue	Reference	Background	Action Required
		deductible and undeducted contributions. The introduction of the caps relating to deductible contributions and undeducted contributions means that: • additional tax is to be payable on deductible contributions in excess of the deductible contribution cap; and • excess undeducted contributions (plus earnings) are to be returned to the member.	deduction contributions/refundable undeducted contributions have been split with the member's spouse. For example, will excess undeducted contributions split into a spouse's account need to be returned to the receiving spouse? or the original spouse? or not at all?
Age-based contribution requirements			
Extension of SG requirements and the Government co-contribution to age 75 years		Currently, superannuation guarantee (SG) contributions are only required for employees up to the age of 70 years and the Government co-contributions are only available to certain individuals provided they are less than 71 years of age at the end of a year of income. Under the age-based deduction rules, contributions are generally only deductible up to 70 years. This ties in to the SG and co-contributions requirements. Given that the age-based deduction limits are being removed and contributions will be deductible up to age 75 years, the SG and co-contributions requirements should be brought into line with the proposed changes for simplicity and consistency purposes.	Extension of SG requirements and the Government co-contribution regime to relevant individuals up to age 75 years.

Issue	Reference	Background	Action Required
Employer ETPs			
$140,000 employer ETP cap	7.1.2	Currently, employer ETPs are counted towards an individual's reasonable benefit limits (RBLs). With the removal of the RBLs, a cap is needed to restrict the amount of concessionally taxed employer termination payments. At this stage, the Government has nominated an employer ETP cap of $140,000 per employer ETP and there will be no lifetime limit on these concessionally taxed employer ETPs. For example, an employee could change employment 10 times during his/her working life and receive employer ETPs totally $1,400,000 that are concessionally taxed. However, the above does not recognise employee loyalty where an employee remains with an employer for a significant period of time. For example, an employee who remains with a single employer over the same period of time as the employee in the previous example would only be able to receive an employer ETP of $140,000 that would be concessionally taxed. This is an inappropriate outcome.	The employer ETP cap should be calculated in such a manner as to recognise an employee's years of service with the employer in the same manner as the tax-free bona fide redundancy payments (ie. $140,000 per year of service). Consider whether $140,000 is the appropriate cap. The cap should be indexed each year in the same manner as indexation applying to current ETP threshold and tax-free redundancy payments.
Taxation of the excess employer ETP	7.1.2	It is proposed that the excess employer ETP over the relevant employer ETP cap will be taxed at the top marginal rate (currently 45%).	Question whether it is appropriate for excess employer ETP to be taxed at a rate other than the individual's marginal tax rate.

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Small business CGT retirement relief		Under the small business retirement exemption, an individual can elect to disregard a capital gain up to a maximum from a CGT event if the proceeds are used to pay an ETP.	Ensure that the CGT exempt component which is paid in cash is not treated as being subject to the employer ETP cap. Ensure that the CGT exempt component can be rolled over into a superannuation fund.
Failure to Quote TFNs			
Tax file numbers (TFNs)	7.2	Under the proposals, deductible contributions in excess of $1,000 will be taxed at the top marginal rate and funds will not be able to accept undeducted contributions where a member does not quote their TFN. However, members are not required to provide their TFNs to their super funds and super funds will be required to managed members expectations regarding the treatment of their contributions. This may be difficult – for example, super funds may not know whether a member's contributions are deductible or not until the member provides a section 82AAT notice.	Consider whether it should be compulsory for members to quote their TFN prior to contributing to a super fund. Consider impact of top marginal tax rate on contributions followed by top marginal rate on the benefit payment if the TFN is never quoted by the member. Consider whether the TFN withholding tax is creditable when the member finally quotes their TFN and to whom the tax is creditable to. This also needs to take into account where benefits have to been transferred to other funds/benefits have been paid.

May 2006 Budget Announcements – Superannuation **ATTACHMENT**

Issue	Reference	Background	Action Required
Untaxed Schemes			
$700,000 cap	8.2 & 8.3	Unlike taxed super funds, the benefits from untaxed funds of individuals aged 60 and over will be taxed. Similarly, higher tax rates will apply to untaxed benefits paid prior to age 60. This is to take into account that contributions supporting those untaxed benefits have not been subject to contributions tax. However, it seems unfair to impose a concessionally taxed lump sum benefits of $700,000 cap while individuals with taxed benefits will not have any cap. Similarly, pensions will be taxed at a differential rate.	Reconsider the rules relating to the taxation of untaxed super to bring the tax treatment into line within taxed benefits.
Rollovers to taxed schemes	8.4	It is proposed that the transferring fund will be require to withhold tax at the top marginal rate for any amounts transferred above $700,000 and the first $700,000 would be treated as a taxable contribution in the hands of the receiving fund.	Confirmation that any amounts in excess of $700,000 will be excluded from the undeducted contribution caps.
Portability			
30 day transfer	9.2.1	It is proposed that super benefits must be transferred as soon as practicable after a request is received within 30 days. Currently, this time limit is 90 days.	Consider whether 30 days is administratively possible from a super fund's perspective. Ensure that the Register of Complying Super Funds (ROCS) maintained by the

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			ATO only shows a super fund's benefit administration address and not the fund's registered tax agent's address. Unless the correct address is shown on ROCS, funds will not be able to satisfy the 30 day time limit.