The Treasury

Consultation on

A Plan to
Simplify and Streamline Superannuation

Submission

8th August 2006

The breadth of the proposed plans, and the abandonment of undue concern with matter of equity & effect on revenue, is to be commended. It has facilitated contemplation of measures which previously, given historical concerns with the preservation of equity and revenue at the level of minutiae, would not have been considered.

Of concern, however, is that in some instances sight appears to have been lost of retirement income principles and, in so doing, effectively the “baby has been thrown out with the bathwater”.

Furthermore, when analysing the cost and benefits of the proposed regime, consideration has been given only to comparisons with the (acknowledged as deficient) current regime when, given the broad brush nature of these reforms, more regard should have been had to what ideally should be in place.

Accordingly, the underlying policy considerations and principles respect to retirement incomes policy generally, and superannuation specifically, need to be taken into account when considering the proposed plans. While there may not be universal agreement as to the formulation of these maxims, these can at least form the basis of debate and provide a framework against which both the existing system and the various proposals in the plan can be considered and reviewed.

(A) PRINCIPLES UNDERLYING RETIREMENT INCOMES POLICY

The first proposed maxim of the Retirement Incomes Policy is, self-evidently, that the purpose of having a retirement incomes policy is to endeavour to ensure that as many people as reasonably possible have an adequate income in retirement. The goal is to seek to minimise the number of retirees living in poverty or relative poverty.

> **Maxim 1:** -That the purpose of having a retirement incomes policy is to endeavour to ensure that as many people as reasonably possible have an adequate income in retirement.

Secondly, a good retirement incomes policy will seek, within reason, to maximise the amount people have in retirement, having regard to matters of equity and simplicity. While simplicity is important, given the role of the taxation and social security systems it could be argued that overall, broad based equity is more important. It should be noted that a number of the complexities in the existing system have arisen from historical undue concerns with equity at the margins or a lack of appreciation of the underlying principles and policy considerations. While considerations of equity and simplicity are not always mutually exclusive there is often a tension between them and regard always needs to be had as to whether simplification may be at the expense of equity at a broad level.

Maxim 2: - A good retirement incomes policy will seek, within reason, to maximise the amount people have in retirement, having regard to matters of equity and simplicity.

Equity has two aspects – intra-generational equity and inter-generational equity.

Intra-generational equity means that, within reason, individuals of the same generation are treated fairly, after having made reasonable allowance for relativities of income and net worth. All things being equal, in a progressive taxation system it is generally considered equitable if those of higher income \ net worth contribute proportionally more in tax revenue than those of lower income \ net worth.

Given that not only the aged pension but other forms of social security and welfare (such as Medicare; provision of health care and other services and maintenance of infrastructure) will be funded by taxpayers, generally those in employment, it is critical that concessional tax treatment of superannuation not impose too great a burden on future generations of employed taxpayers.

Maxim 3: - Equity has two aspects – intra-generational equity and inter-generational equity.

Simplicity should mean genuine simplicity in design and administration having regard to matters of equity. It should not be simplicity at the expense of broad-ranging equity or apparent simplicity in specified circumstances simply to promote the retirement income system. Having said that, efforts should be made to minimise complexity and undue and unnecessary complexity is to be avoided.

Maxim 4: - Simplicity should mean genuine simplicity in design and administration having regard to matters of equity.

Any retirement incomes policy must, by necessity, have regard to the declining taxpayer \ aged person ratios - not only by minimising future aged pension payments but also by having regard to the general tax burden to be faced by future employed taxpayers. The combined effects of declining fertility rates and increasing longevity have will resulted in an aging population which, by the time the majority of baby boomers will have retired, will see an effective halving of the employed taxpayer \ aged dependency ratio from an historical four employed taxpayers for every aged person \ pensioner to a projected two employed taxpayers for every aged person \ pensioner. While minimising reliance on the aged pension is the underlying reason for the emphasis on being self-funded in retirement, it is critical that regard be had to ensuring that future employed taxpayers do not bear an undue proportion of the general tax burden and, accordingly, that an equitable contribution is made by retirees to the revenue.

Maxim 5: - Any retirement incomes policy must, by necessity, have regard to the declining taxpayer \ aged person ratios - not only by minimising future aged pension payments but also by having regard to the general tax burden to be faced by future employed taxpayers.

The three - pillar policy – safety net of the age pension; mandatory Superannuation Guarantee contributions and provision of tax incentives, such as the concessional tax treatment of superannuation, to encourage voluntary savings – is to remain in place. The concessional tax treatment of superannuation ranges from tax on superannuation fund income levied at the rate of 15% (0% for “pensions”) through to the co-contribution on to there being no \ reduced tax on ETPs and deductions and rebates on “pension” payments.

Maxim 6: - The three - pillar policy – safety net of the age pension; mandatory Superannuation Guarantee contributions and provision of tax incentives, such as the concessional tax treatment of superannuation, to encourage voluntary savings – is to remain in place.

As concessional tax treatment represents a cost to the revenue, which is borne by taxpayers, it is critical that regard be had to both the benefits \ outcomes achieved, in light of policy objectives, and to considerations of equity. Concessional tax treatment which favours one group of taxpayers unfairly over another, or which drives sub-optimal behaviours, or which results in undue complexity or administrative burdens, should be reconsidered.

Maxim 7: - As concessional tax treatment represents a significant cost to the revenue, which is borne by taxpayers, it is critical that regard be had to both the benefits \ outcomes achieved, in light of policy objectives, and to considerations of equity.

As it has received the benefit of concessional tax treatment, at a cost to taxpayers, reasonable limits as to the amount of retirement benefit \ income which benefits from concessional tax treatment should be imposed. Currently these are in the form of both contribution and benefit limits.

Maxim 8: - As it has received the benefit of concessional tax treatment, at a cost to taxpayers, reasonable limits as to the amount of retirement benefit \ income which benefits from concessional tax treatment should be imposed.

As the underlying policy rationale to concessional tax treatment is to ensure that individuals have a reasonable income in retirement, a cohesive retirement system should include measures to minimise extent to which concessionally taxed superannuation is used for estate - planning. In normal circumstances, the ability for significant proportions of retirement savings being passed on to the next generation in the form of death benefits represents a failure of the concessionally taxed retirement incomes system. Arbitrary tax outcomes at an individual level, dependant on whether or not the retiree was able to put particular measures in place prior to their death, are even less desirable.

Maxim 9: - As the underlying policy rationale to concessional tax treatment is to ensure that individuals have a reasonable income in retirement, a cohesive retirement system should include measures to minimise extent to which concessionally taxed superannuation is used for estate - planning.

(B) PLAN IN LIGHT OF PRINCIPLES UNDERLYING RETIREMENT INCOME POLICY

CHAPTER 2 – TAXATION OF BENEFIT PAYMENTS

2.2 Proposed Rules For Benefits Paid To Individuals Aged 60 And Over

2.2.1 Lump sums — proposed arrangements

All lump sum benefits paid from a taxed source to an individual aged 60 or over would be tax free when paid.

Making lump sum benefits paid from a taxed source to individuals aged 60 or over tax free when paid from 1st July 2007 is inequitable in three main ways: -

- negatively with respect to those retirees who paid benefit tax on benefits taken prior to \ on 9th May – it is inequitable with respect to those individuals who, all things being equal, had equivalent benefits where one individual, by virtue of taking their benefit prior to \ on 9th May, has been penalised by paying benefits tax relative to an individual with an equivalent benefit who, by deferring their benefit until on \ after 1st July 2007, is able to avoid paying any tax whatsoever;
- positively with respect to those individuals whose benefit has largely accrued under the existing regime but have yet to access it – for those individuals with large accrued benefits this measure will represent a significant windfall gain at the expense of the revenue – in some instances of high income \ well superannuated individuals it could be up to millions of dollars;
- negatively with respect to those individuals who, for reasons of personal circumstances – generally those of lesser financial means - are unable to defer their retirement until 60 – this measure is inequitable relative to their counterparts who are able to defer their retirement until age 60.

Accordingly – this measure can produce inequitable outcomes.

Taxation of the final benefit, as opposed to the taxation of contributions, enables the maximisation of accrued benefits, thereby satisfying Maxim 2, and is the best time to determine equity and parity between individuals and the amount of superannuation they have managed to accrue over a lifetime.

Most of the complexity which arose from the taxation of final benefits resulted from the existence of the various different components. The proposal to simplify these various components into two is welcome and, it should be noted, if used in conjunction with a tax-free threshold which ensured low-income earners with relatively small benefits did not have to pay tax, would be sufficient in and of itself to deliver simplicity without the need to abandon end benefits tax altogether.

Finally - there will be a need for administration systems to not only retain historical data with respect to tax components, in order to provide an audit trail, but also to configure their systems to be able to determine the two new components and to be able to tax benefits paid to recipients under the age of 60.

Accordingly, this measure is only simplified with respect to retirement benefits paid over age 60 and still maintains a level of complexity within the system.

2.2.1 Lump sums — proposed arrangements
All lump sum benefits paid from a taxed source to an individual aged 60 or over would be tax free when paid.

This produces inequitable outcomes – especially between generations – and only serves to increase the tax burden of employed persons in the future.

Recommendation: -That tax on benefits in excess of the tax free threshold be retained, although consideration could be given to increasing the tax free threshold significantly - possibly to as much as the current RBL amount ($XXX, XXX). This would have the effect of simplifying tax of benefits for the vast majority of the Australian workforce, while preserving some measures of equity at the top end in respect of those individuals who have accumulated significant benefits in a concessionally taxed environment. The proposed reduction of the current tax components to two would further simply tax on benefits.

There would be no RBL.

This is a retrograde step. Determination of the reasonableness of the amount of a concessionally taxed superannuation benefit, and the imposition of any measures to address excessive benefiting from concessional taxation treatment, is best done at the end when the benefit is taken – assessment of the final benefit which has accrued over an individual's lifetime. The imposition of annual contribution limits is at best a proxy measure which produces arbitrary, and in some instances manifestly inequitable, outcomes and at worst represents an administrative nightmare – surcharge mark II.

Annual contribution limits are, by their very nature, arbitrary and discriminate against those individuals who are not in a position to be able to contribute ever year but then find themselves in a position to be able to contribute what are deemed to be "excessive" amounts for a particular year. This can include people who: -

- have variable income, such as artists and sportspersons;
- have received a lump sum compensatory benefit;
- have effectively saved for retirement outside superannuation, such as through their business (noting complexity of existing exemption) or through capital growth of their family home; or
- because of historically lower income; breaks in employment; breakdowns in relationships or prior financial commitments such as mortgage repayments - are trying to play "catch-up"

all of whom are penalised by the imposition of annual contribution limits even thought their final benefit may never reach levels which would be considered to be unreasonable.

By way of contrast - for those high-income individuals who can afford to make significant contributions each year these limits produce unreasonable outcomes.

Utilising the ASIC calculator in respect of a 15 year old child in a high income family – if annual contributions are made every year up to the annual limits until age 65,this will generate a benefit at age 65 in excess of $24 million dollars (balanced) or $28 million (growth) in today's dollars. While this is an extreme case, it does serve to illustrate that the annual contribution limit regime does not necessarily limit the accumulation of benefits to what might be considered to be a reasonable amount and that it in fact produces relative inequities at the cost of administrative complexity.

To take this example further – if Mum and Dad were to set up a self-managed fund for themselves and their two children then, given their management and control of the self managed fund, they would be able to invest in such assets as holiday homes and artwork provided, of course, that they paid the fund an arms' length market rent for the use of such assets – an avenue to contribute further income into the fund in the form of earnings on investments. To top it all off, the fund would be able to claim deductions on expenses incurred in respect of the management of the investments, such as properties and artworks. The question needs to be posed - why would you bother with a discretionary family trust or investing in an offshore tax haven when there is tax-free superannuation?

While this may be regarded as an extreme, examples of such payouts are featured regularly in the pages of the financial press – the most recent example being an article in The Age on Wednesday 2nd August 2006 citing a retiring executive's entitlement to receive a payout of approximately $24 million or an annual pension of $975,000. Under this proposal no tax would be paid on receipt of these amounts and, furthermore, investment earnings on the assets underlying the $975,000 per annum pension would be exempt from tax.

In addition, abolishing RBLs is inequitable in that individuals whose benefit has largely accrued under the existing regime but have yet to access it this measure will represent a significant windfall gain at the expense of the revenue – in some instances of high income \ well superannuated individuals it could be quite a significant sum.

While the proposal to abolish RBLs is simple its replacement - annual contribution limits – is unnecessarily complex. Administration of annual contribution limits - involving reporting to the ATO and to other funds on rollover or transfer and the receipt and processing or rejection of assessments - is akin to surcharge mark II with all the attendant complexities that annual reporting brings.

By way of contrast – reporting of RBLs need only occur when a benefit is taken.

If the RBL system is simplified: -

- by significantly increasing the amounts (so only relatively few high income \ well – superannuated individuals are affected compared to today);
- by taxing excess at individual's marginal tax rate;
- through the proposed rationalisation of tax components; and
- by returning to pensions to being truly pensions (as opposed to current proposal re draw downs which will turn superannuation into glorified bank accounts)

then benefits should only need to be reported on relatively few occasions (for most people only once on retirement) and, given will only affect high income \ well-superannuated individuals, determinations could be administered through the tax return \ assessment process.

2.2.1 Lump sums — proposed arrangements
There would be no RBL.

This abolishes any measure of reasonableness of benefits - the best time to determine reasonableness of the extent of the cross subsidisation derived from the concessional tax environment. Furthermore its proxy – annual contribution limits – not only is capable of producing manifestly inequitable outcomes but will prove complex to administer.

Recommendation: -That RBLs be retained and possibly increased significantly and that the proposed annual contribution limits not be introduced.

2.2.2 Pensions — proposed arrangements

All pension payments from a taxed source would be tax free when paid to individuals aged 60 or over, including pensions which commenced before 1 July 2007. There would be no RBL.

This measure is an aberration.

Firstly – it flies in the face of the principle that "unearned income" should generally be taxed no more concessionally than earned income.

Regarding the earlier example of the retiring executive eligible for an annual pension of some $975,000 - how can it possibly be justified that a 65 year old earning the average weekly wage is paying tax at marginal rates on their earned income while an individual in receipt of a pension approximately twenty times more is paying no income tax?

Of course, there has always been a case for some concessional tax treatment of pensions - up to a reasonable amount - on two grounds: -

- in respect of relatively modest pensions – as a recognition of past taxes paid, both inside and outside superannuation; and
- to influence behaviour: -
    - as an incentive to contribute to superannuation in the first place; and
    - in the case of lifetime (or at least approximating lifetime) pensions – to encourage individuals to invest in such products, given that they mitigate against both mortality (and, in the case of life pensions investment) risk and estate planning (to only limited extent in case of allocated pensions).

There are two fundamental issues with the proposed plans: -

- given the proposed abolition of RBLs the only constraint will be the annual contribution limits. To return to an example discussed previously – that of the individual able to generate a retirement benefit at age 65 of some $28 million in today's dollars - earnings on the entire $28 million would be tax free in the fund, as would receipt of any "pension payments" from the earnings \ capital;
- unlike the historical and convention meaning of pension (an income stream comprised of regular recurring payments, generally payable for life – not ad hoc draw downs of earnings \ capital) the proposed "pensions" provide no benefit in the form of mitigation of either mortality (and in the case of life pensions – investment) risk or estate planning.

Accordingly – this would call into question why these so-called "pension payments" should be afforded such extremely beneficial tax treatment.

The abolition of tax on all pension payments from a taxed source paid to individuals aged 60 or over is inequitable with respect to those employed taxpayers who will bear the entire tax burden themselves with retirees making no contribution to the tax base other than via direct, consumption taxes. While employed taxpayers will have been relieved of most of the burden of funding the age pension, nevertheless, their taxes will need to fund the provision of other social security and social welfare, including other income support payments, Medicare; the provision of health care and other services and the maintenance of infrastructure.

In particular - in respect of individuals whose benefit has largely accrued under the existing regime but have yet to access it – this measure will represent a significant windfall gain at the expense of the revenue – in some instances of high income \ well superannuated individuals it could be quite a significant amount. It is also inequitable with respect to those individuals who, for reasons of personal circumstances – generally those of lesser financial means - are unable to defer their retirement until 60.

2.2.2 Pensions — proposed arrangements

All pension payments from a taxed source would be tax free when paid to individuals aged 60 or over, including pensions which commenced before 1 July 2007. There would be no RBL.

This measure is inequitable – especially when regard is to be had to inter – generational equity.

Recommendation: - That RBLs be maintained for pensions and possibly increased. That payments from a genuine lifetime or allocated pension continue to be taxed at full concessional rates, while pension payments from “non-complying pensions” are taxed at lesser concessional rates.

2.2.3 Reporting — proposed arrangements

Individuals would not need to include lump sum superannuation benefits and superannuation pensions in their tax return, lowering their taxable income and therefore potentially lowering the tax paid on other income.

Superannuation funds would not need to report benefit payments to the ATO for RBL purposes.

These have been discussed above.

2.3 Proposed Rules For Benefits Paid To Individuals Aged Under 60 Years

2.3.1 Lump sums
Proposed arrangements for those aged under 60

The proposed arrangements would simplify lump sum payments for individuals aged under 60, with the payment being divided into only two components — an exempt component and a taxable component.

Simplifying lump sum payments by dividing the payment into only two components will result in genuine simplification without any material inequities and is to be commended.

2.3.2 Pensions
Proposed arrangements for those aged under 60

Pension payments for individuals aged under 60 would generally continue to be taxed under current arrangements although consistent with the simplification of taxation of lump sum payments, tax would be lower in some cases.

As the components of a lump sum payment made to a person aged under 60 are to be simplified more components of a lump sum would be tax exempt under the proposal.

The full superannuation pension rebate of 15 per cent would apply to all pensions paid from a taxed fund if the individual is aged 55 to 59 years.

Once the pension recipient turns 60, their pension would be tax free as outlined in section 2.2.2.

Although there are some minor inequities with respect to pensioners who commenced a pension prior to 1st July 2007, overall this appears to be equitable.

2.4 Death Benefits
Proposed arrangements

Under the proposed arrangements, all lump sum death benefit payments would be tax free if paid to a dependant.

It is proposed that the taxation of a death benefit paid as a reversionary pension would depend on the age of the primary and reversionary beneficiary.

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.

With the exception that proposed abolition of RBLs removes any limitation to the amount of death benefit which can be paid tax free to a dependant - this largely reflects the position today.

CHAPTER 3. PAYMENT RULES SIMPLIFIED

3.1 When Benefits Can, Or Must, Be Paid
Compulsory withdrawal abolished

The requirement for compulsory payment of benefits to members over age 65 who do not meet the current work test would be removed — that is, there would be no forced payment of superannuation benefits after age 65. Due to these changes, superannuation funds would no longer have to administer work tests to determine whether the benefits of members aged between 65 and 74 must be paid out.

The requirement that benefits must be paid out regardless of a person's work status from age 75 would also be removed.

These changes would mean that a person would be able to keep their benefits in their superannuation fund indefinitely, taking out as little or as much of their benefits as they choose. If they choose to take their benefits in pension form, then earnings on the assets supporting that pension would continue to be exempt from tax — earnings on other assets would continue to be subject to tax as assessable income of the fund at 15 per cent.

The compulsory cashing conditions are founded on a sound underlying policy principle - that superannuation is afforded concessional tax treatment to ensure that individuals have an adequate income in retirement and, accordingly, that the use of superannuation for estate planning purposes was in violation of retirement income policy. This appears to have been forgotten.

The aim of compulsory cashing was simply that the benefit either had to commence to be paid as a pension – thereby ensuring it was a source of income in retirement – or cashed out from the superannuation system so it no longer benefited from concessional tax treatment. It did not mean that the benefit had to be dissipated in any way – it simply meant that it had to be transferred to a non-superannuation environment so it no longer received concessional tax treatment.

Accordingly -the stated outcome of this proposed measure – that *"[t]hese changes would mean that a person would be able to keep their benefits in their superannuation fund indefinitely, taking out as little or as much of their benefits as they choose"* – appear to ignore the retirement income principle that superannuation is afforded concessional tax treatment on the basis that it is to provide an income in retirement. Superannuation should not be designed in such a way that it is possible for people to "tak[e] as little … of their benefits as they choose", thereby enabling estate planning by facilitating the maximisation of the amount which is ultimately provided tax free to dependants on death.

Where the compulsory cashing rules are flawed – both conceptually and in having to administer them – is in the addition of the work test. This dates from an historical era where it was considered there was a requirement for an occupational nexus in order to be able to contribute to superannuation – this has gradually been reduced over time and eventually abolished.

Estate planning is purely and simply a function of age – nobody would consider that a 17 year old contributing to a superannuation fund is estate planning, whereas a 73 year old who is still contributing to a superannuation fund is significantly more likely to be estate planning. In fact - if the 73 year old is still working then, inter alia, as they are continuing to receive a source of income outside superannuation this means they are relying on their superannuation less, or possibly not at all, as a source of income in retirement.

3.1 When Benefits Can, Or Must, Be Paid
Compulsory withdrawal abolished

The requirement for compulsory payment of benefits to members over age 65 who do not meet the current work test would be removed.

This is in violation of the retirement incomes principle that concessional tax treatment is afforded superannuation in order to provide an income in retirement.

Recommendation: -That compulsory cashing be retained, however, that the work tests be removed and instead the test simply be age based – superannuation must be cashed on attaining age 70 (if considered necessary – a transitional rule to 75). An age based rule, with the abolition of the work tests, can be readily administered.

3.2 Simplifying Pension Rules

Replacing multiple rules for multiple types of pensions with a simple set of rules

Under the proposed arrangements, all pensions that meet simplified minimum standards would be taxed the same on payment. Earnings on assets supporting these pensions would remain tax exempt.

Pensions that meet existing rules and commenced before 1 July 2007 would be deemed to meet the new minimum standards.

The new minimum standards for pensions commencing on or after 1 July 2007 would require:

- *payments of a minimum amount to be made at least annually (see section 3.2.3), allowing pensioners to take out as much as they wish above the minimum (including cashing out the whole amount);*
- *no provision to be made for an amount to be left over when the pension ceases; and*
- *that the pension could be transferred only on the death of the pensioner to one of their dependants or cashed as a lump sum to the pensioner's estate.*

It is not clear what is meant by the requirement that “*no provision to be made for an amount to be left over when the pension ceases*”.

The first observation is that a “pension” is generally defined as being an income stream comprised of regular recurring payments, generally payable for life – not ad hoc draw downs of earnings \ capital regulated only by a requirement for an annual payment of an extremely conservative minimum amount. The most obvious feature of this proposal is that it readily facilitates estate - planning in a concessionally taxed environment – indeed, Chart 3.1 illustrates a pensioner aged 100 with approx 35% of their original account balance remaining – surely a nonsense given that concessional tax treatment is to provide an income in retirement – not a legacy on death on or after 100.

It should be noted at this point that any requirement to withdraw a minimum amount as a pension payment does not mean that this amount has to spent – it can be re-invested elsewhere. It simply has the effect of limiting the amount which benefits from concessional tax treatment.

Allowing members to withdraw as much or (within limits) as little as they like, as often or as infrequently as they want (as long as at least annual) will have the effect of turning superannuation in the pension phase into a glorified bank account. This begs the question as to why concessional tax treatment should be afforded to all assets underlying a “pension”.

Furthermore there are administrative considerations, as superannuation has traditionally generally paid either ETPs or regular, recurring pension payments with occasional commutations. From an investment perspective, as cash flow can no longer readily be anticipated, this is likely to result in “default” options in the pension phase becoming significantly more conservative than they are at present.

A final observation is to query why earnings on assets supporting these pensions would remain tax exempt. While this is undoubtedly beneficial to those individuals who have accumulated only relatively modest amounts - with the proposed abolition of RBLs measure and of tax with respect to pension payments received (irrespective of magnitude) this provides an obvious incentive for high-income individuals to maximise the amount of their pension assets at the expense of the revenue.

There has always been a case for some concessional tax treatment of pensions: -

- as a recognition of past taxes paid, both inside and outside superannuation; and
- to influence behaviour – as an incentive both to contribute to superannuation in the accumulation phase and, given that they mitigate against mortality (and in the case of life pensions - investment) risk and estate planning, to encourage individuals to invest in lifetime (or approximating lifetime) pensions.

Given the proposed abolition of RBLs, and the proposal to replace lifetime and allocated pensions with “minimum draw down” pensions it must be queried why earnings on assets - in excess of a reasonable amount - would be tax exempt. As high-income individuals are generally always going to save for retirement in one form or another, the cost of the tax concessions provided as an incentive to save and remain within superannuation must be examined. Further, given the relaxation of the rules regarding pension payments, which no longer guard against mortality (and in the case of life pensions – investment) risk or estate planning (or for that matter dissipation of assets), it should be queried why superannuation pensions should be rewarded with tax concessions when they are little different to non-superannuation investments.

3.2 Simplifying Pension Rules

Replacing multiple rules for multiple types of pensions with a simple set of rules

Under the proposed arrangements, all pensions that meet simplified minimum standards would be taxed the same on payment. Earnings on assets supporting these pensions would remain tax exempt.

The proposal to simplify the superannuation pension standards makes superannuation pensions little different to other non-superannuation investments. Given the abolition of RBLs and the tax free status of pension assets there is a significant incentive to avoid tax in the payment phase and to estate plan.

Recommendation: -If pensions are to be simplified in such a fashion – that RBLs be retained to limit the cost of pensions assets being tax exempt.

3.3 Transition To Retirement

The proposed new rule would allow no more than 10 per cent of the account balance (at the start of each year) to be withdrawn in any one year. This caps the amount that could be withdrawn to prevent excessive dissipation of assets.

Only observation is that this is inconsistent with post retirement pensions where there is no such cap to prevent excessive dissipation of assets.

CHAPTER 4. SIMPLIFIED CONTRIBUTION RULES

It is proposed to streamline the rules for deductible contributions. This involves removing the age-based limits on deductible contributions.

Under the proposed arrangements, a limit on concessional deductible contributions of $50,000 per person per annum would apply. These contributions would be taxed at 15 per cent.

Where the ATO identifies that a person's deductible contributions have exceeded $50,000 in a financial year, the amount in excess of $50,000 would be taxed at the top marginal tax rate.

Removal of the age-based limits is to be commended.

As discussed previously, however, this limit (in conjunction with the limit on undeducted contributions): -

- as a proxy substitute for an RBL measure - is not necessarily effective in limiting the amount of benefit accrued to a reasonable amount;
- being an annual measure - is arbitrary in its application and can result in inequitable outcomes; and
- administratively – is extremely complex and will end up emulating the surcharge.

Furthermore, there are additional complexities involved in the application of this measure to both fund and unfunded defined benefit schemes – all of which can be avoided with RBLs.

4. Simplified Contribution Rules

Under the proposed arrangements, a limit on concessional deductible contributions of $50,000 per person per annum would apply. These contributions would be taxed at 15 per cent.

As a proxy for RBLs this proposed measure is ineffective, inequitable in its application and unduly complex to administer.

Recommendation: -That in lieu of this measure RBLs are retained (and possibly significantly increased) and that the concept of contribution limits be abolished. Further, that consideration be given to retaining tax on benefits in excess of the tax-free threshold (which could be increased significantly).

4.4 Age-Based Limits And Deduction Rules

It is proposed that age-based deduction limits be abolished and a proposed limit of $50,000 of deductible contributions per annum be imposed.

4.5 Undeducted Contributions

To ensure the concessions are targeted appropriately, a cap of $150,000 a year (three times the proposed concessional contributions limit) on the amount of post-tax superannuation contributions a person can make would apply.

Recommendation: - Given they have limited effect with respect to high-income earners \ high net worth individuals, and the administrative complexity involved (including with respect to defined benefit funds) - no limits should be imposed on contributions \ deductibility but instead RBLs should be retained, modified and the amounts possibly increased.

CHAPTER 5 CONTRIBUTION INCENTIVES FOR THE SELF-EMPLOYED

5.1 Age-Based Limit And Deduction Rules

It is proposed that the deductibility of contributions by the self-employed (and other persons who are currently eligible for a deduction) be treated in the same way as contributions made for the benefit of employees.

As stated above, it would be preferable if contribution limits were not imposed and instead RBLs were retained. The proposal that the deductibility of contributions by the self-employed be treated in the same way as contributions made for the benefit of employees is to be commended.

5.2 Extension Of The Government Co-Contribution Scheme To The Self-Employed

It is proposed to extend the Government co-contribution scheme to the self-employed, effective from 1 July 2007.

This proposal is to be commended.

CHAPTER 6 AGE PENSION ARRANGEMENTS

6.1 Pension Assets Test

*It is proposed that the pension assets test taper rate be halved from 20 September 2007 so that recipients only lose $1.50 per fortnight (rather than $3) for every $1,000 of assets above the relevant threshold***.**

Recommendation: -As one of the major benefits in qualifying for even a part aged pension is eligibility for such things as the pensioner health care rebate \ pharmaceutical benefits scheme – perhaps consideration could be given to separating the (lower) eligibility for the pension from (higher) eligibility for the PBS. This would have the effect of creating a "middle" group of self-funded retirees whose assets are too high to receive the pension but who retain eligibility for the PBS scheme.

6.2 Abolition Of The 50 Per Cent Assets Test Exemption For 'Complying' Income Streams

The current 50 per cent assets test exemption for 'complying' income streams would be removed from 20 September 2007.

Recommendation: - Given the proposed "pension" has significantly increased the opportunity for concessionally taxed estate planning and reduced measures to mitigate mortality (and in the case of life pensions – investment) risk, consideration should be given as to whether there is still a place for lifetime (and possibly allocated) pensions within superannuation which should be afforded special treatment.

CHAPTER 7. OTHER MEASURES

7.1.2 Proposed new arrangements for employer ETPs

It is proposed that employer ETPs be comprised of two components — exempt and taxable. The exempt component would be any post-June 1994 invalidity amount and the pre-July 1983 amount. This would be exempt from tax. The taxable component would be the post-June 1983 amount. This would be taxed at 15 per cent for amounts up to $140,000 for recipients aged 55 and over and at 30 per cent for those aged under 55. Amounts in excess of $140,000 would be taxed at the top marginal tax rate. As there would be no lifetime limit on concessionally taxed payments, employers would not be required to report these payments to the ATO.

Recommendation: -In the absence of an RBL - like limit and a reporting mechanism this would be open to obvious abuse, as it would be possible for an employer, or related employers, to pay a series of ETPs, each one of which was less than $140,000. Accordingly, RBLs and reporting to the ATO should be maintained.

7.2 Non-Quoting Of Tax File Numbers
7.2.1 Tax on contributions

It is proposed that in cases where a tax file number has not been quoted to a taxed fund, the top marginal tax rate would apply where taxable contributions to that fund for a member exceed $1,000.

Recommendation: - Given that the mandatory nature of superannuation and the majority of members are standard employer-sponsored members, this measure is punitive in the extreme and will prove difficult and costly to administer. Even if the proposal to abolish tax on benefits is implemented, it would be preferable for the consequences of there being no TFN to be tax levied on the benefit at the top marginal rate.

CHAPTER 9. MAKING IT EASIER TO FIND AND TRANSFER SUPERANNUATION

9.2.1 Portability

It is proposed that the maximum time limit be reduced from 90 days to 30 days.

It is proposed that these 'retriggering' provisions be removed so that in all cases benefits must be transferred within 30 days from the date of the initial request.

It is proposed that all funds use a standard form for portability requests including standard proof of identity requirements to ensure uniformity amongst funds.

Recommendation: - As the "re-triggering" provisions are triggered by circumstances within the control of the member, not of the fund (such as the need to be able to confirm the identity of the fund or contact details of the roll - over fund) and to remove them will increase the risk of superannuation benefits being paid to the wrong person, that the "triggering" provisions be retained.

Recommendation: -While a standard form and proof of identity requirements would be desirable, this fails to recognize the significant difference between the historical administrative practices of funds and - in particular the point in time at which funds identify their members. To impose a "lowest common denominator" requirement on all funds would be inequitable and, as such, funds should, within reason, be able to determine the most appropriate requirements given their operations.

9.2.2 Lost Members Register

It is proposed that the ATO be given a more active role in arranging transfers on behalf of lost members. This would greatly simplify the consolidation process for members by reducing the need for their involvement.

Under such an approach, the ATO would write to lost members advising them of the existence of their lost account and offering them a number of choices, including consolidating the account with an active account, or indicating that they are satisfied with the account's inactive status.

Where the member requests that their lost account be consolidated with an active account, the ATO would deal with the relevant funds and arrange the transfer on the member's behalf. This process would be facilitated by the development of a standard portability form and standardised proof of identity requirements which could be included with the ATO mail out.

Recommendation: - That participation in such a scheme is conditional on the government fund making good any losses incurred by funds or members as a result of benefits being paid to the wrong person.

Should you have any queries with respect to this, please do not hesitate to contact the writer.

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