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

Via email: simplesuper@treasury.com.au

9 August 2006

Dear Sir

A PLAN TO SIMPLIFY AND STREAMLINE SUPERANNUATION

On behalf of the Association of Grant Thornton firms in Australia, we enclose herewith our detailed response to the proposed changes to superannuation - "A plan to simplify and streamline superannuation".

Should you like to discuss any aspect of the above in further detail, please do not hesitate to contact me on 07 3222 0202 or pbanister@gtqld.com.au.

Yours faithfully
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Grant Thornton's response to

"A Plan to Simplify and Streamline Superannuation"

9 August 2006

Grant Thornton

Contents

Introduction

The following submission is provided on behalf of the Association of Grant Thornton firms in Australia. The submission is in response to the document entitled "A Plan to Simplify and Streamline Superannuation" ("the Plan") which was released by the Government on 9 May 2006.

Grant Thornton firms are prominent worldwide in advising growing entrepreneurial and owner managed businesses entities, their business owners and individuals. In particular, the Australian member firms specialise in advising business owners and expatriates on taxation, structural and retirement issues.

Our submission is separated into general comments and specific comments. The general comments relate to our broad response to the Government's proposed new superannuation system. The specific comments address the respective Chapters of the Detailed Outline of the Plan. These incorporate comments about the needs of business owners and expatriates. An additional section is included for the latter due to the special issues that arise for the expatriate market.

Overview

Overall

We support the objective of making superannuation more attractive and easier for members to understand.

The restructure of the taxation system for superannuation from three tiers of taxation to two tiers of taxation is supported. In particular, removal of the tax impact on end benefits beyond age 60 will create incentive to maximise retirement savings rather than hampering accumulations due to concerns about taxation issues.

The proposed concessional tax treatment for withdrawals beyond age 60 creates incentive to utilise the Australian superannuation system, which in turn creates incentive to work and save.

Specific Outcomes

The removal of the RBL system will reduce the tax bias that is often necessary in retirement planning decisions. This will lead to less complexity and better administration of the system generally.

Improving access to the concessions by removing the reasonable benefit limits ("RBLs") and permitting tax deductible contributions to age 75 creates incentive to work beyond the normal retirement age which should sustain the available talent pool while the "baby boomer" generation ages.

Operation of Proposed Limits

We acknowledge that the combined effect of the removal of the tax on certain end benefits and the removal of the RBL's requires that limits apply on contributions to prevent abuse of the concessions.

However, we consider that the approach proposed in the Plan limits access to the concessions in an unrealistic and unreasonable manner. In particular, greater allowance should be made for individuals whose income or cashflow is uneven from year to year. Also, the proposed transitional period applying to people over 50 should be a permanent feature.

Further, the proposed limitations on access to the system via post-tax contributions operate unfairly against small business owners, returning expatriates, or immigrants. The issues impacting on these types of superannuants are discussed in our submission.

Recommendations

We recommend that:

1. the tax-free status of superannuation benefits that is afforded to a person over 60 while they are living be expanded to lump sum death benefits paid to their adult child beneficiaries (refer page 8)
2. the current policy of allowing pensions to revert to adult children should be retained (refer pages 9)
3. members be permitted to commute any pensions that they have already commenced so that they can be restructured to accommodate the new system and pension standards (refer page 10)
4. the proposed contribution limits be increased (refer page 12)
5. the proposed transitional rule for persons over 50 be maintained permanently (refer page 13)
6. the limit for concessional (i.e. deducted) contributions be increased to $150,000 for people over age 50 (refer page 13)
7. all contribution limits be indexed according to AWOTE (refer page 14)
8. the "work test" be removed (refer page 14)
9. the "work test" should not apply beyond the year during which actual contributions are made (refer page 15)
10. for calculating the amount to be returned to members due to excess post-tax contributions, earnings should be calculated via a default earning rate, with taxpayers having the option upon election to apply the actual earning rate (refer page 15)
11. a tax rate of 35.6% should apply to earnings paid on excess post-tax contributions (refer page 15)
12. the post-tax contributions limit should not operate on a "use it or lose it" basis; rather up to two years carry forward (ie unused arrears) and two years bring forward be permitted. This means that up to five years be permitted to be contributed at once (refer page 16)
13. business people be provided with a larger exemption to the cap than is proposed under paragraph 4.5.3 of the Detailed Outline. Rather, the exemption from the cap should apply for all proceeds of the business rather than merely the Subdivision 152-D amount, to a maximum of the small business maximum asset value threshold (refer pages 16)
14. the existing system of lodging Member Contribution Statements be maintained to facilitate the managing of contribution limits (refer page 17)

15. the penalty tax assessed on excess contributions be proposed to members first who then have opportunity to object to the assessment and select the fund that will pay the tax (refer page 17)
16. expatriates be provided with a general exemption to the cap to permit catch-up contributions. The exemption should be calculated by reference to the years of non-residency and the post-tax contribution limit applying in the year of contribution (refer page 18)
17. transfers from foreign superannuation funds be in addition to any post-tax contribution limit. That is, such transfers should benefit from an exemption to the cap (refer page 15 and page 18)
18. as an alternative to the recommendations concerning contributions, we recommend that all contribution limits apply on a lifetime basis; i.e. say $1.5m concessional contributions and $4.5m post-tax contributions (refer page 18)
19. all taxpayers be entitled to a claim a deduction for personal superannuation contributions (refer page 20)
20. the Government monitors large super withdrawals to ensure that no inappropriate Centrelink advantages are obtained (refer page 21)
21. if there is no alternation to the concessional contribution limits and post-tax contribution limits, that the existing policy of permitting rollover of ETPs to super remain in place (refer page 22)
22. tax concessions proposed for benefits from untaxed schemes be monitored. Consideration should be given to extending these concessions as the extent of unfunded liabilities diminishes (refer page 23)
23. the proposed tax treatment of untaxed schemes also apply for taxable withdrawals from foreign superannuation funds (refer page 23)

The Government should also consider entrenching the key benefits of these changes within the law. This will give the public confidence that the "goalposts will not move" after their contributions are made. In this regard, people are conscious of the many changes in superannuation laws over the years and require confidence that they will not be adversely affected.

Chapter 2 – Taxation of benefit payments

Grant Thornton member firms support the proposed tax-free status for lump sum or pension benefits from a taxed source being paid to a person over age 60.

Further, we support the simplification of components of superannuation balances into two simple exempt and taxable components for the purposes of taxable benefit payments.

We support the proposal to maintain the low rate threshold for persons under 60 and that it be indexed as discussed at paragraph 2.3.1 of the Detailed Outline. With respect to death benefits, paragraph 2.4 proposes a quite similar tax treatment of lump sums as applies under the current rules.

Recommendation One

We recommend that the tax-free status of superannuation benefits that is afforded to a person over 60 while they are living be expanded to lump sum death benefits paid to their adult child beneficiaries.

It is illogical not to extend that status beyond death. In this regard, people over 60 who are terminally ill will be forced to play a taxation version of "Russian roulette", i.e. do they:

- withdraw their money from the superannuation system tax-free in lump sum form immediately? or
- leave the money in the superannuation system which potentially could cost their family 16.5% tax upon withdrawal after death?

It is inappropriate to impose such financial stress upon seriously ill people.

It is acknowledged that this issue will not be critical where a "dependant"[1] exists for tax purposes. However, with the ageing population, considering distributions where adult children[2] are the only potential beneficiaries will be very common. Thus, any tax bias in favour of making decisions on one's "death bed" should be removed.

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[1] It is assumed that the new system will maintain the dichotomy between the definitions of "dependant" for SIS and taxation purposes, where the former includes adult children while the latter excludes them.

[2] Who are regarded as "dependants" for SIS purposes but not taxation purposes

Recommendation Two

The current policy of allowing pensions to revert to adult children should be retained.

It is stated in paragraph 2.4 of the Detailed Outline that pensions will be unable to revert to a non-dependant of a member. Under current law, pensions can revert to SIS-dependants only. The only difference between SIS-dependants and tax dependants is that adult children are not automatically dependants for tax purposes.

We recommend that the current policy be maintained wherein pensions can revert to adult children of a deceased. We recognise that the policy intent is to limit access to ongoing superannuation concessions in such circumstances. However, we do not consider that the overriding policy intent of simplicity is achieved by such a change in policy.

Chapter 3 – Payment rules simplified

We support the removal of the compulsory withdrawal rule that potentially commences once a person reaches age 65 depending on their work status and is compulsory from age 75. Removal of this rule provides retirees with the flexibility to live off their money outside superannuation before drawing on their superannuation benefits.

We support the simplification of pension standards as contained in part 3.2 of the Detailed Outline. The proposed standards appear easy to understand and provide members with greater flexibility.

In particular, the apparent relaxation of the minimum annual pension payments when compared with the current allocated pension and market linked pension rules is supported. This will overcome the current need to unwind investment structures earlier than may be economically viable. Rather, the relaxed payment standards will permit members to have stronger growth elements to their portfolios which should lead to retirement benefits be sustained for a longer term.

We also support the proposed ability to draw up to 100% of a member's account balance as a pension payment (except in the transition to retirement phase). However, we suggest that Centrelink claims by people who draw large proportions of their balance should be monitored. This is discussed in our comments in relation to Chapter 6 contained below.

Recommendation Three

We recommend that members be permitted to commute any pensions that they have already commenced so that they can be restructured to accommodate the new system and pension standards.

The Plan involves a significant reform to the superannuation system. People deserve the opportunity to re-consider how they approach their retirement given the extent of the proposed reforms.

For allocated pensions, no special relief is required as they are already commutable.

For market-linked pensions and non-commutable allocated pensions (ie in transition to retirement phase), both of these are account-based pensions where the member is fully at risk. Accordingly, there should be no reason in practice or policy why such pensions should not be permitted to be commuted.

For other (ie defined benefit) pensions[3], complications will arise if members are provided with an opportunity to commute such income streams. This is especially the case where the pension is provided by a public offer or corporate superannuation fund. Such funds would most likely have the investment strategies for their reserves well established and it may be unwieldy for these to be unwound.

However, in the interests of simplicity, at least Self Managed Superannuation Funds should be provided with the opportunity to commute defined benefit pensions that they offer. Given the limited number of members, the process of commutation and dealing with any surplus will be transparent. Further, as the decision-makers for such funds are also the members, there is little risk that the various stakeholders will be disadvantaged if commutation is permitted.

It is suggested that any opportunity for commutation be subject to a time limit of, say, two years.

As noted in **Recommendation Two** above, we recommend that adult children should continue to be permitted to be reversionary beneficiaries of pensions.

[3] such as lifetime pensions, life expectancy pensions and flexi pensions

Chapter 4 – Simplified contribution rules

The combined effect of the limited tax applying upon withdrawal from super and the removal of the RBLs requires that limitations be placed on the extent of contributions. In doing this, the rules should ensure that all Australians have reasonable access to superannuation concessions. However, we acknowledge that the access rules should not be so liberal as to make the wealthy the main beneficiaries of superannuation.

The plan proposes that contributions be limited in the following manner:

- $50,000 deductible contributions per annum be subject to concessional tax at 15%
- for persons who are aged 50 and above during the first five years of operation of the provisions, a $100,000 limit will apply
- $150,000 per annum post-tax (or undeducted) contributions per annum
- it will be possible to bring forward up to two years of post-tax contributions limits – i.e. so that $450,000 per time can be contributed, although this is proposed to be subject to the "work test"

Should contributions exceed the proposed limits, the following consequences will arise:

- excess "concessional" contributions – i.e. deducted contributions – will be taxed at 45%, being the top marginal rate
- excess post tax contributions – i.e. undeducted contributions – will need to be refunded with earnings

In relation to the former, we note that an alternative would be to charge the taxpayer's marginal tax rate rather than the top tax rate. This is in light of the fact that the top marginal rate only applies once Taxable Income reaches a relatively high $150,000. However, the compliance costs involved in administering such a system would probably be counter productive. Accordingly, we would support a 45% rate.

Recommendation Four

We recommend that the proposed contribution limits be increased.

When assessing what caps are reasonable, we recommend that the Government should err on the higher side so that people will have more "room up their sleeve" in later years to save for their retirement. In this regard, the "use it or lose it" rule may compel even quite young people to seriously consider making large contributions to super. When compared with the taxpayers who are the main beneficiaries from the superannuation system at the moment, such contributors operate in a drastically different life-cost paradigm than those approaching retirement at the moment, including:

- paying for their education through either the HECS system or through private universities[4]
- having a more significant burden of home ownership including very large mortgage commitments in comparison with annual income
- the potential that the impact of any economic downturn arising mid-career will be exacerbated because of such higher life-costs. Suffice to say that Treasury modelling should not assume that people laden with large mortgages and education liabilities will make serious provision for their retirement until they have attained a sound or financial footing

Recommendation Five

We recommend that the proposed transitional rule for persons over 50 be maintained permanently.

Due to the reasons outlined above, it is unlikely that people will have sufficient funds to commence providing for their retirement until late in their careers: i.e. after they have paid off items such as their:

- education
- home mortgage
- children's education
- business debt

The policy imperative for larger contribution limits over 50 will be even stronger in future.

Accordingly, a larger limit for such people should be a permanent feature of the system.

Recommendation Six

We recommend that the limit for concessional (ie deducted) contributions be increased to $150,000 for people over age 50.

This recommendation is made in light of the discussion above. There are many reasons why people may reach the age of 50 and not have accumulated significant superannuation. Some of these may be justified while others may have been "self-inflicted". However, that is not important. What is important is that people have the ability to achieve the status of self-funded retiree, thus being a lesser burden on the taxpaying community in retirement.

Implementing our recommendation provides Australians over 50 with the ability to "get serious" about retirement saving and achieve, or make significant progress towards, financial independence.

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[4] People approaching retirement are less likely to have had any significant liability for education expenses during their working life as either tertiary education was less prevalent for their generation or they were able to take advantage of free education that was introduced during the early 1970s. Conversely, people born during the late 1960s and beyond will be more likely to have had such a liability as undertaking tertiary education was more common and the HECS scheme was introduced in 1989.

The graph attached at Appendix A compares the position of three people making concessional contributions:

- Member 1 ("put away early"): who commences accumulating super from age 25 with SGC contributions, but boosts their contributions to $50,000 at age 35 which continues to age 60
- Member 2 ("keep some aside"): who also commences accumulating super from with SGC contributions, but boosts their contributions to $25,000 at age 40 and then to $50,000 at age 50, which continues to age 60
- Member 3 ("keep some aside – recommended"): is the same as Member 2 but obtains the benefit of our recommendation and is able to contribute $150,000 each year from age 50

The graph at Appendix A illustrates that $50,000 is insufficient where people cannot make sufficient provision for retirement throughout the years to age 50. However, implementing the recommendation of increasing the limit to $150,000 at age 50 provides the ability for such people to "recover lost ground".

While an increase of the limit to $150,000 will not of itself enable the full shortfall, when compared to Member 1, to be recouped, it provides a much greater ability to achieve financial independence that the proposed low $50,000 limit. Any shortfall can be reduced via post-tax contributions or utilising exemptions to the cap that are discussed elsewhere in this submission.

Appendix B includes the supporting calculations, which assume 8% p.a. earnings after costs. The assumption is also made that income will increase by $5,000 per annum each year. It is considered that this is unlikely in earlier years, with the result that the two "keep some aside" members are likely to be further behind. This is because their SGC accumulations at age 40 are likely to be less than is depicted.

Recommendation Seven

We recommend that all contribution limits be indexed according to AWOTE.

We recommend that limits be indexed so that they maintain their economic value. In this regard, it is counter intuitive for the modelling in the Detailed Outline to apply indexation when there is no maintenance of time value provided for in the contribution limits.

Recommendation Eight

We recommend that the "work test" be removed.

Under current law, a "work test" applies before non-mandated contributions can be accepted by a superannuation fund trustee for persons over age 65. They must have worked at least 40 hours in 30 consecutive days within the financial year before contributions can be accepted.

There is little reference to the "work test" within the Detailed Outline of the Plan. It is referred to four times in the context of removing the compulsory withdrawal rules and once when explaining the current contribution rules for 65 to 74 year olds. This infers that the "work test" was to be removed for contributions under the new system. However, the "work test" is referred to within the Fact Sheet about Post-Tax Contributions on the Simpler Super web site.

We recommend that the work test be removed. This is consistent with the objective of making the new system as simple as possible. It is also consistent with the Detailed Outline of the Plan.

Recommendation Nine

In particular, the "work test" should not apply beyond the year during which actual contributions are made.

If Recommendation Seven is not adopted, we recommend that the "work test" not be applied to deem any contributions made via the averaging rule to be excess contributions in later years. Such an approach is suggested in the Fact Sheet about Post-Tax Contributions on the Simpler Super web site. There is no mention of any tolerance to be made for unforeseen changed circumstances that give rise to failure of the "work test" such as disability of member or relative, inability to obtain work, or the death of a member or their relative.

The extra compliance costs and potential confusion arising from such a requirement are likely to far exceed any loss to the revenue, if any, by allowing averaging to be used in the last year of work.

Post-tax contributions

With respect to the rules concerning return of post-tax contributions the Plan requires refinement in accordance with the following recommendations:

Recommendation Ten

For calculating the amount to be returned to members due to excess post-tax contributions, earnings should be calculated via a default earning rate, with taxpayers having the option upon election to apply the actual earning rate.

To reduce compliance costs, a default interest rate should be applied when calculating the extent of earnings to be returned with the excess post-tax contributions. This rate should be set at a benchmark above the RBA risk free rate. It is recommended that the benchmark rate for either Division 7A or FBT loan benefit purposes be applied. Any higher benchmark would be onerous and give rise to a double penalty, given that a penalty tax rate is to be applied on the earnings.

However, upon election, taxpayers should have the ability to apply to have the precise earning rate utilised. This will ensure that more extensive compliance costs will only be incurred by those whose circumstances warrant it.

Where there has been a loss during the period during which the excess contributions are held, this should reduce the overall refund required to prevent abuse of the preservation rules.

Recommendation Eleven

A tax rate of 35.6% should apply to earnings paid on excess post-tax contributions.

Paragraph 4.5.1 of the Detailed Outline advises that any earnings will be "effectively taxed" at the top marginal tax rate.

We propose that the tax rate of 35.6% plus 1.5% Medicare Levy is a suitable rate. If a fund earns $100, 15% tax will apply. If our proposed rate is applied to the $85 remaining, the overall tax will reach an effective tax rate of approximately 45% plus 1.5% Medicare Levy. That is, for each $100 of earnings, slightly less than $53.50 after-tax will remain.

Application of such a rate will align the treatment with the treatment that applied up to 30 June 2006 on excess benefits[5].

Recommendation Twelve

That the post-tax contributions limit should not operate on a "use it or lose it" basis; rather up to two years carry forward (ie unused arrears) and two years bring forward be permitted. This means that up to five years be permitted to be contributed at once.

The Plan proposes that a taxpayer can contribute post-tax contributions up to two years ahead. However, no carry back is proposed for an unused contribution limit – i.e. "use it or lose it".

The "use it or lose it" approach is considered inappropriate for post-tax contributions. While such an approach may benefit the wealthy or those who have a steady ongoing income, it does not benefit those people who have inconsistent income levels or, more particularly, have their wealth locked away in their business. In this regard, "one size" rarely "fits all".

The ability to make catch up contributions should be a feature of the system.

Recommendation Thirteen

We recommend that business people be provided with a larger exemption to the cap than is proposed under paragraph 4.5.3 of the Detailed Outline. Rather, the exemption from the cap should apply for all proceeds of the business rather than merely the Subdivision 152-D amount, to a maximum of the small business maximum asset value threshold.

Many business people regard their business as their "super". Further, many business people only unlock economic value when they sell their business or sell a major business asset (eg their premises). Implementing this recommendation will provide such people with access to the superannuation system that otherwise may not arise.

It is inappropriate to limit the exemption to the cap to the Subdivision 152-D amount due to the following:

- as little as only one-quarter of the proceeds on sale will be able to be contributed to super rather than the full proceeds
- it promotes selling a business rather than selling the entity conducting the business, thus increasing compliance costs
- it will reduce the attraction of applying the currently more effective 15 year exemption per Subdivision 152-B
- it will reduce access to superannuation for those who do not wish to apply the small business concessions or those who do not meet the small business eligibility requirements

All business people need relief from the harsh operation of the limits, rather than merely those who qualify for the small business concessions. Otherwise, the perverse consequence of growing one's business could be an ineffective retirement. A tax bias against small business growth is inappropriate.

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[5] It is noted that the rate of tax on excess benefits was inadvertently not reduced when the *Income Tax Rates Act 1986* was recently updated to incorporate the new top rate of 45%. Rather than 38% applying to excess benefits, the rate should have been reduced to at least 35.6% to align with the new tax rates.

Business people cannot be expected to enjoy steady incomes and thus require tolerances to be incorporated into the system for their benefit. Such people are compelled in practical terms to put money aside for unforeseen events such as large items of capital expenditure, sudden needs for working capital or the funding of losses when an economic downturn or poor trading conditions arise.

Of course among the major beneficiaries of the business person keeping such money available rather than shifting it into the superannuation environment are the employees. Such people would be entitled to a steady income and would be entitled to make regular contributions to superannuation.

To restrict business people's flexibility to access the superannuation system leads to a curious bias within the proposed system that works against the interest of private business owners. That this group is purportedly responsible for employing a large proportion of Australia's workforce, and is thus indirectly the funder of their retirement needs, necessitates an improvement in the proposed position by providing an enhanced exemption from the cap.

Recommendation Fourteen

We recommend that the existing system of lodging Member Contribution Statements be maintained to facilitate the managing of contribution limits.

Superannuation funds will face significant issues when administering the contributions caps. We have considered other options to administer the limits but consider them inappropriate. This is in the expectation that Member Contributions Statements, or something similar, would still need to be lodged as the ATO would expect to "data match" information collected from each fund with the output from any alternative system.

In particular, we consider that any system that involves managing these caps via personal taxation lodgements or other regular return by a member would significantly increase compliance costs.

Recommendation Fifteen

We recommend that the penalty tax assessed on excess contributions be proposed to members first who then have opportunity to object to the assessment and select the fund that will pay the tax.

Once the Commissioner has concluded that excess concessional (i.e. deductible) contributions have been made, one must determine how the excess tax is levied. If there is one single superannuation fund involved, the position may be quite simple. But this is subject to the funds being still held within that fund.

The position will be more complicated where multiple funds are involved.

In light of these issues, we recommend that the following approach occur:

- the ATO issues a notice to the member advising that excess tax has been assessed and nominates a fund that is proposed to be charged with the assessment

- members have the opportunity to object against the assessment and also to elect that an alternative fund be assessed. A reasonable period should be provided – say 60 days from issue of assessment
- if the member objects, this is resolved in accordance with the procedures outlined in the *Taxation Administration Act*
- if the member does not object but nominates an alternative fund, that fund is assessed
- if the member does not respond within the prescribed period, the nominated fund is assessed
- if the member's balance is insufficient to pay any tax, the member is assessed, although this can be assigned to an alternative fund upon election

Recommendation Sixteen

We recommend that expatriates be provided with a general exemption to the cap to permit catch-up contributions. The exemption should be calculated by reference to the years of non-residency and the post-tax contribution limit applying in the year of contribution.

Expatriates should be provided with a general exemption to the cap to permit catch-up. This exemption should be calculated by reference to the number of full years as a non-resident and the post-tax contribution limit in the year of catch-up contribution. The limit should permit catch-up contributions to a maximum of, say, 10 years (ie if a person is away for 5 years, they can make 5 years worth of contributions; if they are away 15 years, they can only make 10 years worth of catch up contributions). Any catch-up should be made within one year of recommencing residency

The reasons underlying the need for such an exemption are discussed under a heading "Expatriates and international retirees" towards the end of this submission.

Recommendation Seventeen

We recommend that transfers from foreign superannuation funds be in addition to any post-tax contribution limit. That is, such transfers should benefit from an exemption to the cap.

Paragraph 4.6.1 proposes that the current tax treatment for transfers of overseas super funds into an Australian fund be maintained. We recommend that this approach remain including the flexibility to roll monies into superannuation via an exemption to the cap. This is discussed further under a heading "Expatriates and international retirees" towards the end of this submission.

Recommendation Eighteen

As an alternative to the recommendations concerning contributions, we recommend that all contribution limits apply on a lifetime basis; i.e. say $1.5m concessional contributions and $4.5m post-tax contributions.

This alternative, which incorporates an assumed ability to pay, say, 30 years worth of maximum contributions throughout one's life, is much simpler than any other proposals. It puts the onus on taxpayers to organise their affairs during their working life so that they can take advantage of the limits, but in a manner that is flexible to their circumstances.

Further, due to time value of money benefits, it promotes retirement saving earlier which should benefit the economy generally.

This approach would address many of the concerns highlighted elsewhere in this submission, particularly those for business owners and expatriates.

We would envisage that exemptions to the cap should also apply on sale of businesses and for transfer of foreign superannuation entitlements.

Chapter 5 – Contribution incentives for the self employed

We endorse the proposal to allow the self employed full deductibility for their contributions. This is a long overdue reform.

We also endorse providing the self employed with access to the Government's Co-Contribution Scheme.

Recommendation Nineteen

We recommend that all taxpayers be entitled to claim a deduction for personal superannuation contributions.

We recommend that the scope for personal superannuation contributions be extended beyond the self employed and apply to all taxpayers. In particular, employees are currently denied deductions for personal contributions where, broadly, they are provided with employer superannuation support.

To overcome this restriction requires employees to enter into salary sacrifice arrangements early in the financial year to ensure that they attain the maximum employer contributions rather than merely the SGC contributions. To make such decisions early in a financial year when the availability of cash towards the end of that year is an unknown factor is a disincentive for people to save for their retirement.

Our proposal to permit all taxpayers to benefit from personal superannuation contribution deductions will provide employees with the flexibility to make contributions towards the end of the financial year when their personal financial position is more certain.

In making this recommendation, we acknowledge that all employees have the ability to make post-tax contributions to boost their retirement wealth. However, the availability of an immediate tax break will provide greater incentive to save for retirement.

Chapter 6 – Age pension arrangements

We support the proposed reforms contained in Chapter 6 of the detailed outline.

Recommendation Twenty

We recommend that the Government monitors large super withdrawals to ensure that no inappropriate Centrelink advantages are being obtained

As noted above, we support the greater flexibility that will be provided to retirees in structuring their retirement incomes. However, we are concerned about the consequences of providing members over 60 with the ability to withdraw up to 100% of their balance in lump sum or pension form at any time, subject to the preservation requirements.

If there is no Centrelink disincentive for doing this, there is potential for excessive consumption (e.g. upgrading the home, acquiring diminishing assets such as a better car or a boat, or going on a significant holiday, etc) dissipating retirement savings. If this occurs, this is not considered in the interests of retirees, the broader taxpayer group and the economy generally.

However, we acknowledge that the current system already permits more than $585,000 in after-tax benefits to be withdrawn as a lump sum[6] without impact. Accordingly, we recommend that withdrawal and consumption activity be monitored rather than introducing a specific rule as an initial part of the system.

[6] That is $678,149 lump sum RBL less tax on this amount (tax at a rate of 16.5% is reduced by the $135,950 lump sum tax-free threshold)

Chapter 7 – Other measures

The most significant aspect of this Chapter is its proposed changed treatment of employer ETPs.

Recommendation Twenty-One

If there is no alteration to the concessional contribution limits and post-tax contribution limits, we recommend that the existing policy of permitting rollover of employer ETPs to super remain in place.

In this regard, the proposed taxation arrangements on taxation of employer ETPs are sufficient to limit revenue leakage from such a proposal, in the absence of any other boost to contribution limits.

Chapter 8 – Untaxed schemes

We endorse the proposed introduction of tax concessions for untaxed schemes. In this regard, such concessions are becoming justified irrespective of any other reforms due the extent of efforts being made at the Federal Government level (i.e. through the Future Fund) and the State Government level to provide funding for superannuation liabilities in untaxed funds.

Recommendation Twenty-Two

We recommend that tax concessions proposed for benefits from untaxed schemes be monitored. Consideration should be given to extending these concessions as the extent of unfunded liabilities diminishes.

Recommendation Twenty-Three

We recommend that the proposed tax treatment of untaxed schemes also apply for taxable withdrawals from foreign superannuation funds.

In this regard, despite the proposed maintenance of benefits provided by Section 27CAA of the *Income Tax Assessment Act 1936*, the proposed approach does not adequately address the issues arising from holding foreign superannuation interests. To provide such concessions when the Australian Government or Australian employers have provided little or no funding to foreign superannuation accumulations will be of no cost to the Government. Conversely, it will make Australia a more attractive destination for expatriate retirees, which should give rise to capital inflows.

Chapter 9 – Making it easier to find and transferring superannuation

We support the measures outlined in Chapter 9 of the Detailed Outline.

Expatriates and international retirees

A looming issue to be addressed within the global market place is dealing with the needs of so-called "baby boomers" approaching retirement age. Given that the "baby boomer" generation was the first to make use of the opportunities to travel and work abroad in significant numbers, a substantial portion of the global expatriate population is approaching retirement age.

This has led to a large demand for consulting and investment advisory assistance from Australian citizens living and working abroad who intend to move back home to Australia or from foreign citizens living and working abroad who are considering using Australia as a retirement destination. The demand for such work is ever-increasing and is a growth business for Australian advisory firms.

However, the market for the expatriate dollar is a competitive one. Within our region, features include:

- New Zealand's recent "transitional resident' rules: which provide individuals who take up New Zealand tax residence for the first time (or recommence tax residence after a minimum 10 year period of absence) with a four year income tax exemption on virtually all foreign income. Combined with applicable tax treaty provisions these rules limit world-wide tax costs significantly and in particular allow individuals to receive overseas pensions tax free (both in New Zealand and overseas)
- Japan has similar rules to New Zealand pursuant to recent changes. A "non-permanent resident" is one who has been a resident of Japan for less than five in the previous ten years and is subject to Japanese tax on only Japan source income and any income remitted or paid into Japan
- the region has a number of territorial systems such as Hong Kong, Malaysia and Singapore
- not all tax systems in our region are comprehensive by nature
- not all tax systems in our region are administered in a manner similar to our system

To attract Australian citizens back home and to be attractive for the immigrant retiree, among other things, our tax system needs to have attractive features.

In this regard, Australia has been attractive including for two important reasons:

- the ability for expatriates to move to Australia and make large "catch-up" contributions to super to fund their retirement; and
- to rollover their existing foreign superannuation to an Australian fund

If such benefits are removed, this will compound the negative connotations created by having a comprehensive tax system with a significant headline rate of 46.5%. To reduce our attraction to expatriates by limiting their ability to make reasonable provision for their superannuation puts at risk the potential of large capital inflows into Australia, the advisory infrastructure that is being established to help them, and the subsequent boost in GST collections as they consume.

Such people are already afforded concessions such as with the Lifetime Health Cover regime whereby their absence from Australia is not regarded as a penalty. Accordingly, they should benefit from an exemption to the cap that enables "catch-up" superannuation.

Further, there are a number of practical difficulties that arise when benefits are held within foreign superannuation funds. Expatriates will often have accumulated a large amount within a foreign fund that is not able to be accessed until retirement or at least until they cease employment with the multi-national group. This can have the consequence that the amount remains in the foreign fund for a long duration without any solution other than to leave it there. This can include long periods during which the person is an Australian tax resident.

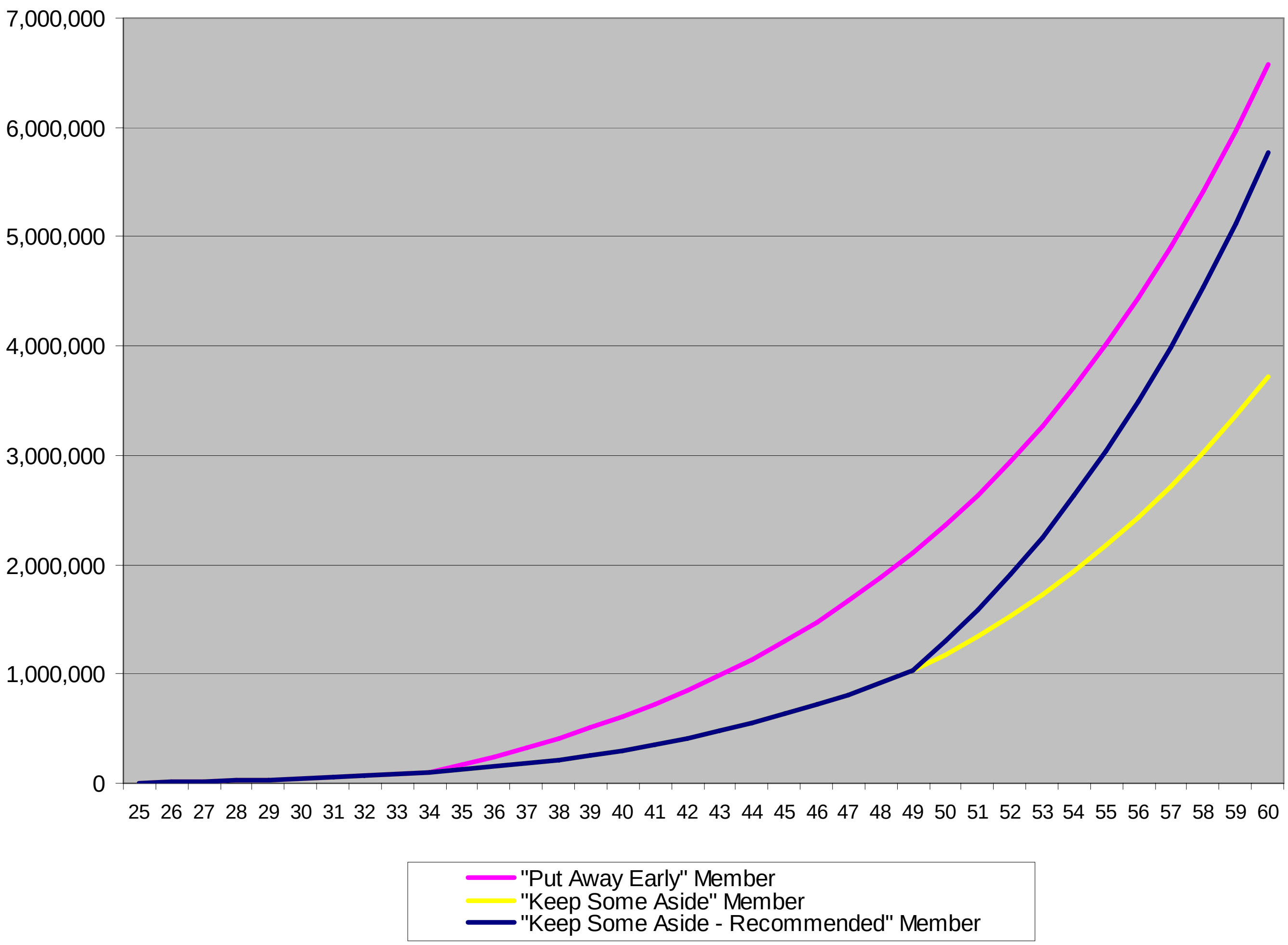
We have provided Recommendations 16 and 17 to overcome this problem, ie:

- that expatriates be provided with a general exemption to the cap to permit catch-up. This exemption should be calculated by reference to the number of full years as a non-resident and the post-tax contribution limit in the year of catch-up contribution. The limit should permit catch-up contribution to a maximum of, say, 10 years (ie if a person is away for 5 years, they can make 5 years worth of contributions; if they are away 15 years, they can only make 10 years worth of catch up contributions). Any catch-up should be made within one year of recommencing residency
- that any foreign superannuation funds be permitted to be transferred to an Australian complying fund as an exemption to the cap. This appears to have been contemplated by 4.6.1 of the Detailed Outline

However, not all foreign superannuation entitlements are capable of being rolled over (e.g. due to the special rules of the fund or due to special country rules). In such situations, the Australian Government would not have made any accumulation for such a person. Further, it is unlikely that the Australian Government would have given any tax concession to an employer making a contribution to a foreign fund. Accordingly, it is inappropriate to tax such benefits when equivalent untaxed schemes in Australia are to be afforded benefits as provided by Chapter 8 of the detailed outline.

Accordingly, we have made Recommendation 23 such that the tax treatment that is proposed for untaxed schemes also apply for the taxable portion of any amount withdrawn from a foreign superannuation scheme.

Appendix A – Graph for Recommendation Five



Appendix B – Supporting calculations

"Put Away Early" Member

Age	Salary	Employer Contrib.	Opening Bal	Contributions	Earnings	Tax	Closing Bal
25	40,000	3,600	0	3,600	0	540	4,140
26	45,000	4,050	4,140	4,050	331	657	9,178
27	50,000	4,500	9,178	4,500	734	785	15,198
28	60,000	5,400	15,198	5,400	1,216	992	22,806
29	65,000	5,850	22,806	5,850	1,824	1,151	31,632
30	72,500	6,525	31,632	6,525	2,531	1,358	42,045
31	80,000	7,200	42,045	7,200	3,364	1,585	54,194
32	90,000	8,100	54,194	8,100	4,335	1,865	68,495
33	105,000	9,450	68,495	9,450	5,480	2,239	85,663
34	115,000	10,350	85,663	10,350	6,853	2,580	105,447
35	125,000	50,000	105,447	50,000	8,436	8,765	172,648
36	135,000	50,000	172,648	50,000	13,812	9,572	246,032
37	145,000	50,000	246,032	50,000	19,683	10,452	326,167
38	160,000	50,000	326,167	50,000	26,093	11,414	413,674
39	165,000	50,000	413,674	50,000	33,094	12,464	509,232
40	170,000	50,000	509,232	50,000	40,739	13,611	613,581
41	175,000	50,000	613,581	50,000	49,087	14,863	727,531
42	180,000	50,000	727,531	50,000	58,202	16,230	851,964
43	185,000	50,000	851,964	50,000	68,157	17,724	987,844
44	190,000	50,000	987,844	50,000	79,028	19,354	1,136,226
45	195,000	50,000	1,136,226	50,000	90,898	21,135	1,298,259
46	200,000	50,000	1,298,259	50,000	103,861	23,079	1,475,199
47	205,000	50,000	1,475,199	50,000	118,016	25,202	1,668,417
48	210,000	50,000	1,668,417	50,000	133,473	27,521	1,879,411
49	215,000	50,000	1,879,411	50,000	150,353	30,053	2,109,817
50	220,000	50,000	2,109,817	50,000	168,785	32,818	2,361,420
51	225,000	50,000	2,361,420	50,000	188,914	35,837	2,636,171
52	230,000	50,000	2,636,171	50,000	210,894	39,134	2,936,199
53	235,000	50,000	2,936,199	50,000	234,896	42,734	3,263,829
54	240,000	50,000	3,263,829	50,000	261,106	46,666	3,621,601
55	245,000	50,000	3,621,601	50,000	289,728	50,959	4,012,289
56	250,000	50,000	4,012,289	50,000	320,983	55,647	4,438,919
57	255,000	50,000	4,438,919	50,000	355,114	60,767	4,904,800
58	260,000	50,000	4,904,800	50,000	392,384	66,358	5,413,541
59	265,000	50,000	5,413,541	50,000	433,083	72,462	5,969,087
60	270,000	50,000	5,969,087	50,000	477,527	79,129	6,575,743

"Keep Some Aside" Member

Age	Salary	Employer Contrib.	Opening Bal	Contributions	Earnings	Tax	Closing Bal
25	40,000	3,600	0	3,600	0	540	4,140
26	45,000	4,050	4,140	4,050	331	657	9,178
27	50,000	4,500	9,178	4,500	734	785	15,198
28	60,000	5,400	15,198	5,400	1,216	992	22,806
29	65,000	5,850	22,806	5,850	1,824	1,151	31,632
30	72,500	6,525	31,632	6,525	2,531	1,358	42,045
31	80,000	7,200	42,045	7,200	3,364	1,585	54,194
32	90,000	8,100	54,194	8,100	4,335	1,865	68,495
33	105,000	9,450	68,495	9,450	5,480	2,239	85,663
34	115,000	10,350	85,663	10,350	6,853	2,580	105,447
35	125,000	11,250	105,447	11,250	8,436	2,953	128,086
36	135,000	12,150	128,086	12,150	10,247	3,360	153,842
37	145,000	13,050	153,842	13,050	12,307	3,804	183,003
38	160,000	14,400	183,003	14,400	14,640	4,356	216,399
39	165,000	14,850	216,399	14,850	17,312	4,824	253,386
40	170,000	15,300	253,386	15,300	20,271	5,336	294,292
41	175,000	25,000	294,292	25,000	23,543	7,282	350,117
42	180,000	25,000	350,117	25,000	28,009	7,951	411,078
43	185,000	25,000	411,078	25,000	32,886	8,683	477,647
44	190,000	25,000	477,647	25,000	38,212	9,482	550,340
45	195,000	25,000	550,340	25,000	44,027	10,354	629,722
46	200,000	25,000	629,722	25,000	50,378	11,307	716,406
47	205,000	25,000	716,406	25,000	57,312	12,347	811,065
48	210,000	25,000	811,065	25,000	64,885	13,483	914,433
49	215,000	25,000	914,433	25,000	73,155	14,723	1,027,311
50	220,000	50,000	1,027,311	50,000	82,185	19,828	1,179,324
51	225,000	50,000	1,179,324	50,000	94,346	21,652	1,345,322
52	230,000	50,000	1,345,322	50,000	107,626	23,644	1,526,591
53	235,000	50,000	1,526,591	50,000	122,127	25,819	1,724,538
54	240,000	50,000	1,724,538	50,000	137,963	28,194	1,940,695
55	245,000	50,000	1,940,695	50,000	155,256	30,788	2,176,739
56	250,000	50,000	2,176,739	50,000	174,139	33,621	2,434,499
57	255,000	50,000	2,434,499	50,000	194,760	36,714	2,715,973
58	260,000	50,000	2,715,973	50,000	217,278	40,092	3,023,342
59	265,000	50,000	3,023,342	50,000	241,867	43,780	3,358,990
60	270,000	50,000	3,358,990	50,000	268,719	47,808	3,725,517

"Keep Some Aside - Recommended" Member

Age	Salary	Employer	Opening Bal	Contributions	Earnings	Tax	Closing Bal
25	40,000	3,600	0	3,600	0	540	4,140
26	45,000	4,050	4,140	4,050	331	657	9,178
27	50,000	4,500	9,178	4,500	734	785	15,198
28	60,000	5,400	15,198	5,400	1,216	992	22,806
29	65,000	5,850	22,806	5,850	1,824	1,151	31,632
30	72,500	6,525	31,632	6,525	2,531	1,358	42,045
31	80,000	7,200	42,045	7,200	3,364	1,585	54,194
32	90,000	8,100	54,194	8,100	4,335	1,865	68,495
33	105,000	9,450	68,495	9,450	5,480	2,239	85,663
34	115,000	10,350	85,663	10,350	6,853	2,580	105,447
35	125,000	11,250	105,447	11,250	8,436	2,953	128,086
36	135,000	12,150	128,086	12,150	10,247	3,360	153,842
37	145,000	13,050	153,842	13,050	12,307	3,804	183,003
38	160,000	14,400	183,003	14,400	14,640	4,356	216,399
39	165,000	14,850	216,399	14,850	17,312	4,824	253,386
40	170,000	15,300	253,386	15,300	20,271	5,336	294,292
41	175,000	25,000	294,292	25,000	23,543	7,282	350,117
42	180,000	25,000	350,117	25,000	28,009	7,951	411,078
43	185,000	25,000	411,078	25,000	32,886	8,683	477,647
44	190,000	25,000	477,647	25,000	38,212	9,482	550,340
45	195,000	25,000	550,340	25,000	44,027	10,354	629,722
46	200,000	25,000	629,722	25,000	50,378	11,307	716,406
47	205,000	25,000	716,406	25,000	57,312	12,347	811,065
48	210,000	25,000	811,065	25,000	64,885	13,483	914,433
49	215,000	25,000	914,433	25,000	73,155	14,723	1,027,311
50	220,000	150,000	1,027,311	150,000	82,185	34,828	1,294,324
51	225,000	150,000	1,294,324	150,000	103,546	38,032	1,585,902
52	230,000	150,000	1,585,902	150,000	126,872	41,531	1,904,305
53	235,000	150,000	1,904,305	150,000	152,344	45,352	2,252,001
54	240,000	150,000	2,252,001	150,000	180,160	49,524	2,631,685
55	245,000	150,000	2,631,685	150,000	210,535	54,080	3,046,300
56	250,000	150,000	3,046,300	150,000	243,704	59,056	3,499,059
57	255,000	150,000	3,499,059	150,000	279,925	64,489	3,993,473
58	260,000	150,000	3,993,473	150,000	319,478	70,422	4,533,372
59	265,000	150,000	4,533,372	150,000	362,670	76,900	5,122,942
60	270,000	150,000	5,122,942	150,000	409,835	83,975	5,766,753