



**The Institute of
Chartered Accountants
in Australia**

9 August 2006

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

Email: simplesuper@treasury.gov.au

Dear Trevor,

This submission is made by The Institute of Chartered Accountants in Australia (the Institute). The Institute is one of Australia's peak professional bodies and our members represent many of Australia's peak business and finance professionals. These members act as advisers and key decision-makers in all facets of the superannuation industry.

The submission has been prepared with the assistance from many members in their capacity as trustees, service providers and fund members of funds of all sizes.

The Institute greatly values the opportunity to be involved in the consultation process on these important reforms. We support the Government's efforts to simplify the superannuation system. Our submission aims to highlight areas the Institute believes can be clarified or further strengthened, so that the benefits of these reforms can be achieved.

We look forward to working with Government and Treasury on the implementation of the package.

Should you have any queries please do not hesitate to contact myself, or Susan Orchard on 03 9502 4371.

Yours sincerely

Bill Palmer

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1. Taxation of benefit payments

We support the removal of Reasonable Benefit Limits (RBLs) as these are a particularly complex method of minimising access to concessional tax treatment. RBLs are not well understood by many stakeholders in the industry, including regulators and advisors. There should, however, be discretion to provide for an earlier commencement date for the abolition of RBLs in circumstances outside of the person's control e.g. death. This arises, as the person with an excessive benefit who dies today is disadvantaged when compared to a person with the same benefits who dies after 1 July 2007.

1.1 Calculation and fixing of pre 1 July 1983 benefits

The paper indicates that the pre 1 July 1983 amount in each account is to be calculated at a point in time and the benefit fixed. The timing of this measure needs to follow a program of education encouraging those with existing savings to consolidate accounts. Our financial planning members have indicated that the consolidation of accounts takes place as people near retirement when they seek advice as to their options. The Institute believes this requires at least twelve months notice to ensure consumers take the appropriate action. We recommend a calculation date of 1 July 2008.

Consideration also needs to be given to those Australians with monies in multiple accounts that choose not to consolidate due to the impact of exit fees or access to insurance. This proposal can see people being disadvantaged by either being required to consolidate or failing to do so.

A solution to this would be to enable a superannuation fund to record an existing eligible service period with appropriate evidence from another complying superannuation fund prior to the determined calculation date. Where this approach is taken people would need to be educated as to the benefit of taking an action. However, as the action is simpler and will not result in a disadvantage, the lead-time required would be reduced and a calculation date for fixing the pre 1 July 1983 benefit could be 31 December 2007.

With respect to the calculation of pre 1 July 1983 benefits we would recommend that the pre 1 July 1983 benefit be calculated by the same method as currently occurs, i.e. the account balance is reduced by the exempt components and the remainder proportioned between pre and post 1 July 1983.

1.2 Disability payments

This proposal sees the removal of restrictions on the making of contributions by non-working and self-employed Australians. However, there are restrictions on benefit payments with respect to disability payments. As the Superannuation Industry (Supervision) Act 1993 (SIS) defines permanent incapacity as a person's ceasing employment due to a disability and being unable to return to employment in the field for which a person is are educated, Australians who have never worked or are self employed are unable to receive a superannuation benefit in the event of a serious disability.

As a result of this long-standing issue some people are disadvantaged as they are unable to access savings to make the appropriate lifestyle modifications to homes or transport.

A solution to this would be to ensure the definition of disability in SIS is functional and to include an inability to carry out paid or unpaid functions.

1.3 Disability pensions

The paper is silent on whether a disability benefit can be paid as a pension. The paper is also silent on the tax treatment of such a payment.

The Institute recommends that this be explicitly addressed and advocates that disability pensions should be allowed and that these are exempt from tax as for a person over age 60. This will encourage beneficiaries to take pensions in the event of disability and assist Government by funding a part of their income during a period of incapacity.

Where this recommendation is not accepted the pension paid as a result of a disability should continue to be eligible for the 15 per cent rebate.

1.4 Death benefit pensions

One area that should be clarified during the legislative process is what happens where the dependent in receipt of the pension becomes a non-dependent for example following the death of their sole parent a child is provided a pension for life. Does the tax treatment of the pension change when the child reaches age 18?

In order to keep the process simple the Institute believes that it is appropriate to assess the pension benefits against the dependency status of the beneficiary upon commencing the payment of the pension and retain that status for the life of the pension. The recipient or their legal personal representative should be allowed to elect to commute the benefit with no access to the exempt component once they reach age 25.

This will eliminate the need to retain a record of the exempt component and to reduce the component by the amount used in order to determine rebates in the future.

The paper has not clarified the tax treatment of a pension upon the death of the current beneficiary, when the beneficiary is in receipt of a death benefit pension.

This should be paid to the beneficiaries of the deceased in accordance with the proposed rules with no access to the exempt component of the original person.

1.5 Existing pensions

The paper is silent on the proposed treatment for existing pensions.

1.6 Defined benefit pensions

Many of the recipients of these pensions are often elderly people who have put in place pension arrangements that minimise the fluctuations in their income. This reduces their interactions with Centrelink.

Recipients of pensions should be allowed to continue on in accordance with the current rules. However, any monies previously considered excessive should be exempted from tax for persons over age 60.

Where they wish to move to an account based pension the pensioner should be able to make an irrevocable election to transfer to the new account based pension factors. This would be a direct transfer from the date of the election i.e. the new rates applied at this time.

There should be no impact on the asset test for pensions transferring using this method i.e. if a 100 per cent asset test exemption applied to an account this should continue to apply.

The undeducted purchase price (UPP) should be recalculated using the new exempt component. This would involve determining how much of the previous UPP has been used via a simple multiple and calculating the UPP at the standard calculation date.

2. Payment rules simplified

2.1 Pensions

The paper indicates that a benefit, taken as a pension will be subject to a minimum payment with no maximum. As the tax on the income of the fund, including capital gains, is nil it needs to be clearly determined when the fund is in pension phase. This will be achieved by ensuring that there is a clear request for a pension to be paid and acceptance by the trustee.

2.2 Definition of dependant

There are presently two definitions of dependant: one for tax purposes and one for superannuation benefit purposes. This definition should be applied consistently and should include an interdependent person as set out in the SIS.

2.3 Definition of reversionary

There is no definition of reversionary in the SIS Act. In order that benefits are transferred to appropriate reversionaries this should be defined. It is considered appropriate to include all beneficiaries, which meet the definition of an interdependent person to enable tax payers to continue on financial arrangements posthumously.

3. Simplified contribution rules

3.1 Contribution caps

The key to ensuring there is an adequate savings level is ensuring that the contribution caps keep dollar parity in real terms. While we understand that the government does not wish to index these rates the Institute believes that it is important to build into the legislative framework a regular review of the caps. This could take the form of a series of fixed review dates. This will ensure that where the government sees savings short falls due to restrictions on contributions this can be addressed in a timely manner.

The Institute believes that the \$100K cap for those over 50 should be an ongoing provision to recognise that people currently over age 40 will have had limited opportunities to save in a tax effective manner early in their careers. This has arisen due to the existence of age-based limits and the lack of access to salary sacrifice arrangements in the early years of SG. The Institute's proposal would also recognise the barriers to saving for some young people such as those caused by the need to pay HECS-HELP debts. At a minimum this concession should be provided for a period of at least 10 years.

The need for transitional measures for deductible contributions is welcomed (i.e. doubling of the contribution from \$50K to \$100K until 2012). We recommend a consistent approach be adopted for post tax contributions (i.e. doubling of the contribution from \$150K to \$300K until 2012.) to be appropriate. The three-year averaging does not provide a concession - it merely allows you to use up three year's limits in one year.

3.2 50K - 150K caps

The Institute considers it appropriate to exclude transfers from overseas from the \$150K cap for undeducted contributions in recognition of the fact this recognises that the contributions made were made in accordance with the requirements of a foreign country and in good faith. This would apply where the benefit was transferred directly from the foreign fund to an Australian fund in accordance with SIS. To enhance the integrity thereof it may be necessary to require that this would only apply to benefits built up in overseas funds by individuals working and living in the offshore location

There are currently concessions granted for the sale of a business where a capital gain is made, by a self-employed person, facilitating a 500K contribution to superannuation. The limit used in this calculation has not been reviewed since its introduction in 1997. The Institute considers this limit has been significantly eroded by inflation and should be reviewed to ensure that business operators are able to provide for retirement in a tax effect manner.

The cap on contributions has also introduced a further issue for those selling a business that is a non-CGT asset. In this scenario the person is excluded from the CGT rollover relief concession and is unable to make additional superannuation contributions. It is recommended that \$500K arising from the sale of a pre - CGT business asset be exempt from the undeducted contribution cap

The return of contributions mechanism needs to be simple and efficient making the tax payer liable for ensuring payment although the fund could be required to direct the payment from the member's account to the Australian Taxation Office (ATO). If the onus/compliance instead rests with the fund the administration would be very onerous on the fund. Also the differing taxation rates in the fund or contributions over and under the deductible limit will take us back to the surcharge administration nightmare. Hence this needs to be carefully considered.

To simplify this process it is recommended that a single rate be used to determine the tax payable on the contribution earnings while they are in the fund.

The use of notional contributions for defined benefit funds is likely to result in complex calculations which impact on member's expected benefits. In order to ensure equity for those with defined benefit funds the system should allow contributions at existing levels to continue where the benefit has not been improved from May 2006. Notional contributions may be used by a fund member to determine whether they are eligible to make additional contributions to bring them up to the 50K or 150K cap.

The contributions limit has had the greatest negative impact on our members' clients. Those clients who were planning their retirement under the old rules have in many cases had the 'rug pulled out' from underneath them. e.g. a 64 year farming couple who sold their farm but settled post Budget night are limited to top up UDCs of only \$300K combined. We strongly suggest that further transitional measures are put in place to allow for higher UDCs in circumstances where a taxpayer already had a plan (e.g. evidenced by a statement of advice (SOA) predating Budget night) in place to implement the strategy. Although applying the undeducted contribution (UDC) restriction from Budget night is not technically a retrospective change, it has the practical effect of being so, which is disappointing given that governments have aimed never to have retrospective changes in the important superannuation arena. Such changes make taxpayers wary and may limit their comfort levels in fully embracing the superannuation system going forward - which would not help the retirement funding problem.

4. Contribution incentives for self-employed

For contribution purposes the Institute supports treating the self-employed in the same manner as those in traditional employment.

The proposals set out in the paper make the caps an individual limit of \$50K it is therefore unnecessary to retain the restrictions on claiming a personal deduction for contributions made, i.e. the 10 per cent rule. This will ensure that those unable to salary sacrifice can maximise their contributions within the \$50K limit.

4.1 Age pension arrangements

The Institute supports the changes to the pension income test and the simplification of the system through the removal of the assets test.

The changes, while far reaching, do not however address the inherent inequity in the pension system that arises as a married couple receive approximately 80 per cent of the pension benefit as compared to two singles that are interdependent. Any future review needs to consider equity between households in retirement.

5. Other measures

5.1 Employer payments

The Institute supports the simplification of taxation on payments in respect of termination of employment. However, again we would encourage grandfathering of pre- Budget entitlements that would exceed the new \$140 K per employer limit, for example, where a person entered into an agreement which included a termination entitlement which would have been concessional taxed under the current environment.

5.2 Non quotation of tax file number

There needs to be some rules requiring the money to be returned to the employee. This will arise when the employer has been requested to withhold undeducted contributions and remit these to the fund and the member has not quoted their tax file number (TFN).

6. Making it easier to find and transfer superannuation

We support the Government's proposal to make it easier for members to find any lost superannuation and transfer their superannuation to a fund of their choice.

A recent survey conducted by the Institute revealed that 27 per cent of Australians hold two or more superannuation funds.

We would support the introduction of a single standard form to improve the process of transferring benefits and reducing the number of days for a transfer request to 30 days. The consistency of using a standard form would ensure that the process of transferring and consolidation would occur more effectively.

The Government's proposal to become more proactive in the role of locating and contacting members over their lost superannuation is to be commended. As stated in the recent survey by the Institute one of the main reason behind consumers not having consolidated their superannuation was due to apathy and belief that it is too complex. A proactive stance by Government/ ATO will assist more consumers to consider their superannuation. The provision of a facility to consolidate their superannuation funds must incorporate the need for consumers to receive financial advice to ensure an appropriate decision is made. There are key issues that must be considered when consolidating superannuation fund including insurance and fees.

7. Ancillary problems

7.1 Superannuation Guarantee Act

The Superannuation Guarantee Act which, uses the term Reasonable Benefit Limits (RBL), should be amended. The RBL is used as a limit to enable a person to opt out of superannuation guarantee (SG) payments. This could be achieved by including a maximum savings level over which the member can elect not to receive SG contributions. While reviewing this area the requirement to give the employer statements should be amended to require the provision of an asset certificate from an advisor as occurs for sophisticated investors in the Australian Securities and Investment Commission (ASIC) regime.

7.2 Changes to UK pension system

The UK has recently changed its pension system that makes it more difficult for foreign funds to accept superannuation benefits from UK funds. To date the Institute is unaware of any funds gaining qualifying recognised overseas pension schemes (QROP) approval. It is likely that a minimum number of funds will achieve this standard. Should the market choose not to offer defined benefit pensions in the future these monies may be prevented from transfer into Australian funds. Hence, although defined benefit (DB) pensions may not be as popular in the new regime, there should not be any legislative restriction upon providing a DB pension in the future.

7.3 Tax treatment of overseas pensions

Upon becoming a client of Centrelink, an Australian citizen who reaches retirement age or experiences a cashing event for an overseas pension scheme is required to claim their entitlement. These pensions are subject to the income test and discount the pension or allowance payable in Australia. These monies are subject to income tax. For those who have not yet reached retirement age when senior Australians receive tax concessions can lead to a high effective tax rate.

The Institute recommends these monies be treated consistently with savings held within an Australian retirement plan.