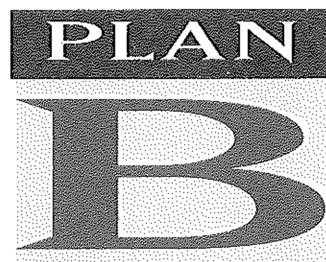

PLAN B FINANCIAL SERVICES LTD
ABN 42 052 834 634
AUSTRALIAN FINANCIAL SERVICES
LICENCE NO 220382

LEVEL 28 CENTRAL PARK
152-158 ST GEORGES TCE
PERTH WESTERN AUSTRALIA
PO BOX 7008
CLOISTERS SQUARE
PERTH WA 6850

TELEPHONE (08) 9324 6000
FACSIMILE (08) 9481 6148
planb@planbonline.com
www.planbonline.com

9 August 2006

Mr John Lonsdale
General Manager
Superannuation, Retirement & Savings Division
The Treasury
Langton Crescent
PARKES ACT 2600
Fax: 02 6263 2770
simplersuper@treasury.gov.au

Dear John,

A PLAN TO SIMPLIFY AND STREAMLINE SUPERANNUATION

Plan B Financial Services Ltd (Plan B) is a leading WA-based financial planning organisation with over 150 staff. Plan B Trustees Limited, a wholly owned subsidiary of Plan B, operates three public offer superannuation funds with a combined membership in excess of 20,000 and accumulated member benefits of more than $800M.

We have reviewed the proposals contained in "A Plan to Simplify and Streamline Superannuation, Detailed Outline", in addition to attending the Treasury briefing in Perth on 4 July, and wish to submit our written comments for consideration by the Treasury and Government.

1. SUMMARY

1.1. General comments

We welcome the proposals to simplify the superannuation system and believe that enhancing the flexibility and efficiency of the superannuation system will assist and encourage people to achieve a higher standard of living in retirement. However, in saying that we believe there is scope for further refinement and have outlined our views for your consideration.

A significant disadvantage with the superannuation system remains, that being the legislative risk. The incessant amendments to superannuation legislation has affected the level of comfort of both members and financial advisers to invest retirement savings in superannuation. Plan B Advisers will generally recommend that clients retain some funds outside of superannuation as a result of this and will continue to in light of these reforms. In our view, only a prolonged period of stability and clear objectives of the system can remedy this issue.

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1.2. Specific comments

The following comments are explained in further details in the remainder of the document:

- Age for tax-free benefits is reduced to preservation age
- Abolition of ETP Payment Summary forms
- Provision for the full commutation of lifetime, life expectancy and market-linked pensions
- A transition period of 6-12 months after legislation becomes effective to implement the new ETP tax system.
- Immediate publication of the date the pre-July 1983 component is to be fixed at.
- Consistent definition of 'dependant' between tax and superannuation legislation
- Lump sum death benefits are tax-free if the deceased is aged 60 or over
- Exemption to the personal contribution limit for proceeds from superannuation death benefits, retail life insurance policies and real estate
- Limit for deductible contributions be changed to $100,000, and indexed annually to nearer $10,000
- Clarification as to whether investment earnings on deductible contributions that exceed the limit will be taxed differently
- Allow individuals to make deductible contributions, as opposed to employers.
- Individuals required to satisfy the work-test only when making a contribution, as opposed to future years if they have utilised the three-year average cap.
- Annual indexation of the personal contribution limit to nearer $10,000

2. Taxation of Benefit Payments

2.1. Proposed rules for benefits paid to individuals aged 60 or over

We support the proposition to abolish taxes on benefits to retirees but strongly disagree with the proposed age of 60. This is inconsistent with the preservation age, hence is a source of unnecessary complexity and contradicts the premise of these proposals. While we appreciate the Government's position that the preservation age is increasing to 60, this does not occur until 2024.

We are already seeing demand for strategies for members who fall into this age gap. Such strategies serve to reduce the tax revenue that would otherwise arise and the deterrent against retiring before age 60, negating the purpose for this added complexity.

This also creates difficulties in withholding tax for non-commutable pensioners in the year they turn 60, as the pension payments become tax-free.

Hence, we recommend that the age for tax-free benefits is reduced to preservation age.

We also recommend that ETP Payment Summary forms are abolished, given that individuals do not need to include benefits in their tax return. This proposal could give rise to smaller, more frequent benefit payments (as appears to be the intention of the proposal) and would increase the reporting burden on funds if the forms are not dispensed with.

Provision also needs to be made for the commutation of lifetime, market-linked and life expectancy pensions that were purchased for the purpose of accessing the Pension RBL. Individuals were previously encouraged to purchase these pensions by the existence of the Pension RBL. If, as proposed, benefits become tax-free, these individuals must be given the opportunity to unwind these arrangements that they are locked into. Hence, we recommend that provision is made for the full commutation of these pensions at the choice of the member after receiving appropriate advice. We do not foresee any issue with this as individuals would not be able to repurchase these types of income streams under the proposals.

2.2. Proposed rules for benefits paid to individuals aged under 60

The proposed simplified tax system would require significant systems changes. A transition period of 6-12 months after the legislation became effective would be required to implement the system.

We also request that the date the pre-July 1983 component is to be fixed at is published as soon as possible.

2.3. Death benefits

We see a number of issues with the payment of tax-free lump death benefit payments to dependants. The first is the differing definitions of 'dependant' between the Income Tax Assessment Act and the Superannuation Industry (Supervision) Act. This needs to be resolved and made consistent.

The second issue is the anomaly created for an individual aged 60 or over - if they withdraw their superannuation benefit immediately prior to death and gift the funds to a non-dependant it is tax-free, but the benefit would be taxable if paid to a non-dependent following death. Hence, the proposal should be amended so that lump sum death benefits are tax-free if the deceased was aged 60 or over.

The final issue is that death benefits for non-reversionary pensions would be paid as a lump sum. The operation of the $150,000 contribution limit in many cases would prevent a non-working beneficiary from contributing the death benefit to their superannuation. Previously it was common for non-working beneficiaries to seek short-term employment in order to contribute the death benefit to superannuation. This anomaly appears to contradict the Government's objective of individuals using superannuation to fund their retirement. If this proposal became effective, we would need to advise all non-reversionary pensioners with a balance likely to exceed $150,000 to repurchase their pensions as reversionary. Hence, we recommend that an exemption to the contribution limit be introduced for proceeds from superannuation death benefits and retail life insurance policies.

3. SIMPLIFIED CONTRIBUTION RULES

3.1. Deductible contributions

We understand, from the profile of our clients, that the concessional deductible contribution limit of $50,000 is significantly inadequate. While we note that this is an important revenue source for the system, we believe it is too strict. It will affect many self-employed individuals, key staff of larger corporates and disadvantage those with lumpy income (as some years they cannot contribute up to the limit). A more appropriate limit would be $100,000, annually indexed to changes in AWOTE (or CPI) and rounded to the nearest $10,000.

Clarification is also required as to whether investment earnings on contributions that exceed the limit will be taxed differently. If not, some motivation may still exist for affected individuals to contribute above the limit (as they would be taxed at the top marginal tax rate on those funds anyway) to benefit from concessional tax treatment of investment earnings.

Complexity still remains for funds that receive deductible contributions made by self-employed individuals and for employers in administering superannuation salary sacrifice arrangements. This could be remedied by shifting the burden to individuals, allowing them to make deductible contributions and claim back the tax paid in their tax returns. This would have no impact on tax revenue, remove the need for Section 82 notices and allow individuals to make deductible contributions where their employer does not offer the ability for them to salary sacrifice.

We are also opposed to the proposed administration arrangements for collecting the additional tax for contributions that exceed the limit. Superannuation funds will suffer significant costs in administering the arrangement, including additional staff and systems changes. However, we are unable to suggest an alternative mechanism.

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3.2. Personal contributions

It has been recently reported that individuals making a $450,000 personal contribution must continue to meet the work test for the next two years. In our view this is unworkable. It would unfairly place a burden on superannuation funds to follow-up the individual in later years for a work test declaration. In circumstances where the individual transfers to another fund, records of earnings since the contribution was made have to be recorded and reported to the new fund. Furthermore, funds may be required to refund contributions if an individual dies or is disabled in the next two years. We recommend that individuals only be required to satisfy the work-test at the time of making a contribution.

We also recommend that the limit is indexed in future years and rounded to the nearest $10,000.

We would like to see the exemption to contribute small business proceeds expanded to include real estate. The property boom has seen individuals invest significant wealth in this sector. Many investors will sell the property as they approach retirement to access the funds. The $450,000 limit may prevent all of the sale proceeds from being invested into superannuation.

The administration of excessive contributions appears problematic, especially when dealing with multiple funds and investment earnings. The proposals paper states that rules will be developed for this although our expectation is that it will be administered similarly to the arrangements for deductible contributions, with the ATO policing it. It appears superannuation funds will have to calculate the tax attributable to investment earnings on excess contributions. This would create further administration costs for superannuation funds. However, if the need to provide future work-tests, for those individuals who utilise the $450,000 limit, is removed we do not see this being a common occurrence.

We appreciated the consultation meeting Treasury convened in Perth, which provided the opportunity to discuss and understand further the proposals.

If you have any queries on any aspect of our submission, please do not hesitate to contact Adam Lee on 08 9324 6026 or myself on 08 9324 6020.

Yours sincerely,

Graeme Douglas
Head of Group Risk Management