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Espreon Strategist Advisory Network

9 August 2006

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

Email: simplersuper@treasury.gov.au

Dear Sir or Madam

Re: Submission to "A Plan to Simplify and Streamline Superannuation"

We welcome the opportunity to make a submission on the Federal Government's plan to simplify the rules governing superannuation benefits. At the outset, we wish to confirm our support for the objective to make the rules, particularly taxation rules, applying to superannuation less complex, such that all superannuants are able to understand such rules. This will lead to greater confidence by superannuants in the superannuation system resulting in greater investment in superannuation, in line with the Federal Government's three pillar approach to providing retirement incomes.

Introduction to the Submission Group

We are a group of thirty (30) Advisors who specialise in the area of advice surrounding superannuation. Whilst we predominantly work with clients who have Self Managed Superannuation Funds (SMSFs), the Advisors in the group have a varied background covering all aspects of superannuation, including: legal; taxation; administration; investment advising; insurance; estate planning; compliance. Our combined client base would include in excess of 9,000 SMSFs with over 18,000 members and more than $6 billion in superannuation assets.

Introduction to Our Submission

As stated, we support the Federal Government's objective to simplify the taxation complexity governing superannuation contributions; superannuation earnings; superannuation benefits. In the outline of the proposal at 1.3 on page 2 (Chapter 1), it states that:

"The Government is inviting comments on a proposal to sweep away the current raft of complex tax arrangements and restrictions that apply to superannuation benefits. This would improve retirement incomes and increase incentives to work and save."

Whilst we believe that the proposal will simplify the rules governing superannuation, particularly taxation of benefits, it is our view that there are a number of transitional issues which will result in the different levels of complexity for those superannuants retiring or planning to retire over the next ten to twenty years. If the Federal Government wants to make the rules governing

superannuation simple, then it must be made simple for all superannuants whether they are retiring in the next five (5) years or the next forty (40) years.

The Federal Government must "sweep away the current raft of complex tax arrangements and restrictions" for all superannuants and ensure we do not end up with a multi-tiered system. This has previously occurred when there have been major rule changes; e.g. pre/post 1983 taxation of benefits plus 1994 RBL changes.

The proposal appears to indicate that we will have a multi-tiered system with regard to the types of pensions. Pensions in place pre 1 July 2007 will continue post 30 June 2007. Superannuants should have the opportunity to restructure current (pre 1 July 2007) pensions to the new (post 30 June 2007) pension, at their choosing.

Superannuants who have put in place retirement plans, prior to the announcements of the proposals, must also have the opportunity to implement such plans. A common feedback theme from our client base is that superannuants lack confidence in a system where the rules change such that retirement plans put in place can no longer be implemented, due to those changes. The proposal needs to take into consideration those superannuants who cannot take advantage of the transitional rules to implement retirement plans that have been in place for some time.

Our submission will focus on those issues that we have identified that:

- do not remove the complexity of super;
- have a detrimental effect to superannuants over current rules;
- provide administrative concerns.

The Issues

Taxation of Disability Pension Received by a person under age 60

Prior to 1 July 2007 a person in receipt of a disability superannuation pension was taxed in the same manner as a 'retired' person. That is, even where the person was under age 55 they are still entitled to claim the 15% pension rebate under section 159SM of the ITAA 1936. This put those on disability pension, many with shortened life expectancy, on the same tax footing as a 'retired' person.

After 30 June 2007, a person of at least age 60 will receive their pension from a taxed superannuation fund tax free. However, under the proposal after 30 June 2007, a person in receipt of a pension who is under age 60 will have their pension taxed in the same manner as a pension received under the current rules. That is, the gross amount of the pension will be included in the person's tax return; a claim for the 'undeducted purchase price' of the pension will be made; and (up to) a 15% rebate claimed on the 'assessable amount' of the pension.

The proposed tax free benefits post age 60 rule (to come into effect 1 July 2007) is an incentive for a person to delay retirement and remain in the work force. This is in line with the third pillar of the Federal Government's Retirement Policy.

A person who can never return to the workforce due to a disability and in receipt of a superannuation disability pension should be on the same tax footing as a retired person over age 60.

Let's take a person who is currently aged 28 who becomes a quadriplegic due to an accident, with a reduced life expectancy of age 50. Currently, their superannuation disability pension is taxed the same as a person who is retired. That is, the gross pension less any undeducted purchase price is taxed with allowance for a pension tax rebate of up to 15%. However, post 30 June 2007 this person will never have the opportunity for their pension to be received tax free, as it is unlikely they will attain age 60.

The intent of the current law is to tax disability pensions in the same manner as a retired person. This equality should continue post 30 June 2007.

Taxation of Death Benefits

We acknowledge that there is no fundamental change to the taxation of death benefits. In fact, under the proposal, death benefits paid to a non-dependant will be subject to less tax where there is a pre 1 July 1983 component. This is due to the pre 1 July 1983 component forming part of the new 'Exempt Component'. Further, with the abolition of RBLs, there will be no excessive benefits tax – a significant potential tax saving for dependants.

However, due to the proposed non taxation of benefits paid to persons over age 60, there is now a focus on the fact that we have a 'death tax' on death benefits paid from a superannuation fund.

Under the proposed rules, benefits paid from a superannuation fund as a result of the death of a member will be tax free where paid to a 'tax dependant'. This is no different from the current law.

When paid to a non-tax dependant, the benefits will comprise of two components: Exempt component – no tax; and Taxable component – subject to tax at 15%, plus medicare levy.

These proposed rules will, on many occasions, result in the following scenario:

Two individuals, Bill & Fred, both over age 60: Bill has $500,000 in a superannuation fund, consisting totally of a 'Taxable component'; Fred also has $500,000 in a superannuation fund, also consisting totally of a 'Taxable component'. Both Bill & Fred do not have a spouse and their children are over age 18 and are not 'tax dependants'.

Post 30 June 2007, Bill is diagnosed with a terminal illness and his doctor advises he has six months to live. Fred dies suddenly and unexpectedly of a heart attack.

Whilst both Bill and Fred unfortunately die, from a taxation perspective, Bill's dependant will be better off as he will have the opportunity to withdraw all of his superannuation prior to his death with no tax applying and gift to his adult children. However, Fred's superannuation will be paid to his adult children as a superannuation death benefit and subject to tax at 15%, plus medicare levy. Fred's children are $82,500 worse off ($500,000 x 16.5%).

These proposed rules will not instill confidence in superannuants: Should they remove their super from the superannuation system when there is certainty of paying no tax?

Where the Federal Government has made a philosophical change to the taxation of superannuation benefits paid to a person after age 60 and removed the

maximum restrictions on pensions, why does government wish to tax these benefits when paid out as a result of death?

We strongly recommend that the Government should remove taxation of death benefits. Alternatively, a member of superannuation fund should be able to leave part of their superannuation benefits in the fund (or transfer it to another complying superannuation fund) in the name of their children.

Whilst Treasury's view is that superannuation should not be used as an Estate Planning tool and it is quite clear from the proposal that all benefits to non-tax dependants must be paid out of the fund after death, Government should look at the long term benefits of maintaining money within the superannuation system for future generations, rather than the short term 'tax grab' on death benefits.

In line with the Government's Retirement Income Policy, it would be beneficial to the country's long term savings requirements if one generation could leave superannuation benefits to the next generation. This would provide a 'super boost' to the next generation and would continue to be regulated by the prudential rules of the superannuation law.

Reversionary Pensions

In Chapter 2 of the proposal it states at 2.4 that "*A pension would not be able to revert to a non-dependant on death; rather, death benefit payments to non-dependants would have to be made as a lump sum*."

This is a major change from the current superannuation law which allows a pension to revert to an adult child, who is not a 'financial dependant'. Under the Superannuation Industry (Supervision) Act (SISA), a pension can revert to a 'dependant'. Section 10 of SISA defines a dependant to include "*the spouse and any child of the person*". Under the Tax Act, a dependant only includes a child under the age of 18 or any person financially dependant on the deceased at the time of death.

The proposed rules remove the ability of a person, currently, in receipt of a pension to revert that pension to an adult child who is not a 'tax dependant'. We further understand the proposals intend to remove the ability to commence a (new) death benefit pension to a child who is over the age of 18 and not a 'tax dependant'.

The proposed new rules will only allow lump sums to be paid to adult children who are not 'tax dependants'. Why is the form of the benefit being restricted to this class of beneficiary?

Many individuals have already in place pensions that revert to their adult children after their death that were set up when the pensioner was alive and the children were minors. What will be the situation for such pensions post 30 June 2007? Will they be able to revert to the adult child (who may not be a 'tax dependant)?

Many individuals have as part of their retirement strategy, the plan to pay income streams, rather than lump sum benefits, to their adult children after their death.

What will be the situation where a person dies post 30 June 2007; the pension reverts to a child under age 18 – when the reversionary beneficiary attains 18 will the residual pension need to be paid out as a lump sum? Will the position be different if the primary pensioner dies before age 60 instead of after 60?

We recommend that the current law remain and continue to give choice to the form of benefit being paid to a deceased member's children.

<u>Simplifying Pension Rules</u>

We support the proposal to replace the current number of pensions with one set of pension rules. We note from Chapter 3 at 3.2.2 that "*Pensions that meet existing rules and commenced before 1 July 2007 would be deemed to meet the new minimum standards*". However to avoid a multi tiered system of pensions post 30 June 2007, persons in receipt of pensions should be able to choose to restructure their pensions to the new post 30 June 2007 pension regime. Whilst contractual arrangements may prohibit such restructure, those who are able to restructure should be given the opportunity to come under the new simpler pension rules.

Allocated pensions, in most cases, will be able to be commuted and rolled/transferred to a post 30 June 2007 pension. However, other pensions, e.g. market linked, lifetime, life expectancy pensions, will not be able to be transferred to a new post 30 June 2007 pension. This interpretation of the proposed rules is in line with Treasury Fact Sheet from their website explaining the proposed rules. In the fact sheet titled "Superannuation Pensions" in response to the question "Would I be able to move my current income stream to the more flexible pension?" it is stated:

"Some pensions, such as allocated pensions, can be commuted at any time. In this case, there would be no restrictions placed on a person who wished to move from an allocated pension to the proposed new pension.

However, some pensions have limited circumstances when a person can stop the income stream and commence another in exchange for more generous reasonable benefit limits and more concessional age pension asset tests treatment. These include guaranteed income streams payable for life or life expectancy of the recipient and 'term allocated pensions'. The plan does not propose that people will be able to commute these pensions. This issue has been raised by industry and the Government will consult on whether these income streams could be transferred to a new income stream."

Looking at complying lifetime and market linked pensions, under current law a person can transfer/roll their pension to another pension, provided it is a 'complying pension'. That is, the current law allows:

- A lifetime pension to be rolled over to another lifetime pension. This may be required where the current lifetime pension becomes insolvent and has to be restructured to a lifetime pension with a lower annual pension amount (this could only occur in a fund with at least 50 members);
- A lifetime pension to be rolled over to a market linked pension. This may be required where the current lifetime pension becomes insolvent and has to be restructured to another complying pension. This is the solution to this scenario within a SMSF. Also, a person may restructure from a lifetime pension to a market linked pension to obtain a more favourable tax result as all of the net earnings from a market linked pension are tax free within the fund. Unlike a lifetime pension where part of the balance set aside is allocated to reserves and not exempt from the fund's 15% earnings tax;

- A market Linked pension to be rolled to another market linked pension. This is common post 1 January 2006 where a person with a pre 1 January 2006 market linked pension wishes to take advantage of the new '100 year' market linked pension rules, which allows the maximum term of a market linked pension to be extended to age 100.

In all the above cases, the transfer/rollover is allowable as the current law allows the rollover of a complying pension to another complying pension. What will be the situation post 30 June 2007 with respect to the ability to roll a complying pension to another complying pension? Are the above scenarios prohibited under the proposed rules? If so these will place greater restriction on members who are currently in receipt of these pensions. Will it be possible to convert a Market linked pension to an Allocated Pension once the RBL has been abolished?

We recommend that law is drafted to allow a person to restructure any pre 1 July 2007 pension to a post 30 June 2007 pension. There should be no time limit placed upon this choice. This will allow all persons to choose to come within the new simpler rules and not be disadvantaged simply because they complied with the law that existed at the time.

Further, consideration should be given to retaining the social security treatment of an existing pre 30 June 2007 pension when the pension is restructured to the simpler post 30 June 2007 pension. For example, a pension which was commenced on or after 20 September 2004 is 50% assets test exempt for social security purposes. If this pension is restructured post 30 June 2007 to the new simpler pension, it should retain its 50% assets test exemption. Without the ability to retain such social security treatment we envisage a major disincentive for persons to transfer to the simpler pension system.

Simplified Contribution Rules

Gainful Employment

We support the proposal to increase the age to which a person can contribute to a superannuation fund from age 70 to 75. We believe that this is a great opportunity to completely remove the 'gainful employment test' for contributions made to a superannuation fund by a person who has attained age 65.

The 'gainful employment test' in relation to contributions made to a superannuation fund was removed from 1 July 2004 in respect of persons under age 65. We do not believe that a 'gainful employment test' for the age group of 65 to 75 fits within the Government's Retirement Income Policy. Furthermore, the removal of such test fits within the Government's proposal to simplify the rules governing super.

Standard Deductible Limit

In Chapter 4 of the proposal, 4.2 states that the proposed rules aim to "*streamline the rules for deductible contributions. This involves removing the age-based limits on deductible contributions*". We do not believe that the current age based limits on deductible contributions were anything other than streamlined and that it is not necessary to change them. The age based rules are well understood by the public, particularly when compared with their predecessor - the HAS based rules or the averaging over 10 employees.

Changing the deductible limit to $50,000 per annum per person, regardless of age, makes the assumption that people will invest consistently over their working

life to super. This is simply not the case. In our experience as a group who advises many individuals, it is most common that individuals make larger contributions later in their working life, when their disposable income allows such.

With the recent increase in interest rates and ever increasing petrol prices, most family incomes are consumed on mortgages, education of their children and day to day living expenses. When a person reaches their later years in their working life they then have the financial ability to accelerate their contributions to superannuation. The current age based limits reflect this.

We therefore recommend that the current age based rules and indexation thereof, remain in place in lieu of the proposed $50,000 limit.

The change to apply the limit to a per person basis, rather than the current per (non-related) employer basis raises the administrative issue of taxing the contribution amount above the relevant limit at the top marginal rate.

Under the proposed rules, no limit will apply to an employer for contributions made to a superannuation fund on behalf of an 'eligible employee'. The fund will be taxed at 45% of the amount above the person's relevant limit. The proposal states that the additional tax will be levied to the superannuation fund. Further, where taxable contributions for an individual exceed the relevant limit and are made to more than one superannuation fund, the most practical fund(s) on which to levy the tax would need to be determined.

Further details need to be provided in relation to how this, from an administration viewpoint, will actually operate. It will be the responsibility of the fund to report these contributions to the ATO. Whilst a fund believed their administrative burden was reduced due to the removal of the superannuation surcharge, it appears not to be the case. The objective to simplify superannuation must not only apply to members of fund, but to fund administrators as well. Care must be taken when drafting the relevant legislation to ensure the administrative burden of complying with this requirement is not more complex and costly than the Surcharge reporting requirements.

Personal Deduction Eligibility

We fully support the dollar for dollar deductibility of personal superannuation contributions for the self employed.

We note at 4.4.2 of the proposal the comment in relation to simplifying the criteria for a person to be eligible to claim a deduction for a person superannuation contribution. Further details regarding the simplified eligibility criteria need to be supplied. This is expected as part of the draft legislation. We propose that persons who are currently able to claim an income tax deduction for personal superannuation contributions continue to be eligible for the deduction under the proposed simplified rule.

<u>Undeducted Contributions – Cap</u>

An unexpected proposal was the cap to undeducted contributions (UDC). Particularly as it applies from budget night which gave people no opportunity to appropriately alter their retirement plans.

The proposal states that the cap will "*impact on very few people*". This assumption in misguided. The following are examples of common situations which will affect many people.

Example 1 – Sale of Business or Rural Property

Bill sells his business for $2 million. It has a CGT cost base of $500,000. Bill is not entitled to the 15 year CGT exemption under Subdivision 152 B of ITAA 1997. Bill is entitled to apply the 50% general exemption; the 50% Active Asset Exemption under subdivision 152C of ITAA 1997; & the Small Business Retirement Exemption under subdivision 152D of ITAA 1997.

The amount used for the Small Business Retirement Exemption is $375,000. In chapter 4 of the proposal, 4.5.3 states that it is proposed that scope would be provided for certain exemptions to the cap, such as the CGT exempt component from the sale of a small business (Subdivision 152-D of ITAA 1997). That is, in this scenario, the only amount exempt from the UDC cap is $375,000. The balance of $1,625,000 is caught by the cap. This is illustrated as follows:

Consideration	$2,000,000
Less: Cost base	$ 500,000
Taxable Capital Gain	$1,500,000
Apply 50% general discount	$ 750,000
Apply 50% Active Asset Exemption	$ 375,000
Apply Small Business Retirement exemption	$ 375,000
Sale Proceeds	$2,000,000
Less: Small Business Retirement Exemption	$ 375,000
Amount subject to UDC cap	$1,625,000
Less: maximum 1 year UDC	$ 150,000
Less: maximum 3 year averaging	$ 450,000
Amount unable to contribute	$1,025,000

If Bill has a spouse, then another maximum amount of $600,000 potentially can be contributed. If Bill and his spouse can take advantage of a maximum self employed persons deductible contribution transitional rules, an additional $200,000 can be contributed (but they lose 15% contributions tax). This would still leave an amount unable to be contributed for some years.

Further, as we discuss later in this submission, if Bill is aged 64 and not continuing in 'gainful employment', he will be unable to utilise the averaging rules.

Had Bill been entitled to the 15 year CGT Exemption under Subdivision 152 B of ITAA 1997 then, as the proposed cap rules stand, none of the sale proceeds would be exempt from the cap on UDCs.

The Government, when introducing the Small Business Retirement Exemption, stated that they were doing so to recognise that for many small business owners their business was their superannuation. There is a misconception that the proposed rules will exempt from the UDC cap the sale proceeds from the disposal of a small business. As outlined in the proposal this is not the case. Only part of the proceeds can be contributed to the fund exempt from the UDC cap and if the 15 year rule applies, the entire sale proceeds are subject to the cap. The cap on UDCs will severely restrict a small business owner from transferring the entire sale proceeds of their small business to the concessionally taxed superannuation environment otherwise than on a drip feed basis. Every small business owner and rural property owner will be affected by the proposed UDC cap.

Example 2 – Accumulation of Assets Outside of Super

This UDC cap will also have a detrimental affect to the situation where a person, who has built up assets outside of superannuation during their working life, wishes to transfer those assets or the proceeds from the sale of those assets to superannuation.

Betty has, during her working life, accumulated a rental property portfolio. The properties were accumulated using gearing and thus superannuation was not an option. Betty is now 62 years of age and is retiring from the workforce. Whilst her superannuation is a modest $120,000, she wishes to realise her property investment portfolio and contribute the amount to superannuation to add to her existing to superannuation and then commence a pension. This plan was in put in place by Betty and her Financial Advisor, under current law.

The properties are expected to realise $1,650,000. The combined cost base of the properties is $900,000 and the expected tax on the taxable capital gain $168,750. This leaves $1,481,250 that Betty wishes to contribute to super.

The UDC cap will mean that Betty can contribute $150,000 in the current financial year and $450,000 in the next financial year. This leaves Betty short by $881,250. Betty will be unable to contribute any further monies after the three year averaging period is over as she will have attained age 65 and will not be 'gainfully employed'. The income generated by Betty's assets that are unable to be contributed to super will be subject to higher personal marginal income tax rates.

Again, this is not an uncommon scenario and due to Betty's age is unable to 'drip feed' UDC to superannuation over time.

Example 3 – Personal Injury compensation

This scenario was highlighted in "The Australian" newspaper on 19 July 2006. The UDC cap will severely affect those people who receive large compensation payouts after a serious injury. The UDC cap will mean that those permanently disabled may only be able to put a fraction of their compensation payout into superannuation.

Under current law, people in this situation have usually directed a substantial portion of such a compensation payout to superannuation to utilise its tax effectiveness by way of commencing an allocated pension. The earnings within the fund would be tax exempt and the pension received would be concessionally taxed due to a large undeducted purchase price and the 15% pension rebate.

The proposed UDC cap will restrict this opportunity for such persons. The UDC cap will force such persons to 'drip feed' contributions over a long period of time provided they are not close to age 65. This will cause problems with respect to the investment strategy of assets held outside of super which are intended to be 'drip fed' to super as the UDC cap allows.

Further, as income from assets held outside of super will be subject to higher personal income tax, the compensation amount will not last as long as an amount that was entirely contributed to super.

The UDC cap discriminates against people who suffer permanent injuries and are no longer able to continue in the workforce. Any compensation payout represents

future lost earnings, which would otherwise, been able to be contributed over time to superannuation.

Example 4 – Unable to Use Averaging when turning 65

Referring again to Treasury's web site on the proposed superannuation rules and a Fact Sheet concerning 'Post Tax Contributions', there is a question and answer, which is as follows:

"How would the work test rule for people aged 65 and above apply to the averaging provisions?

When a person reaches age 65 they can only make post-tax superannuation contributions during a financial year if they work at least 40 hours during a 30 day period. Superannuation contributions cannot be made once a person reaches age 75 (unless they are required under an industrial award).

The proposed averaging arrangements would allow a person to bring-forward their entitlement to make $150,000 in the next two years. For example, a person who is age 64 would be able to take advantage of the averaging arrangements provided they satisfied the work test in the following years. A person who makes a $300,000 contribution at age 64 would need to satisfy the work test at age 65. If the person did not satisfy the work test at age 65 the contributions would be returned to them and the earnings on the excess contributions would be effectively taxed at the top marginal tax rate.

A person aged 74 and above would not be able to take advantage of the averaging arrangements as they do not have an entitlement to make contributions from age 75."

It is clear from this question and answer that the averaging rules is not a simple 'bring forward dollar amount'. However, it will clearly disadvantage those who wish to make large UDCs just prior to attaining age 65 and who will not been 'gainfully employed' from age 65 and for personal wishing to make large UDCs just prior to attaining age 75. The above scenarios in Example 1 & 2 highlight this issue where the individual are the applicable age.

Why do post tax contributions need to be related to age or employment?

From our experience as Advisors to Business Owners and Self Funded Retirees, it is a common scenario to have business people who work in their business beyond age 65 and have pre CGT assets. This is particularly common in regional areas, with farmers in particular, who are left in a position of being severely restricted in their ability to contribute money so superannuation or actually unable to put any money into superannuation.

For example, a farmer sells his property and agricultural business. He is aged 67 and is no longer 'gainfully employed' after the sale. The property is a pre CGT asset. The farmer will be restricted to a maximum deductible contribution of $100,000 (using the transitional rules proposed) and a maximum UDC of $150,000. If the farmer has a spouse this is doubled, however, it is still a severe restriction imposed on the farmer who wishes to place capital proceeds within the superannuation environment.

The situation is worse where the farmer is aged over age 75. Say the farmer is aged 76 at the time of the sale. Under current and the proposed rules, none of the sale proceeds can be contributed to superannuation. His entire proceeds,

which were marked to provide an income stream in retirement, will be subject to higher personal tax on income and capital gains from investments, outside the superannuation regime.

As previously stated, Government has recognised the fact that for Small Business Owners and particularly farmers, their business is their superannuation. They should be allowed to contribute the sale proceeds of their business to superannuation, regardless of age.

Administrative Issues with Excessive UDCs

At 4.5.1 in chapter 4 the proposal advises that any UDCs in excess of the cap are to be returned to the member. Further, any earnings on the excessive UDCs are to be taxed at the top marginal rate.

Further details are required in relation to administrative issues re:

Where UDCs are made to multiple superannuation funds – how it will be determine as to which fund will have to refund UDCs? This will cause problems with respect to Fund Investment Strategies. In the time between the fund receiving the UDCs and the fund receiving notice from the ATO to refund an amount of UDC, the fund may have committed those monies to a long term investment. A notice to refund such UDCs may have a detrimental affect on all members of the fund if the fund is forced to redeem assets in order to comply with a notice from the ATO to refund excessive UDCs;
How will the income subject to the top marginal rate be determined? The proposal states that earnings on excessive UDCs will be taxed at the top marginal rate. How will those earnings be identified? What will be the situation where fund investments are segregated?

Again, any such administrative requirements to implement these proposals should not increase the reporting burden upon fund administrators.

UDC proposal

The assumption that a cap on UDCs will not affect many people is simply wrong. We recommend the following:

- The UDC cap is removed – the loss to tax revenue would be minimised where maximum are retained with respect to pensions; or
- A lifetime UDC cap, say $4 million, which would allow a person to use the cap in one financial year. There would be a requirement to monitor the cap, however, this would be no additional burden upon administrators than those proposed with respect to monitoring deductible contribution limits and the annual UDC cap.

Other Administrative Issues

In any system there will always be dollar limits. It is imperative that any such limits be indexed on an annual basis. We propose that all limits be indexed to Average Weekly Ordinary Times Earnings (AWOTE) or in the alternative to the national CPI.

Further, in Chapter 7: Other Measures at 7.2, it is proposed that taxable contributions greater than $1,000 be subject to tax at the top marginal rate of 45% where the member does not quote their personal income tax file number

(TFN) to the superannuation fund. This effectively is a tax penalty for those who do not quote their tax file number to the superannuation fund. The current tax file number withholding regime operates in the way where tax is withheld at the higher marginal rate where the TFN is not quoted, however, the individual receives the full credit when lodging their personal tax return. The penalty is simply earlier payment of tax for those who lodge a tax return.

Under the proposal it appears that in the situation where a taxable contribution, greater than $1,000, is made to a fund on behalf of a member who has not quoted their personal TFN, that contribution will be subject to tax at the top marginal rate and there will be no opportunity for the member to recover the penalty tax (in excess of 15%).

We envisage numerous arguments between members and the trustees of their fund along the lines of the member arguing that they in fact have advised the fund of their TFN and the Fund contends that they have no received the advice. This happens regularly between people who receive interest and their bank.

What will be the situation where a person quotes their tax file number via their TFN declaration when they join their employer and the employer does not pass on the TFN to the fund? Who will be liable for the penalty tax?

This is an unnecessary, costly administrative requirement and should be dropped from the proposal.

Summary

Again we welcome the opportunity to put our collective view to Government in relation to the Superannuation Proposals as announced by the Treasurer in the May 2006 Federal Budget. We reaffirm our support to simplify the rules governing both the taxation and prudential supervision of superannuation which will ultimately result in positive outcomes in line with the Federal Government's Retirement Income Policy.

We have identified a number of issues in relation to the proposed new rules. These issues require attention to ensure the integrity of the proposed rules to indeed simplify super for all superannuants.

Should you have any questions concerning our submission or wish to discuss any matter further please contact me as representative for the group on
07 3862 4899. We would welcome the opportunity to participate further in the review process.

Kind regards,

Mark R. Ellem CPA
Representative of the "Espreon Strategist Advisory Network"